

Canada



K'ómoks

Agreement-in-Principle

March 24, 2012



IN WITNESS WHEREOF the Parties hereby execute this Agreement-in-Principle
March 24, 2012, at Comox, British Columbia

SIGNED on behalf of the K'ÓMOKS FIRST
NATION

CHIEF ERNEST HARDY

Witness:

Barbara Mitchell
Councillor
K'ómoks First Nation

SIGNED on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF CANADA as
represented by the Minister of Indian Affairs
and Northern development and Federal
Interlocutor for Métis and Non-Status Indians

THE HONOURABLE JOHN DUNCAN

Witness:

Doug Waddell,
Chief Federal Negotiator

SIGNED on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA as represented by the
Minister of Aboriginal Relations and
Reconciliation

THE HONOURABLE MARY POLAK

Witness:

The Honourable Don McRae
Minister of Agriculture
MLA, Comox Valley

TABLE OF CONTENTS

PREAMBLE.....	11
GENERAL PROVISIONS.....	13

SELF-GOVERNMENT

LOCAL GOVERNMENT RELATIONS.....	57
CULTURE AND HERITAGE.....	59

LANDS

LANDS	63
LAND TITLE.....	77
ACCESS	81
ROADS AND RIGHTS OF WAY.....	85

HARVESTING RIGHTS

FISHERIES.....	91
WILDLIFE.....	93
MIGRATORY BIRDS.....	103
GATHERING PLANTS	111

RESOURCE MANAGEMENT

PARKS AND PLANNING.....	115
ENVIRONMENTAL ASSESSMENT AND PROTECTION	119
FOREST RESOURCES.....	123
WATER.....	127

FISCAL RELATIONS

CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT	137
TAXATION.....	139

PROCEDURES

APPROVAL OF THIS AGREEMENT 143

ELIGIBILITY AND ENROLLMENT 145

RATIFICATION OF THE FINAL AGREEMENT 153

IMPLEMENTATION..... 157

TRANSITION 159

DISPUTE RESOLUTION 161

AMENDMENT 169

OTHER MATTERS

GOVERNANCE CAPACITY DEVELOPMENT 173

DEFINITIONS 175

APPENDICES

Appendix A: 189

Map of K'ómoks First Nation Area

Appendix B:..... 193

Appendix B-1: Map of K'ómoks First Nation Land Overview

Appendix B-2: Former K'ómoks First Nation Reserves

Part 1: Descriptions of Former K'ómoks First Nation Reserve

Part 2: Maps of Former K'ómoks First Nation Reserves

Appendix B-3: Maps of Former K'ómoks First Nation Reserves

Appendix B-4: Western Goose Spit

Part 1: Description of Western Goose Spit

Part 2: Map of Western Goose Spit

Appendix C: 235

Appendix C-1: Interests to Continue in Accordance with Provincial Law

Part 1: Water Licences and Permits to Occupy Crown Land Issued under the *Water Act*

Part 2: Subsurface Tenure Issued under the *Mineral Tenure Act*

Part 3: Trapline Issued under the *Wildlife Act*

Part 4: Guide Outfitter Certificates and Licences Issued under the *Wildlife Act*

Appendix C-2: Interests to be Replaced on the Effective Date

Part 1: Public Utility Works and Other Interests on Former K'ómoks First Nation Reserves

Part 2: Public Utility Works and Other Interests on Former Provincial Crown Land

Part 3: Public Utility Works and Other Interests on Former K'ómoks First Nation Fee Simple Land

Appendix C-3: Interests to be Created on the Effective Date

Part 1: Existing Tenures Requiring Private Road Easement over K'ómoks First Nation Lands

Part 2: Fee Simple Estates Requiring Private Road Easement over K'ómoks First Nation Lands

Appendix C-4: Applicable Forms of Document

Appendix D: 257

Exclusions to K'ómoks First Nation Lands

Appendix E:	259
Map of Access Corridor at Goose Spit	
Appendix F - Expropriation Procedures:	263
Part 1: Provincial Expropriation Procedures	
Part 2: Federal Expropriation Procedures	
Appendix G:	275
Map of K'ómoks First Nation Harvest Area	
Appendix H:	279
K'ómoks First Nation Public Land	
Appendix I:	281
Maps of Watersheds in the K'ómoks First Nation Area	
Appendix J:	289
Map of Courtenay River Estuary	
Appendix K:	291
K'ómoks First Nation Hydro Power Reservations	
Appendix L:	293
Geographic Features to be Renamed with K'ómoks First Nation Names	

Appendix M - Dispute Resolution Procedures: 295

Appendix M-1: Collaborative Negotiations

Appendix M-2: Mediation

Appendix M-3: Technical Advisory Panel

Appendix M-4: Neutral Evaluation

Appendix M-5: Community Advisory Council

Appendix M-6: Arbitration

PREAMBLE**Whereas:**

K'ómoks are aboriginal people of Canada;

Section 35 of the Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada;

The Parties are committed to the reconciliation of the prior presence of K'ómoks and of the sovereignty of the Crown through the negotiation of a Final Agreement which will establish a new government-to-government relationship;

The Parties desire certainty in respect of K'ómoks ownership and use of lands and resources, K'ómoks law-making authority and the relationship of Federal Laws, Provincial Laws and K'ómoks Laws;

The Parties intend that the Final Agreement will not extinguish any aboriginal rights, and will achieve certainty with respect to those rights in the manner set out in the Final Agreement;

K'ómoks are Northern Coast Salish and Kwak'wak'awa'kw people who assert that their heritage, history and culture, including their language and spiritual practices, are tied to the lands, waters, and resources that comprise the K'ómoks Area;

Canada and British Columbia acknowledge the aspirations of K'ómoks to preserve, promote and develop the culture, heritage, language and economy of K'ómoks;

The Parties intend that the Final Agreement will set out the right of K'ómoks to practice the K'ómoks culture and use the K'ómoks language in a manner consistent with the Final Agreement;

Canada and British Columbia acknowledge the aspirations of K'ómoks and its Members to participate more fully in the economic, political, cultural and social life of British Columbia in a way that preserves and enhances the collective identity of K'ómoks and to evolve and flourish as a self-sufficient and sustainable community;

The Parties intend that the Final Agreement will set out the right of K'ómoks to self-government, and that right will be exercised in accordance with the Final Agreement;

This Agreement sets out the basis for negotiating a Final Agreement.

GENERAL PROVISIONS

NATURE OF THE AGREEMENT-IN-PRINCIPLE

1. The Parties acknowledge and agree that this Agreement and for greater certainty any of its provisions are not legally binding on any of the Parties and are without prejudice to the respective legal positions of the Parties. Neither this Agreement nor any related communications over the course of these negotiations will be used against any of the Parties in any court proceeding or any other forum, including international fora, or be construed as creating, abrogating, negating, denying, recognizing, defining, or amending any rights or obligations of any of the Parties except as expressly provided for in the Final Agreement and only upon the Effective Date.
2. Prior to the conclusion of a Final Agreement, the Parties will address fisheries matters, and the Parties will review other parts of the Final Agreement that may be affected, including, if appropriate, the certainty provisions, and make any necessary changes, and the Final Agreement will reflect the agreement of the Parties.

NATURE OF THE FINAL AGREEMENT

3. Upon ratification of the Final Agreement by the Parties, the Final Agreement will be a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
4. Once ratified by the Parties, the Final Agreement is binding on and can be relied on by the Parties and all persons.
5. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that Settlement Legislation provide that the Final Agreement is approved, given effect, declared valid, and has the force of law.
6. Ratification of the Final Agreement by the Parties in accordance with the Ratification Chapter is a condition precedent to the validity of the Final Agreement and, unless so ratified, the Final Agreement will be of no force or effect.

REPRESENTATION AND WARRANTY

7. K'ómoks represents and warrants to Canada and British Columbia that, in relation to the matters dealt with in the Final Agreement, K'ómoks has the authority to enter, and it enters, into the Final Agreement on behalf of all K'ómoks Individuals who, through

K'ómoks, have or may exercise any aboriginal rights, including aboriginal title, in Canada, or who may make any claim in relation to those rights.

8. Canada and British Columbia represent and warrant to K'ómoks that, in relation to the matters dealt with in the Final Agreement, they have the authority to enter into the Final Agreement, within their respective authorities.

CONSTITUTION OF CANADA

9. The Final Agreement will not alter the Constitution of Canada, including:
 - a. the distribution of powers between Canada and British Columbia;
 - b. the identity of K'ómoks as aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
 - c. sections 25 and 35 of the *Constitution Act, 1982*.
10. The Final Agreement will provide that the *Canadian Charter of Rights and Freedoms* applies to K'ómoks Government in relation to all matters within its authority.
11. After the Effective Date, there will be no "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for K'ómoks, and there will be no "reserves" as defined in the *Indian Act* for the use and benefit of K'ómoks. For greater certainty, K'ómoks Lands will not be "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* and are not Indian Reserves.

CERTAINTY

Full and Final Settlement

12. The Final Agreement will constitute the full and final settlement in relation to any aboriginal rights, including aboriginal title, in Canada that K'ómoks may have.

Section 35 Rights of K'ómoks

13. The Final Agreement will exhaustively set out K'ómoks Section 35 Rights, their attributes, the geographic extent of those rights, and the limitations to those rights, to which the Parties will have agreed, and those rights will be:

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- a. any aboriginal rights, including aboriginal title, in Canada, modified as a result of the Final Agreement and the Settlement Legislation, of K'ómoks in and to its K'ómoks Lands and other lands and resources in Canada;
 - b. the jurisdictions, authorities and rights of K'ómoks Government; and
 - c. the other K'ómoks Section 35 Rights.

Modification and Continuation

14. Notwithstanding the common law, as a result of the Final Agreement and the Settlement Legislation, any aboriginal rights, including any aboriginal title, of K'ómoks, as they may have existed anywhere in Canada before the Effective Date, including their attributes and geographic extent, will be modified, and will continue as modified, as set out in the Final Agreement.
15. For greater certainty, any aboriginal title of K'ómoks anywhere that it may have existed in Canada before the Effective Date, including its attributes and geographic extent, will be modified and continue as the estates in fee simple to those areas identified in the Final Agreement as K'ómoks Land.

Purpose of Modification and Continuation

16. The purpose of the modification referred to in paragraph 14 is to ensure that as of the Effective Date:
 - a. K'ómoks has, and can exercise, K'ómoks Section 35 Rights as set out in the Final Agreement, including the attributes and geographic extent of those rights, and the limitations to those rights, to which the Parties will have agreed;
 - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner that is consistent with the Final Agreement; and
 - c. Canada, British Columbia, and all other persons do not have any obligations in relation to any aboriginal rights, including aboriginal title, that K'ómoks may have to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, K'ómoks Section 35 Rights set out in the Final Agreement.
17. For greater certainty, any aboriginal rights including aboriginal title, that K'ómoks may

have will not be extinguished, but will be modified and continue as modified as set out in the Final Agreement.

Release of Past Claims

18. The Final Agreement will provide that K'ómoks will release Canada, British Columbia and all other persons from all suits, claims, demands, actions, or proceedings, of whatever kind, whether known or unknown, that K'ómoks ever had, has or may have in the future, relating to or arising from any act or omission before the Effective Date that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of K'ómoks as it may have existed anywhere in Canada before the Effective Date.

Specific Claims

19. Nothing in the Final Agreement will preclude K'ómoks from pursuing any claims that fall within the scope of Canada's Specific Claims Policy, in accordance with that policy, the *Specific Claims Tribunal Act*, or in court.
20. For greater certainty, if K'ómoks pursues a specific claim in court, Canada reserves the right to plead all defences available to it including limitation periods, the doctrine of laches, and lack of admissible evidence, and K'ómoks reserves the right to make all possible counter arguments available to it.
21. For greater certainty, claims referred to in paragraph 19 will not result in any land being declared to be, or being set aside as "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for K'ómoks, or an Indian Reserve for the use and benefit of K'ómoks.

Indemnities

22. The Final Agreement will provide that K'ómoks will indemnify and forever save harmless Canada or British Columbia, as the case may be, from any and all damages, losses, liabilities, or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand initiated or made before, or after the Effective Date relating to or arising from:
 - a. the existence in Canada of an aboriginal right, including aboriginal title, of K'ómoks, that is determined to be other than, or different in attributes or geographical extent from, K'ómoks Section 35 Rights set out in the Final

Agreement; or

- b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of K'ómoks as it may have existed anywhere in Canada before the Effective Date.
23. The Final Agreement will provide that a Party who is the subject of a suit, action, claim, proceeding or demand, that may give rise to a requirement to provide payment to that Party under an indemnity as set out in the Final Agreement:
- a. will vigorously defend the suit, action, claim, proceeding or demand; and
 - b. will not settle or compromise the suit, action, claim, proceeding or demand, except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

APPLICATION OF FEDERAL LAW AND PROVINCIAL LAW

24. Federal Law and Provincial Law will apply to K'ómoks, K'ómoks Members, K'ómoks Lands, K'ómoks Government, K'ómoks Public Institutions and K'ómoks Corporations.
25. Canada will recommend to Parliament that Federal Settlement Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to K'ómoks, K'ómoks Members, K'ómoks Land, K'ómoks Government, K'ómoks Public Institutions or K'ómoks Corporations, that Provincial Law will, subject to the Federal Settlement Legislation and any other Act of Parliament, apply in accordance with the Final Agreement to K'ómoks, K'ómoks Members, K'ómoks Government, K'ómoks Public Institutions, K'ómoks Corporations or K'ómoks Land, as the case may be.

RELATIONSHIP OF FEDERAL LAW, PROVINCIAL LAW AND K'ÓMOKS LAW

26. Unless otherwise provided in the Final Agreement, K'ómoks Law will not apply to Canada or British Columbia.
27. Notwithstanding any other rule of priority in the Final Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance, will prevail to the extent of a Conflict with K'ómoks Law.
28. For greater certainty, the law-making authority of K'ómoks will not include criminal law, criminal procedure, official languages of Canada, Intellectual Property, aeronautics,

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- navigation and shipping, or labour relations and working conditions.
29. Notwithstanding any other rule of priority in the Final Agreement, Federal Law or Provincial Law will prevail to the extent of a Conflict with a K'ómoks Law that has an incidental impact on a subject matter for which K'ómoks:
- a. has no authority to make laws as set out in the Final Agreement; or
 - b. has authority to make laws but in relation to which a Federal Law or Provincial Law prevail in the event of a Conflict.
30. Notwithstanding any other rule of priority in the Final Agreement, Federal Law or Provincial Law prevail to the extent of a Conflict with a K'ómoks Law that has a double aspect with a subject matter for which K'ómoks:
- a. has no authority to make laws as set out in the Final Agreement; or
 - b. has authority to make laws but in relation to which a Federal Law or Provincial Law prevail in the event of a Conflict.

**RELATIONSHIP OF THE FINAL AGREEMENT AND FEDERAL LAW,
PROVINCIAL LAW AND K'ÓMOKS LAW**

31. Any K'ómoks Law that is inconsistent with the Final Agreement is of no force or effect to the extent of the inconsistency.
32. The Final Agreement will prevail to the extent of an inconsistency with Federal Law or Provincial Law.
33. Federal Settlement Legislation will prevail over other Federal Law to the extent of a Conflict, and Provincial Settlement Legislation will prevail over other Provincial Law to the extent of a Conflict.
34. Any licence, permit or other authorization to be issued by Canada or British Columbia as a result of the Final Agreement will be issued under Federal Law or Provincial Law, as the case may be, and will not be part of the Final Agreement, and the Final Agreement will prevail to the extent of an inconsistency with the licence, permit or other authorization.

INTERNATIONAL LEGAL OBLIGATIONS

35. The Final Agreement will provide for the consistency of K'ómoks Laws and other exercises of power with Canada's International Legal Obligations.

OTHER RIGHTS, BENEFITS AND PROGRAMS

36. K'ómoks Members who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits of other Canadian citizens or permanent residents of Canada, applicable to them from time to time.
37. Subject to paragraph 38, nothing in the Final Agreement will affect the ability of:
- a. K'ómoks;
 - b. K'ómoks Members;
 - c. K'ómoks Government;
 - d. K'ómoks Public Institutions; or
 - e. K'ómoks Corporations,
- to participate in, or benefit from, programs established by Canada or British Columbia for aboriginal people, registered Indians, sometimes referred to as "status Indians", or other Indians, in accordance with criteria established for those programs from time to time.
38. K'ómoks Members are eligible to participate in programs established by Canada or British Columbia, and to receive services from Canada or British Columbia, in accordance with criteria established for those programs or services from time to time, to the extent that K'ómoks has not assumed responsibility for those programs or services under a Fiscal Financing Agreement or other funding agreement.

APPLICATION OF THE *INDIAN ACT* AND CONTINUATION OF INDIAN STATUS

39. Subject to the Transition Chapter and the Taxation Chapter, the *Indian Act* will have no application to K'ómoks, K'ómoks Members, K'ómoks Government, K'ómoks Public Institutions, or K'ómoks Corporations as of the Effective Date, except for the purposes of determining whether an individual is an "Indian".
40. For greater certainty, nothing in the Final Agreement will prevent a K'ómoks Member from being registered as an Indian, sometimes referred to as a "status Indian", in accordance with the *Indian Act*.

JUDICIAL DETERMINATION IN RELATION TO VALIDITY

41. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines any provision of the Final Agreement to be invalid or unenforceable:
- a. the Parties will make best efforts to amend the Final Agreement to remedy or replace the provision; and
 - b. the provision will be severable from the Final Agreement, to the extent of the invalidity or unenforceability, and the remainder of the Final Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.
42. No Party will challenge, or support a challenge to, the validity of any provision of the Final Agreement.
43. A breach of the Final Agreement by a Party will not relieve any Party from its obligations under the Final Agreement.

OTHER ABORIGINAL PEOPLE

44. Nothing in the Final Agreement will affect, recognize or provide any rights under Section 35 of the *Constitution Act, 1982* for any aboriginal people other than K'ómoks.
45. If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than K'ómoks, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of the Final Agreement:
- a. that provision will operate and have effect to the extent it does not adversely affect that right; and
 - b. if the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend the Final Agreement to remedy or replace that provision.
46. If Canada or British Columbia enters into a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* with any other aboriginal people and that treaty or land claims agreement adversely affects K'ómoks Section 35 Rights as set out in the Final Agreement:

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- a. Canada or British Columbia, or both, as the case may be, will provide K'ómoks with additional or replacement rights, or other appropriate remedies; and
 - b. at the request of K'ómoks, the Parties will negotiate and attempt to reach agreement on the provision of those additional, or replacement rights, or other appropriate remedies.

CONSULTATION

47. In relation to a K'ómoks Section 35 Right, the following is an exhaustive list of the consultation obligations of Canada and British Columbia:
 - a. as provided in the Final Agreement;
 - b. as may be provided in federal or provincial legislation;
 - c. as may be provided in an agreement with K'ómoks other than the Final Agreement; and
 - d. as may be required under the common law in relation to an infringement of a K'ómoks Section 35 Right.
48. For greater certainty, the exercise of a power or authority, or an action taken, by Canada or British Columbia that is consistent with or in accordance with the Final Agreement is not an infringement of K'ómoks Section 35 Rights and will not be subject to any obligation to consult except as set out in subparagraphs 47.a, 47.b , or 47.c.

PERIODIC REVIEW

49. The Parties recognize and acknowledge that the Final Agreement will provide a foundation for an ongoing relationship amongst the Parties and commit to conducting a periodic review of the Final Agreement in accordance with paragraphs 50 to 56.
50. Sixty days before each Periodic Review Date, each Party will provide the other Parties with written notice if the Party wishes to discuss the matter contemplated by paragraph 51, and if no notice is provided by any Party, the Parties will forgo engaging in a review for that Review Period.
51. The purpose of the periodic review is to provide an opportunity for the Parties to meet and discuss:

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- a. practicability of the harmonization of K'ómoks legal and administrative systems, including law-making authorities that are being exercised by K'ómoks under the Final Agreement, with those of Canada and British Columbia;
 - b. practicability of processes established by the Parties in accordance with the Final Agreement; and
 - c. other matters with respect to the implementation of the provisions of the Final Agreement as the Parties may agree in writing.
52. Unless the Parties agree otherwise, the discussion under paragraph 51 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period and within 60 days of the end of that discussion each Party will provide the other Parties with its written response on any matter discussed during that Review Period.
53. The periodic review contemplated by paragraphs 49 to 56 and all discussion and information relating to the matter of the periodic review are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done with respect to a periodic review, including the discussions or the responses provided by the Parties except for any amendments made pursuant to paragraph 55, creates any legally binding rights or obligations.
54. Except for the Parties' commitment to meet and provide written responses as set out in paragraph 52, neither the periodic review process contemplated by paragraphs 49 to 56, nor the decisions and actions of the Parties relating in any way to the periodic review process are:
- a. subject to the process set out in the Dispute Resolution Chapter; or
 - b. reviewable by a court or in any other forum.
55. For greater certainty:
- a. none of the Parties are required to agree to amend the Final Agreement or any agreement contemplated by the Final Agreement as a result of the periodic review contemplated by paragraphs 49 to 56;
 - b. if the Parties agreed to amend the Final Agreement, any such amendment will be made in accordance with the Amendment Chapter; and
 - c. if the Parties agree to amend an agreement contemplated by the Final Agreement, the agreement will be amended in accordance with its terms.

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56. Each of the Parties will be responsible for its own costs in relation to the periodic review.

INFORMATION AND PRIVACY

57. For the purposes of federal and provincial access to information and privacy legislation, information that K'ómoks provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
58. If K'ómoks requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province for disclosure of that information, but Canada and British Columbia are not required to disclose to K'ómoks information that is only available to a particular province or particular provinces or that is not available to any province.
59. The Parties may enter into agreements in relation to any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information in accordance with any applicable legislation, including federal and provincial access to information and privacy legislation.
60. Canada or British Columbia may provide information to K'ómoks in confidence, if K'ómoks Government has made a law or K'ómoks has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
61. Notwithstanding any other provision of the Final Agreement:
- a. Canada and British Columbia will not be required to disclose any information that they are required or authorized to withhold under any Federal Law or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
 - b. if Federal Law or Provincial Law allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia will not be required to disclose that information unless those conditions are satisfied; and
 - c. the Parties will not be required to disclose any information that may otherwise be withheld under a privilege at law.

OBLIGATIONS TO NEGOTIATE

62. Whenever the Parties are obliged under any provision of the Final Agreement to negotiate and attempt to reach agreement, unless the Parties otherwise agree, all Parties will participate in the negotiations.
63. Where the Final Agreement provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in the Dispute Resolution Chapter, but none of the Parties are obliged to proceed to Stage Three of the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28 of the Dispute Resolution Chapter.

OTHER AGREEMENTS

64. No agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by the Final Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by the Final Agreement, is:
- a. part of the Final Agreement; or
 - b. a treaty or land claims agreement, or creates, recognizes or affirms aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

ENTIRE AGREEMENT

65. The Final Agreement will be the entire agreement among the Parties in relation to the subject matter of the Final Agreement and, except as set out in the Final Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting the Final Agreement.
66. The Schedules and Appendices to this Agreement will form the basis of the Schedules and Appendices of the Final Agreement.

INTERPRETATION

67. The provisions in this chapter prevail over the provisions in the other chapters of the Final Agreement to the extent of any inconsistency.

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68. There is no presumption that doubtful expressions, terms or provisions in the Final Agreement are to be resolved in favour of any particular Party.
69. If an authority of British Columbia referred to in the Final Agreement is delegated from Canada and:
- a. the delegation of that authority is revoked; or
 - b. if a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- the reference to British Columbia will be deemed a reference to Canada.
70. If an authority of Canada referred to in the Final Agreement is delegated from British Columbia and:
- a. the delegation of that authority is revoked; or
 - b. if a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determined that the delegation of that authority is invalid,
- the reference to Canada will be deemed a reference to British Columbia.
71. In the Final Agreement, unless otherwise provided for or unless otherwise clear from the context:
- a. “will” denotes an obligation that, unless the Final Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
 - b. “may” is to be construed as permissive, but the use of the words “may not” is to be construed as disempowering;
 - c. “including” means “including, but not limited to”;
 - d. a reference to a “paragraph”, “Chapter”, “Schedule” or “Appendix” means a paragraph, chapter, schedule or appendix, respectively, of this Agreement;
 - e. “or” is used in its inclusive sense, meaning A or B, or both A and B;
 - f. “and” is used in its joint sense, meaning A and B, but not either alone;

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- g. a reference in a Chapter to a “paragraph”, “subparagraph”, or “Schedule” means a paragraph, subparagraph or schedule, respectively, of that Chapter;
 - h. headings and subheadings 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;
 - i. a reference to a statute or a regulation includes every amendment to it, every regulation made under that statute, and any law enacted in substitution for it or in replacement of it;
 - j. the use of the singular includes the plural, and the use of the plural includes the singular;
 - k. “provincial” refers to the province of British Columbia;
 - l. where a word is defined in this Agreement other parts of speech and grammatical forms of the same word have corresponding meanings; and
 - m. “harvest” includes an attempt to harvest.
72. Notwithstanding paragraph 4, the Final Agreement is not intended to bind provinces, other than British Columbia, or territories, on matters within their jurisdiction without their consent.

OFFICIAL LANGUAGES

73. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to the Final Agreement, including the execution of the Final Agreement.

NO IMPLIED WAIVER

74. A provision of the Final Agreement, or the performance by a Party of an obligation under the Final Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
75. No written waiver of a provision of the Final Agreement, of performance by a Party of an obligation under the Final Agreement or of default by a Party of an obligation under the Final Agreement, is a waiver of any other provision, obligation or subsequent default.

ASSIGNMENT

76. Unless the Parties otherwise agree, the Final Agreement may not be assigned, either in whole or in part, by any Party.

ENUREMENT

77. The Final Agreement will enure to the benefit of and be binding on the Parties and their respective permitted assigns.

DEPOSIT OF AGREEMENT

78. The Parties will deposit a copy of the Final Agreement and any amendments to the Final Agreement, including any instruments giving effect to an amendment, in the following locations:
- a. by Canada in:
 - i. the Library of Parliament; and
 - ii. the library of the Department of Aboriginal Affairs and Northern Development in the National Capital Region.
 - b. by British Columbia in:
 - i. the Legislative Library of British Columbia; and
 - ii. the Office of the Registrar of Land Titles of British Columbia;
 - c. by K'ómoks in its main office; and
 - d. any other locations agreed to by the Parties.

NOTICE

79. In paragraphs 80 to 84, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.

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80. Unless otherwise set out in the Final Agreement, a communication must be in writing and be:
- a. delivered personally or by courier;
 - b. transmitted by fax or email; or
 - c. mailed by any method for which confirmation of delivery is provided.
81. A communication is considered to have been given, made, or delivered, and received:
- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
 - b. if transmitted by fax or email and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted, or
 - c. if mailed by any method for which confirmation of delivery is provided, when receipt is acknowledged by the addressee.
82. In addition to the provisions of paragraphs 80 and 81, the Parties may agree to give, make, or deliver a communication by means other than those provided in paragraphs 80 and 81.
83. The Parties will provide to each other addresses for delivery of communications under the Final Agreement, and subject to paragraph 84, will deliver a communication to the address provided by each Party.
84. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address, or transmitted to the fax number, of the intended recipient as set out below:

For: Canada
Attention: Minister of Aboriginal Affairs and Northern Development
House of Commons
Room 583, Confederation Building
Ottawa, Ontario
K1A 0A6

Fax Number: (819) 953-4941

For: British Columbia
Attention: Minister of Aboriginal Relations and Reconciliation
Room 310, Parliament Buildings
PO Box 9052 Stn Prov Govt
Victoria, British Columbia
V8W 9E2

Fax Number: (250) 356-6595

For: K'ómoks
Attention: 3320 Comox Road
Courtenay, BC
V9N 3P8

Fax Number: (250) 339-7053

SELF-GOVERNMENT

K'ÓMOKS SELF-GOVERNMENT

1. K'ómoks will have the right to self-government and the authority to make laws as set out in the Final Agreement.
2. K'ómoks Government, as provided for under the K'ómoks Constitution and the Final Agreement, will be the government of K'ómoks.
3. For greater certainty, the authority of K'ómoks to make Laws in relation to a subject matter as set out in the Final Agreement includes the authority to make Laws and to do other things as may be necessarily incidental to exercising its authority.
4. K'ómoks may adopt Federal Law or Provincial Law in relation to matters within K'ómoks law-making authority set out in the Final Agreement.

LEGAL STATUS AND CAPACITY

5. K'ómoks will be a legal entity with the capacity, rights, powers, and privileges of a natural person including the ability to:
 - a. enter into contracts and agreements;
 - b. acquire and hold property or an interest in property, and sell or otherwise dispose of that property or interest;
 - c. raise, spend, invest, and borrow money;
 - d. sue and be sued; and
 - e. do other things ancillary to the exercise of its rights, powers and privileges.
6. The rights, powers, privileges and authorities of K'ómoks will be exercised in accordance with:
 - a. the Final Agreement; and
 - b. K'ómoks Laws, including the K'ómoks Constitution.
7. K'ómoks will act through K'ómoks Government in exercising its rights, powers, privileges and authorities, and in carrying out its duties, functions and obligations.

K'ÓMOKS CONSTITUTION

8. K'ómoks will have a Constitution, consistent with the Final Agreement, which will provide:
 - a. for a democratically elected K'ómoks Government, including its duties, composition, and membership;
 - b. that the K'ómoks Government will be democratically accountable with elections at least every five years;
 - c. for a system of financial administration with standards comparable to those generally accepted for governments in Canada of similar size through which K'ómoks Government will be financially accountable to its K'ómoks Members;
 - d. for conflict of interest rules comparable to those generally accepted for governments of similar size in Canada;
 - e. for recognition and protection of rights and freedoms of K'ómoks Members;
 - f. that every person who is enrolled under the Final Agreement is entitled to be a K'ómoks Member;
 - g. that the Final Agreement sets out the authority of K'ómoks, acting through K'ómoks Government, to make laws;
 - h. processes for the enactment of laws by K'ómoks Government;
 - i. a process for challenging the validity of K'ómoks Laws;
 - j. processes for appeal or review of administrative decisions made by a K'ómoks Institution;
 - k. that any K'ómoks Law which is inconsistent with the K'ómoks Constitution is, to the extent of the inconsistency, of no force and effect;
 - l. for the establishment of K'ómoks Public Institutions;
 - m. for conditions under which K'ómoks may dispose of land or interests in lands;
 - n. for a transitional K'ómoks Government from the Effective Date until the first elected K'ómoks Government takes office;
 - o. for a process for amendment of the K'ómoks Constitution; and
 - p. for other provisions.

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9. The K'ómoks Constitution, once ratified in accordance with the Final Agreement, will come into force on the Effective Date.

K'ÓMOKS GOVERNMENT STRUCTURE

10. A majority of the members of the executive and legislative branches of K'ómoks Government will be elected, as provided for in the K'ómoks Constitution.
11. Subject to paragraph 10, the K'ómoks Constitution may provide for the appointment of members to the executive or legislative branches of K'ómoks Government, including the process for appointment, duties and other related matters.

K'ÓMOKS ELECTIONS

12. Elections for K'ómoks Government will be held in accordance with the K'ómoks Constitution and other K'ómoks Laws.

APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS

13. The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by K'ómoks Institutions under a K'ómoks Law.
14. An application for judicial review under paragraph 13 may not be brought until all procedures for appeal or review established by K'ómoks, applicable to that decision, have been exhausted.
15. The *Judicial Review Procedure Act* applies to an application for judicial review under paragraph 13 as if the K'ómoks Law were an enactment within the meaning of that Act.

CHALLENGES TO VALIDITY OF K'ÓMOKS LAWS

16. The Supreme Court of British Columbia has jurisdiction to hear applications challenging the validity of K'ómoks Laws.

REGISTRY OF LAWS

17. K'ómoks will:
 - a. maintain a public registry of K'ómoks Laws in the English language and, at the

discretion of K'ómoks, in the appropriate K'ómoks language, the English version of which will be authoritative;

- b. provide Canada and British Columbia with copies of K'ómoks Laws after they are enacted, unless otherwise agreed by the Parties; and
- c. establish procedures for the coming into force and publication of K'ómoks Laws.

INDIVIDUALS WHO ARE NOT K'ÓMOKS MEMBERS

- 18. K'ómoks Institutions will Consult with Non-Members in relation to K'ómoks Institution decisions that directly and significantly affect those Non-Members.
- 19. In addition to the requirement to Consult under paragraph 18, K'ómoks will provide Non-Members with the opportunity to participate in the decision-making processes of a K'ómoks Public Institution if the activities of that K'ómoks Public Institution directly and significantly affect Non-Members.
- 20. The means of participation under paragraph 19 will include:
 - a. an opportunity to vote for and stand for election as a member of the K'ómoks Public Institution with the ability to participate in discussions and vote on matters that directly and significantly affect Non-Members;
 - b. the appointment of at least one individual, selected by Non-Members, as a member of the K'ómoks Public Institution with the ability to participate in discussions and vote on matters that directly and significantly affect Non-Members; or
 - c. other comparable measures.
- 21. Notwithstanding paragraph 20, K'ómoks may provide that a majority of the members of a K'ómoks Public Institution must be K'ómoks Members.
- 22. K'ómoks will establish the means of participation under paragraph 20 by K'ómoks Law at the same time that it establishes a K'ómoks Public Institution whose activities may directly and significantly affect Non-Members.
- 23. K'ómoks will provide Non-Members with access to appeal and review procedures in relation to administrative decisions that directly affect Non-Members.

TRANSITIONAL PROVISIONS**K'ómoks Government**

24. The Chief and Council of K'ómoks First Nation under the *Indian Act* on the day before the Effective Date are the elected members of K'ómoks Government from the Effective Date until the office holders elected in the first election take office.
25. The first election for the office holders of K'ómoks Government will be initiated no later than six months after the Effective Date and the officers elected in the election will take office no later than one year after the Effective Date.

Law-making by K'ómoks Government

26. Before K'ómoks Government brings into effect any K'ómoks Law in relation to:
 - a. adoption;
 - b. Child Protection Services;
 - c. health services;
 - d. family and social services;
 - e. Child Care; or
 - f. kindergarten to grade 12 education,

K'ómoks Government will give at least six months written notice to Canada and British Columbia of its intention to exercise the law-making authority.

27. Upon agreement by the Parties, K'ómoks may exercise a law-making authority before the expiration of the six month notice period under paragraph 26.
28. At the written request of any Party made within three months of receiving notice under paragraph 26, the relevant Parties will discuss:
 - a. options to address the interests of K'ómoks through methods other than the exercise of law-making authority;
 - b. immunity of individuals providing services or exercising authority under K'ómoks Laws;
 - c. any transfer of cases and related documentation from federal or provincial institutions to K'ómoks Institutions, including any confidentiality and privacy considerations;

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- d. any transfer of assets from federal or provincial institutions to K'ómoks Institutions;
 - e. any appropriate amendments to Federal Law or Provincial Law, including amendments to address duplicate licensing requirements; and
 - f. other matters agreed to by the Parties.
29. The Parties may negotiate agreements regarding any of the matters set out in paragraph 28, but an agreement under this paragraph is not a condition precedent to the exercise of law-making authority by K'ómoks, and such authority may be exercised immediately following the six month notice period.

NOTIFICATION OF PROVINCIAL LEGISLATION

30. Subject to paragraph 36, or an agreement under paragraph 33, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council, British Columbia will notify K'ómoks if:
- a. the Final Agreement will provide K'ómoks law-making authority in relation to the subject matter of the legislation or regulation;
 - b. the legislation or regulation may affect the protections, immunities, limitations in relation to liability, remedies over, and rights referred to in paragraphs 175 and 176; or
 - c. the legislation or regulation may affect:
 - i. the rights, powers, duties, obligations, or
 - ii. the protections, immunities, or limitations in relation to liability referred to in paragraph 125,except where this cannot be done for reasons of emergency or confidentiality.
31. If British Columbia does not notify K'ómoks under paragraph 30 for reasons of emergency or confidentiality, British Columbia will notify K'ómoks that the legislation has been introduced in the Legislative Assembly, or the regulation has been deposited with the Registrar of Regulations.
32. Notifications under paragraphs 30 and 31 will include:
- a. the nature and purpose of the proposed legislation or regulation; and
 - b. the date the proposed legislation or regulation is anticipated to take effect, if it

has not already done so.

33. K'ómoks and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 30 to 32 and 34.
34. Subject to paragraphs 35 and 36, or an agreement under paragraph 33, if, within 30 days after notice is given under paragraph 30 or 31 or by agreement under paragraph 33, K'ómoks makes a written request to British Columbia, then British Columbia and K'ómoks will discuss the effect of the legislation or regulation, if any, on:
 - a. a K'ómoks Law; or
 - b. a matter referred to in subparagraphs 28.b or 28.c.
35. If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in paragraph 34:
 - a. K'ómoks will be invited to participate in that process; and
 - b. the process will be deemed to satisfy British Columbia's obligation for discussion in relation to a particular matter under paragraph 34.
36. If K'ómoks is a member of a representative body and, with the consent of K'ómoks, British Columbia and that body enter into an agreement providing for consultation in relation to matters under paragraphs 30, 31 and 34, then consultations in relation to a particular matter will be deemed to satisfy British Columbia's obligations for notification under paragraphs 30 and 31 and discussion under paragraph 34.
37. Unless British Columbia agrees otherwise, K'ómoks will retain the information provided under paragraphs 30 to 36 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative Assembly or a regulation is deposited with the Registrar of Regulations, as applicable.
38. The Parties acknowledge that nothing in paragraphs 30 to 36 is intended to interfere with British Columbia's legislative process.
39. Notwithstanding any other provision of the Final Agreement, to the extent that provincial legislation or a regulation referred to in paragraph 30 affects the validity of a K'ómoks Law, the K'ómoks Law will be deemed to be valid for a period of six months after the coming into force of the provincial legislation or regulation.

DELEGATION

40. Any law-making authority of K'ómoks under the Final Agreement may be delegated by a K'ómoks Law to:

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- a. a K'ómoks Public Institution;
 - b. another First Nation Government in British Columbia or a public institution established by one or more First Nation Governments in British Columbia;
 - c. Canada, British Columbia or a Local Government; or
 - d. a legal entity as agreed to by the Parties,

if the delegation and the exercise of any law-making authority is in accordance with the Final Agreement and the K'ómoks Constitution.

41. Any authority of K'ómoks under the Final Agreement other than a law-making authority may be delegated by a K'ómoks Law to:

- a. any body set out in subparagraph 40.a;
- b. any body set out in subparagraph 40.b to 40.d; or
- c. a legal entity in Canada,

if the delegation and the exercise of any delegated authority is in accordance with the Final Agreement and the K'ómoks Constitution.

42. Any delegation under subparagraph 40.b to 40.d or subparagraph 41.b or 41.c requires the written consent of the delegate.

43. K'ómoks may enter into agreements to receive authorities, including law-making authority, by delegation.

K'ÓMOKS LAW-MAKING AUTHORITIES

K'ómoks Government

44. K'ómoks may make laws in relation to the election, administration, management and operation of K'ómoks including:

- a. the establishment of K'ómoks Public Institutions, including their respective powers, duties, composition, and membership, but any registration or incorporation of a K'ómoks Public Institution must be under Federal Law or Provincial Law;
- b. the powers, duties, responsibilities, remuneration, and indemnification of members, officials, and appointees of K'ómoks Institutions;
- c. the establishment of K'ómoks Corporations, but the registration or incorporation

of K'ómoks Corporations must be under Federal Law or Provincial Law;

- d. financial administration of K'ómoks and K'ómoks Institutions; and
 - e. elections, by-elections, and referenda.
45. K'ómoks will make laws to provide K'ómoks Members with reasonable access to information in the custody or control of a K'ómoks Institution.
46. K'ómoks will make laws to provide persons other than K'ómoks Members with reasonable access to information in the custody or control of a K'ómoks Institution regarding matters that directly and significantly affect those persons.
47. K'ómoks may provide different means for accessing information under paragraphs 45 and 46.
48. A K'ómoks Law made under paragraph 45 or 46 may exempt access to information that is generally unavailable under Federal Law or Provincial Law.
49. A K'ómoks Law under paragraphs 44 to 46 prevails to the extent of a Conflict with Federal Law or Provincial Law, unless the Conflict is in relation to the protection of personal information, in which case Federal Law or Provincial Law prevails to the extent of the Conflict.

K'ómoks Membership

50. K'ómoks may make laws in relation to K'ómoks Membership.
51. The conferring of K'ómoks Membership does not:
- a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
 - b. except as set out in the Final Agreement or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.
52. A K'ómoks Law under paragraph 50 prevails to the extent of a Conflict with a Federal Law or Provincial Law.

K'ómoks Assets

53. K'ómoks may make laws in relation to the use, possession, management and disposition of:

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- a. assets located on K'ómoks Lands; and
 - b. assets located off K'ómoks Lands.
54. For greater certainty, the law-making authority under paragraph 53 does not include the authority to make laws regarding creditor's rights and remedies.
55. K'ómoks Law under paragraph 53.a prevails to the extent of a Conflict with a Federal Law or Provincial Law
56. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 53.b.

Adoption

57. For the purposes of this chapter, all relevant factors will be considered in determining a Child's best interests, including the importance of preserving the Child's cultural identity and any factors that must be considered under the *Adoption Act*.
58. K'ómoks may make laws in relation to:
- a. adoptions of K'ómoks Children in British Columbia; and
 - b. adoptions by K'ómoks Members of Children who reside on K'ómoks Land.
59. K'ómoks Laws under paragraph 58 will:
- a. expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place; and
 - b. provide for the consent of an individual whose consent to a Child's adoption is required under Provincial Law, subject to the power of the court to dispense with such consent under Provincial Law.
60. If K'ómoks makes laws under paragraph 58, K'ómoks will:
- a. develop operational and practice standards that promote the best interests of the Child; and
 - b. provide British Columbia and Canada with a record of all adoptions occurring under K'ómoks Law.
61. The Parties will negotiate and attempt to reach agreement on the information that will be included in the record under subparagraph 60.b.

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62. K'ómoks Law made under paragraph 58 applies to the adoption of a K'ómoks Child residing off K'ómoks Lands or a Child residing on K'ómoks Lands who is not a K'ómoks Child if:
- a. the child has not been placed for adoption under the *Adoption Act*, and those individuals whose consent to the Child's adoption is required under Provincial Law consent to the application of K'ómoks Law to the adoption; or
 - b. a court dispenses with the requirement for the consent required in subparagraph 59.b.
63. If a Director designated under the *Child, Family and Community Service Act* becomes the guardian of a K'ómoks Child, the Director will:
- a. provide notice to K'ómoks that the Director is the guardian of the K'ómoks Child;
 - b. provide notice to K'ómoks when the Director applies for a continuing custody order;
 - c. provide K'ómoks with a copy of the continuing custody order once the order is made and make reasonable efforts to involve K'ómoks in planning for the K'ómoks Child;
 - d. if requested by K'ómoks, consent to the application of K'ómoks Law to the adoption of the K'ómoks Child, provided that it is in the best interests of the K'ómoks Child; and
 - e. in determining the best interest of the K'ómoks Child under subparagraph 63.d the Director will consider, if not set out in the *Adoption Act*, the importance of preserving the K'ómoks Child's cultural identity.
64. K'ómoks Law under paragraph 58 prevails to the extent of a Conflict with a Federal Law or Provincial Law.
65. Before placing a K'ómoks Child for adoption, an adoption agency must make reasonable efforts to obtain information about the K'ómoks Child's cultural identity and discuss with a designated representative of K'ómoks the K'ómoks Child's placement.
66. Paragraph 65 does not apply if the K'ómoks Child has reached the age where consent to adoption is required under the *Adoption Act*, and objects to the discussion taking place, or if the birth parent or other guardian of the K'ómoks Child who requested that the K'ómoks Child be placed for adoption objects to the discussion taking place.

Child Custody

67. K'ómoks has standing in any judicial proceedings in British Columbia in which custody of a K'ómoks Child is in dispute and the court will take judicial notice of K'ómoks Laws and consider any evidence and representations in relation to K'ómoks Laws and customs in addition to any other matters it is required by law to consider.
68. The participation of K'ómoks in proceedings referred to in paragraph 67 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

Child Protection Services

69. K'ómoks may make laws in relation to Child Protection Services on K'ómoks Lands for:
 - a. Children of K'ómoks Families; and
 - b. Children who are not members of K'ómoks Families, subject to an agreement under paragraph 75.b.
70. K'ómoks Laws under paragraph 69 must:
 - a. expressly provide that those laws will be interpreted and administered such that the Safety and Well-Being of Children are the paramount considerations; and
 - b. not preclude the reporting, under Provincial Law, of a Child in Need of Protection.
71. If K'ómoks makes laws under paragraph 69, K'ómoks will:
 - a. develop operational and practice standards intended to ensure the Safety and Well-Being of Children and families;
 - b. participate in, or establish systems compatible with British Columbia's information management systems, concerning Children in Need of Protection and Children in Care;
 - c. allow for mutual sharing of information concerning Children in Need of Protection and Children in Care with British Columbia; and
 - d. establish and maintain a system for the management, storage and disposal of Child Protection Services records and the safeguarding of personal Child Protection Services information.
72. Notwithstanding any laws made under paragraph 69, if there is an emergency in which a K'ómoks Child on K'ómoks Lands is in need of protection, and K'ómoks has not responded or is unable to respond in a timely manner, British Columbia may act to

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- protect the K'ómoks Child and, unless British Columbia and K'ómoks otherwise agree in writing, British Columbia will refer the matter to K'ómoks after the emergency.
73. If K'ómoks has made a law under paragraph 69 and there is an emergency in which the Child under British Columbia's authority is a Child in Need of Protection, K'ómoks may act to protect the Child and unless British Columbia and K'ómoks otherwise agree in writing, K'ómoks will refer the matter to British Columbia after the emergency.
74. A K'ómoks Law under paragraph 69 prevails to the extent of a Conflict with a Federal Law or Provincial Law.
75. At the request of K'ómoks or British Columbia, K'ómoks and British Columbia will negotiate and attempt to reach agreement in relation to Child Protection Services for:
- a. Children of K'ómoks Families who reside on or off K'ómoks Lands; or
 - b. Children who are not members of K'ómoks Families and who reside on K'ómoks Lands.
76. Where the Director becomes the guardian of a K'ómoks Child, the Director will make reasonable efforts to include K'ómoks in planning for the K'ómoks Child, including adoption planning.

Aboriginal Healers

77. K'ómoks may make laws authorizing individuals to practise as aboriginal healers on K'ómoks Lands.
78. The authority to make laws under paragraph 77 does not include the authority to regulate:
- a. medical or health practices that, or practitioners who, require licensing or certification under Federal Law or Provincial Law; or
 - b. products or substances that are regulated under Federal Law or Provincial Law.
79. K'ómoks Laws under paragraph 77 will establish standards:
- a. in relation to competence, ethics, and quality of practice that are reasonably required to protect the public; and
 - b. that are reasonably required to safeguard personal client information.
80. A K'ómoks Law under paragraph 77 prevails to the extent of a Conflict with a Federal Law or Provincial Law.

Health

81. K'ómoks may make laws in relation to health services on K'ómoks Lands:
 - a. for K'ómoks Members; or
 - b. provided by a K'ómoks Institution.
82. K'ómoks Laws under paragraph 81 will take into account the protection, improvement and promotion of public and individual health and safety.
83. K'ómoks Law under paragraph 81 will not apply to health services provided by a provincially-funded health institution, agency or body, other than an institution, agency or body established by K'ómoks.
84. At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration of federal and provincial health services and programs by a K'ómoks Institution for individuals residing on K'ómoks Lands.
85. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 81.
86. Notwithstanding paragraph 85, a K'ómoks Law under paragraph 81 in relation to the organization and structure of K'ómoks Institutions used to deliver health services on K'ómoks Lands will prevail to the extent of a Conflict with a Federal Law or Provincial Law.

Family and Social Services

87. K'ómoks may make laws in relation to family and social services provided by a K'ómoks Institution, including income assistance, social development, housing and family and community services.
88. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 87.
89. K'ómoks law-making authority under paragraph 87 does not include the authority to make laws in relation to the licensing and regulation of facility-based services off K'ómoks Lands.
90. If K'ómoks makes laws under paragraph 87, at the request of any Party, the Parties will negotiate and attempt to reach agreements in relation to exchange of information with regards to avoidance of double payments, and related matters.
91. At the request of any Party, the Parties will negotiate and attempt to reach agreements

for administration and delivery by a K'ómoks Institution of federal and provincial social services and programs for all individuals residing within K'ómoks Lands.

Liquor Control

92. K'ómoks may make laws in relation to the prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on K'ómoks Lands.
93. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 92.
94. British Columbia will not issue a licence, permit, or other authority to sell liquor on K'ómoks Land without the consent of K'ómoks.
95. British Columbia will, in accordance with Provincial Law, authorize persons designated by K'ómoks to approve or deny applications for special occasion licences to sell liquor on K'ómoks Land.

Marriage

96. K'ómoks may make laws in respect of:
 - a. the marriage rites and ceremonies of the K'ómoks culture; and
 - b. the designation of K'ómoks Members to solemnize marriages.
97. Nothing in the *Marriage Act* will be construed as in any way preventing K'ómoks from solemnizing, according to the rites and ceremonies of K'ómoks culture, a marriage between any two persons:
 - a. neither of whom is under any legal disqualification to contract marriage under Federal Law or Provincial Law; and
 - b. either or both of whom are K'ómoks Members.
98. A marriage may not be solemnized under K'ómoks Law unless the persons intending to marry possess a valid marriage licence.
99. For the purposes of paragraph 98, marriage licences may only be issued by K'ómoks where:
 - a. K'ómoks has been appointed as an issuer of marriage licences under Provincial Law; and
 - b. the issuance of the marriage licence complies with the *Marriage Act*.

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100. Immediately after the solemnization of the marriage, a representative designated under subparagraph 96.b must register the marriage:
- a. by entering a record of it in a marriage register book issued by Vital Statistics and kept by K'ómoks for that purpose; and
 - b. by providing the original registration to the chief executive officer under the *Vital Statistics Act*.
101. The chief executive officer, or a person authorized by the chief executive officer, under the *Vital Statistics Act* may, during normal business hours and as often as the chief executive officer considers necessary, inspect the marriage register book kept by K'ómoks and compare it with the registrations returned by K'ómoks under paragraph 100.b.
102. The record under subparagraph 100.a must be signed;
- a. by each of the parties to the marriage;
 - b. by two witnesses; and
 - c. by a representative designated under subparagraph 96.b
103. A representative designated under subparagraph 96.b by whom a marriage is solemnized must observe and perform the duties imposed on him or her under the *Vital Statistics Act* representing the records of marriage.
104. Subject to paragraphs 97 to 103, a K'ómoks Law under paragraph 96 prevails to the extent of a Conflict with Federal Law or Provincial Law.

Child Care

105. K'ómoks may make laws in relation to Child Care services on K'ómoks Lands.
106. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 105.

Devolution of Cultural Property

107. In paragraphs 108 to 112, "Cultural Property" means:
- a. ceremonial regalia and similar personal property associated with K'ómoks; and
 - b. other personal property that has cultural significance to K'ómoks.
108. K'ómoks may make laws in relation to devolution of the Cultural Property of a

K'ómoks Member who dies intestate.

109. A K'ómoks Law under paragraph 108 prevails to the extent of a Conflict with a Federal Law or Provincial Law.
110. K'ómoks has standing in any judicial proceeding in which:
- a. the validity of the will of a K'ómoks Member; or
 - b. the devolution of the Cultural Property of a K'ómoks Member,
- is at issue, including any proceedings under wills variation legislation.
111. K'ómoks may commence an action under provincial wills variation legislation in relation to Cultural Property addressed by the will of a K'ómoks Member that provides for the devolution of Cultural Property.
112. In a proceeding to which paragraph 110 or 111 applies, the court will consider, among other matters, any evidence or representations in relation to K'ómoks Laws and customs dealing with the devolution of Cultural Property.
113. The participation of K'ómoks or any other Party in the proceeding referred to in paragraph 110 or 111 will be in accordance with the applicable rules of court and will not effect the court's ability to control its process.

Language and Culture Education

114. K'ómoks may make laws in relation to K'ómoks language and culture education provided by a K'ómoks Institution on K'ómoks Lands for:
- a. the certification and accreditation of teachers for K'ómoks language and K'ómoks culture; and
 - b. the development and teaching of K'ómoks language and K'ómoks culture curriculum.
115. K'ómoks Law under paragraph 114 prevails to the extent of a Conflict with Federal Law or Provincial Law.

Kindergarten to Grade 12 Education

116. K'ómoks may make laws in relation to kindergarten to grade 12 education on K'ómoks Lands:
- a. for K'ómoks Members; or

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- b. provided by a K'ómoks Institution.
117. K'ómoks Laws under paragraph 116 must:
- a. establish curriculum, examination, and other standards that permit transfers of students between school systems in British Columbia at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
 - b. provide for the certification, other than for the teaching of K'ómoks language and culture, of teachers, by a K'ómoks Public Institution, or a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
118. K'ómoks Laws under paragraph 116 do not apply to schools under the *School Act* or the *Independent School Act*, unless the school is established under the *Independent School Act* by K'ómoks.
119. K'ómoks may make laws in relation to home education of K'ómoks Members on K'ómoks Lands.
120. K'ómoks Laws under paragraphs 116 and 119 must not interfere with the ability of parents to decide where their Children may be enrolled to receive kindergarten to grade 12 education.
121. K'ómoks Law under paragraph 116 or 119 prevails to the extent of a Conflict with Federal Law or Provincial Law.
122. At the request of K'ómoks or British Columbia, those Parties will negotiate and attempt to reach an agreement concerning the provision of kindergarten to grade 12 education by a K'ómoks Institution to:
- a. persons other than K'ómoks Members residing on K'ómoks Lands; or
 - b. K'ómoks Members residing off K'ómoks Lands.

Post-Secondary Education

123. K'ómoks may make laws in relation to post-secondary education provided by a K'ómoks Institution on K'ómoks Lands including:
- a. the establishment of post-secondary education institutions with the ability to grant degrees, diplomas or certificates;
 - b. the determination of the curriculum for post-secondary education institutions

established by K'ómoks; and

- c. the provision for and coordination of adult education programs.
124. Federal Law or Provincial Law prevail to the extent of a Conflict with a K'ómoks Law under paragraph 123.

Emergency Preparedness

125. K'ómoks has:
- a. the rights, powers, duties, and obligations; and
 - b. the protections, immunities and limitations in relation to liability,
- of a local authority under Federal Law or Provincial Law in respect of emergency preparedness and emergency measures on K'ómoks Lands.
126. K'ómoks may make laws in relation to its rights, powers, duties, and obligations under paragraph 125.
127. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 126.
128. For greater certainty, K'ómoks may declare a state of local emergency, and exercise the powers of a local authority in relation to local emergencies in accordance with Federal Law or Provincial Law in relation to emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia under Federal Law or Provincial Law.
129. Nothing in the Final Agreement will affect the authority of:
- a. Canada to declare a national emergency; or
 - b. British Columbia to declare a provincial emergency,
- in accordance with Federal Law or Provincial Law.

Regulation of Business

130. K'ómoks may make laws in relation to the regulation, licensing and prohibition of business on K'ómoks Lands, including the imposition of licence fees or other fees.
131. K'ómoks law-making authority under paragraph 130 does not include the authority to make laws in relation to the accreditation, certification, or professional conduct of

professions and trades.

132. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 130.

Public Order, Peace and Safety

133. K'ómoks may make laws in relation to the regulation, control or prohibition of any actions, activities or undertakings on K'ómoks Lands that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety.
134. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 133.

Buildings and Structures

135. K'ómoks may make laws in relation to buildings and structures on K'ómoks Lands.
136. K'ómoks may only establish standards that are different than or additional to those in the British Columbia Building Code pursuant to an agreement with British Columbia.
137. The Canada Labour Code applies to federal works, undertakings, and businesses on K'ómoks Lands.
138. At the request of K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach an agreement to enable K'ómoks to establish standards for buildings or structures which are additional to or different from the standards established by the British Columbia Building Code under the *Local Government Act*.
139. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law made under paragraph 135.

Traffic, Parking, Highways and Transportation

140. K'ómoks may make laws in relation to traffic, parking, transportation and highways on K'ómoks Lands to the same extent as municipal governments have authority to make laws in relation to traffic, parking, transportation and highways in municipalities in British Columbia.
141. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 140.

Public Works

142. K'ómoks may make laws in relation to public works and related services on K'ómoks Lands.
143. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law made under paragraph 142.

Offences and Sanctions

144. K'ómoks Law may provide for the imposition of sanctions, including fines, Administrative Penalties, community service, restitution and imprisonment, for the violation of K'ómoks Law.
145. Except as provided in paragraph 6 of the Taxation Chapter, K'ómoks Law may provide for:
- a. a maximum fine that is not greater than that which may be imposed for comparable regulatory offences punishable by way of summary conviction under Federal Law or Provincial Law; and
 - b. a maximum Administrative Penalty that is not greater than that which may be imposed for a breach of a comparable regulatory requirement under Federal Law or Provincial Law.
146. Where there is no comparable regulatory offence or regulatory requirement under Federal Law or Provincial Law, the maximum fine or Administrative Penalty will not be greater than the general limit for offences under the provincial *Offence Act*.
147. Subject to paragraph 6 of the Taxation Chapter, K'ómoks Law may provide for a maximum term of imprisonment that is not greater than the general limit for offences under the provincial *Offence Act*.

Enforcement of K'ómoks Laws

148. K'ómoks is responsible for the enforcement of K'ómoks Laws.
149. At the request of K'ómoks, the Parties may, to the extent of their respective authority, negotiate agreements for the enforcement of K'ómoks Laws by a police force or federal or provincial enforcement officials.
150. K'ómoks may make laws for the enforcement of K'ómoks Laws including:
- a. the appointment of officers to enforce K'ómoks Law; and

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- b. powers of enforcement, provided such powers will not exceed those provided by Federal Law or Provincial Law for enforcing similar law in British Columbia.
151. K'ómoks law-making authority in paragraph 150 does not include the authority to:
- a. establish a police force; or
- b. authorize the carriage or use of a firearm by K'ómoks enforcement officials,
- but nothing in the Final Agreement prevents K'ómoks from establishing a police force under Provincial Law.
152. If K'ómoks appoints officials to enforce K'ómoks Laws, K'ómoks will:
- a. ensure that any K'ómoks enforcement officials are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in British Columbia; and
- b. establish and implement procedures for responding to complaints against K'ómoks enforcement officials.
153. K'ómoks Laws made under the Wildlife and Migratory Birds Chapters may be enforced by persons authorized to enforce Federal, Provincial or K'ómoks Laws in relation to Wildlife and Migratory Birds in British Columbia.
154. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 150.
155. K'ómoks may, by a proceeding brought in Supreme Court of British Columbia, enforce, prevent or restrain the contravention of a K'ómoks Law.

Adjudication of K'ómoks Laws

156. The Provincial Court of British Columbia has jurisdiction to hear prosecutions of offences under K'ómoks Laws.
157. The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under K'ómoks Laws.
158. The Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, has jurisdiction to hear legal disputes arising between individuals under K'ómoks Laws.
159. K'ómoks is responsible for the prosecution of all matters arising from K'ómoks Laws, including appeals, and may carry out this responsibility by:

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- a. appointing or retaining individuals to conduct prosecutions and appeals, in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia; or
 - b. entering into agreements with Canada or British Columbia in relation to the conduct of prosecutions and appeals.
160. Unless the Parties agree otherwise, British Columbia will pay any fines collected, in relation to a penalty imposed on a person by the Provincial Court of British Columbia, or the Supreme Court of British Columbia, as the case may be, for an offence under a K'ómoks Law, to K'ómoks on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia in relation to an offence under a Federal Law.
161. K'ómoks law-making authority does not include the authority to establish a court.
162. After receiving a written request from K'ómoks, the Parties will discuss and explore options for the establishment of a court, other than a provincial court with inherent jurisdiction or a federal court, to adjudicate offences and other matters arising under K'ómoks Law or laws of other First Nation Governments in British Columbia.

Community Correctional Services

163. K'ómoks may provide Community Correctional Services for persons charged with, or found guilty of, an offence under K'ómoks Law and to carry out such other responsibilities as may be set out in an agreement under paragraphs 164, 165 or 166.
164. At the request of K'ómoks, K'ómoks and British Columbia may enter into agreements to provide Community Correctional Services in relation to persons who fall under the jurisdiction of British Columbia on K'ómoks Lands for persons charged with, or found guilty of, an offence under a Federal Law or Provincial Law.
165. K'ómoks and British Columbia may enter into agreements to enable K'ómoks to provide rehabilitative community-based programs and interventions off K'ómoks Lands for K'ómoks Members charged with, or found guilty of, an offence under a Federal Law or Provincial Law.
166. K'ómoks and Canada may negotiate and attempt to reach agreement for persons appointed by a K'ómoks Institution to provide Community Correctional Services to adult K'ómoks Members released from a federal penitentiary or who are subject to a long-term supervision order, including parole, temporary absence supervision, or other similar service delivered by Canada.
167. The Final Agreement will not authorize K'ómoks to establish or maintain places of confinement, except for police jails or lockups operated by a police service established

under Provincial Law.

K'ÓMOKS LIABILITY

Elected Members of K'ómoks Government

168. No action for damages lies or may be instituted against an elected member or former elected member of K'ómoks Government for:
- a. anything said or done, or omitted to be said or done, by or on behalf of K'ómoks or K'ómoks Government by somebody other than that elected member or former elected member while he or she is, or was, an elected member;
 - b. any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of K'ómoks or K'ómoks Government while that person is, or was, an elected member;
 - c. anything said or done or omitted to be said or done by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or
 - d. any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.
169. Subparagraphs 168.c and 168.d do not provide a defense if:
- a. the person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
 - b. the cause of action is libel or slander.
170. Subparagraphs 168.c and 168.d do not absolve K'ómoks from vicarious liability arising out of a tort committed by an elected member or former elected member of K'ómoks Government for which K'ómoks would have been liable had those subparagraphs not been in effect.

K'ómoks Public Officers

171. No action for damages lies or may be instituted against a K'ómoks Public Officer or former K'ómoks Public Officer:
- a. for anything said or done or omitted to be said or done by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or

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- b. for any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.
172. Paragraph 171 does not provide a defense if:
- a. the K'ómoks Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
 - b. the cause of action is libel or slander.
173. Paragraph 171 does not absolve any of the corporations or bodies referred to in the definition of K'ómoks Public Officer from vicarious liability arising out of a tort committed by a K'ómoks Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.
174. Notwithstanding paragraph 171, except as may be otherwise provided under Federal Law or Provincial Law, a K'ómoks Public Officer does not have protections, immunities or limitations in relation to liability, in relation to the provision of a service, if no persons delivering reasonably similar programs or services under Federal Law or Provincial Law have protections, immunities, limitations in relation to liability and rights under Federal Law or Provincial Law.

K'ómoks and K'ómoks Government

175. K'ómoks and K'ómoks Government have the protections, immunities, limitations in relation to liability, remedies over, and rights provided to a municipality and its municipal council under Part 7 of the *Local Government Act*.
176. Subject to paragraph 3 of the Access Chapter, K'ómoks has the protections, immunities, limitations in relation to liability, remedies over, and rights provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities, limitations in relation to liability, remedies over, and rights, in relation to a road on K'ómoks Land used by the public, or by industrial or resource users, if K'ómoks is the occupier of that road.

Writ of Execution Against K'ómoks

177. Subject to paragraphs 14 and 15 of the Lands Chapter, a writ of execution against K'ómoks must not be issued without leave of the Supreme Court of British Columbia, which may:
- a. permit its issue at a time and on conditions the court considers proper; or

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- b. refuse to permit it to be issued or suspend action under it on terms and conditions the court thinks proper or expedient.
178. In determining how it will proceed under paragraph 177, the court must have regard to:
- a. any reputed insolvency of K'ómoks;
 - b. any security afforded to the person entitled to the judgment by the registration of the judgment; and
 - c. the delivery of programs or services by K'ómoks that are not provided by municipalities in British Columbia, and the funding of those programs or services.

LOCAL GOVERNMENT RELATIONS

GENERAL

1. K'ómoks Lands do not form part of any municipality or electoral area, and do not form part of any Regional District unless K'ómoks becomes a member of the Regional District in accordance with the Final Agreement.
2. On the Effective Date, K'ómoks is responsible for managing its intergovernmental relations with Local Government.
3. Nothing in the Final Agreement will limit the ability of British Columbia to restructure Regional Districts or to amend or divide the boundaries of a Regional District, municipality or electoral area in accordance with Provincial Law.
4. If K'ómoks becomes a member of a Regional District under paragraph 10, British Columbia will Consult with K'ómoks on any changes to:
 - a. the structure of a Regional District; and
 - b. the boundaries of a Regional District or a municipality, that directly and significantly affect K'ómoks.

INTERGOVERNMENTAL AGREEMENTS

5. Before the Final Agreement, British Columbia and K'ómoks will discuss K'ómoks's interests respecting zoning in the inter-tidal area including areas around Sandy Island and Seal Island.
6. K'ómoks may enter into agreements with Local Government with respect to the provision and delivery of:
 - a. Local Government services to K'ómoks Lands; and
 - b. K'ómoks services for lands under the jurisdiction of Local Government.
7. K'ómoks agrees that any service agreement with a Local Government in effect on the Effective Date will remain in effect until such time as it is renegotiated or is terminated under the terms of the agreement.
8. K'ómoks and Local Governments may establish and maintain agreements that set out principles, procedures and guidelines for the management of their relationship. The matters that may be governed by such agreements include, but are not limited to, the following:
 - a. coordination and harmonization of land use and planning, for certainty including

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- regulating land use, enforcement of regulations and development;
 - b. coordination and harmonization of property tax structures;
 - c. coordination and harmonization of the development of infrastructure;
 - d. cooperative economic development;
 - e. environmental protection;
 - f. dispute resolution;
 - g. provision of services; and
 - h. participating in Local Government decision-making processes.
9. In the absence of an agreement under paragraph 8, K'ómoks and Local Governments will meaningfully discuss with each other regarding land use planning on parcels of land that touch a shared boundary between them.

REGIONAL DISTRICT MEMBERSHIP

10. Before the Final Agreement, the Parties will address K'ómoks's participation in the Comox Valley Regional District and Strathcona Regional District and related matters, including the provision of water and sewer services to Indian Reserves set apart for the use and benefit of K'ómoks First Nation, and the relationship between K'ómoks land use plans and regional growth strategies of the Comox Valley Regional District or the Strathcona Regional District.

REGIONAL HOSPITAL DISTRICT MEMBERSHIP

11. K'ómoks Lands form part of the Comox Strathcona Regional Hospital District.
12. On the Effective Date, K'ómoks will be a member of the Comox Strathcona Regional Hospital District and will appoint an elected member of K'ómoks Government to sit as a director on the board of the Comox Strathcona Regional Hospital District in accordance with Provincial Law.
13. The K'ómoks director will have the functions, powers, duties, obligations and liability protections of a municipal director of the regional hospital board as is provided to a "treaty first nation director" under Provincial Law.
14. If K'ómoks becomes a member of the Comox Valley Regional District or the Strathcona Regional District under paragraph 10, K'ómoks membership in the Comox Strathcona Regional Hospital District under paragraph 12 will be replaced through Regional District membership.

CULTURE AND HERITAGE

GENERAL

1. K'ómoks will have the right to practice K'ómoks culture and use K'ómoks languages in a manner consistent with the Final Agreement.
2. For greater certainty, nothing in paragraph 1 creates or implies any financial obligations or service delivery responsibilities on the part of any of the Parties.

LAW-MAKING

3. K'ómoks may make laws applicable on K'ómoks Lands in relation to:
 - a. the preservation, promotion and development of K'ómoks culture and languages;
 - b. the conservation, protection and management of K'ómoks Artifacts owned by K'ómoks;
 - c. the establishment, conservation, protection and management of Heritage Sites, including public access to those sites; and
 - d. the cremation or interment of Archaeological Human Remains found on K'ómoks Lands or returned to K'ómoks.
4. K'ómoks Law under subparagraph 3.c will:
 - a. establish standards and processes for the conservation and protection of Heritage Sites; and
 - b. ensure the Minister is provided with information related to:
 - i. location of Heritage Sites; and
 - ii. any materials recovered from Heritage Sites.
5. Information provided by K'ómoks to British Columbia under subparagraph 4.b will not be subject to public disclosure without K'ómoks's prior written consent.
6. If K'ómoks makes a law under paragraph 3.c, British Columbia's standards and permitting processes for heritage inspections, heritage investigations and the alteration of Heritage Sites will not apply to K'ómoks Lands.

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7. A K'ómoks Law under paragraph 3 prevails to the extent of a Conflict with Federal Law or Provincial Law.

ARTIFACTS

8. K'ómoks owns any K'ómoks Artifact discovered within K'ómoks Lands after the Effective Date, unless another person establishes ownership of the artifact.
9. After the Effective Date, if any K'ómoks Artifact discovered in British Columbia outside of K'ómoks Lands comes into the permanent possession of British Columbia, British Columbia may lend or transfer its legal interest in that K'ómoks Artifact to K'ómoks in accordance with an agreement negotiated between British Columbia and K'ómoks.
10. After the Effective Date, if any K'ómoks Artifact discovered outside of K'ómoks Lands comes into the permanent possession of Canada, at the request of K'ómoks, Canada may lend or transfer its legal interest in that K'ómoks Artifact to K'ómoks in accordance with an agreement negotiated between Canada and K'ómoks.

CANADIAN MUSEUM OF CIVILIZATION

11. Where an artifact held by the Canadian Museum of Civilization as of the Effective Date is established to the satisfaction of K'ómoks and the Canadian Museum of Civilization to be a K'ómoks Artifact, K'ómoks and the Canadian Museum of Civilization may negotiate and attempt to reach agreement with respect to the disposition of, including repatriation, or custodial arrangements for, that artifact.

ROYAL BRITISH COLUMBIA MUSEUM

12. The Final Agreement will address the issue of the transfer of K'ómoks Artifacts from the Royal BC Museum to K'ómoks.

ARCHAEOLOGICAL HUMAN REMAINS

13. Canada or British Columbia will negotiate and attempt to reach agreement with K'ómoks with respect to the delivery to K'ómoks of Archaeological Human Remains that are reasonably considered to be of K'ómoks ancestry, found off K'ómoks Lands that come into the possession of Canada or British Columbia after the Effective Date.

14. If there are competing aboriginal claims to the Archaeological Human Remains referred to in paragraph 13, K'ómoks will provide British Columbia or Canada with written confirmation that the claim has been resolved before the transfer proceeds.

KEY GEOGRAPHICAL FEATURES

15. On or as soon as practicable after the Effective Date, British Columbia will name or rename with K'ómoks names, the geographic features set out in Appendix L in accordance with Provincial Law and provincial policies and procedures.
16. After the Effective Date, K'ómoks may propose that British Columbia name or rename other geographic features with names in K'ómoks language, and British Columbia will consider those proposals in accordance with Provincial Law, provincial policies and procedures.
17. At the request of K'ómoks, British Columbia will record, in the British Columbia Geographic Names Database, names in K'ómoks language and historic background information submitted by K'ómoks for the geographic features that are set out in the Final Agreement, in accordance with Provincial Law, provincial policies and procedures.

MONUMENTAL CEDAR AND CYPRESS

18. The Final Agreement will include provisions respecting the harvest of monumental cedar and cypress for cultural purposes.

LANDS

GENERAL

1. On the Effective Date, K'ómoks Lands will comprise approximately 2043.24 hectares, including:
 - a. 310.06 hectares, more or less, of Former K'ómoks First Nation Reserves identified in Appendix B-2;
 - b. 1726.13 hectares, more or less, of former provincial Crown land identified in Appendix B-3; and
 - c. 7.05 hectares, more or less, of land identified in Appendix B-4 as Western Goose Spit.
2. Before the Final Agreement, the Parties will determine which lands identified in Appendix B will be registered under the *Land Title Act*.
3. As soon as practicable after this Agreement is signed, Canada and British Columbia, as appropriate, will seek approval to implement a treaty related measure to protect the provincial Crown land referred to in subparagraph 1b, by putting in place:
 - a. a Part 13 designation under the *Forest Act*;
 - b. a s.16 map reserve under the *Land Act*; and
 - c. a no staking reserve and no disposition notice under the *Mineral Tenure Act*.
4. As soon as practicable after this Agreement is signed, British Columbia will seek approval to implement an incremental treaty agreement for the transfer of the Mount Washington Gravel Pit and District Lot 7 (Union Bay) to K'ómoks First Nation or a company designated by K'ómoks First Nation subject to the following conditions:
 - a. the parcels will become K'ómoks Lands on the Effective Date;
 - b. the parcels will at no time be added to any Indian Reserves held by K'ómoks First Nation or any other Indian Band or First Nation, and
 - c. such other terms as British Columbia and K'ómoks may agree.
5. Between the signing of this Agreement and a Final Agreement and at the request of K'ómoks, Canada and British Columbia are prepared to seek approval for one or more treaty related measures to acquire private land on a willing-seller willing-buyer basis

subject to the following conditions:

- a. the total value of any lands purchased may not exceed \$4.0 million (Q1 2010\$);
 - b. the value of any lands purchased will be deducted from the capital transfer of \$17.5 million (Q1 2010\$);
 - c. Canada and British Columbia must obtain the appropriate expenditure authorities;
 - d. the addition of lands must satisfy Canada and British Columbia's due diligence requirements; and
 - e. K'ómoks will agree to accept any lands purchased under a treaty related measure as K'ómoks Lands on the Effective Date.
6. Before the Final Agreement:
- a. British Columbia will determine the ownership of the Subsurface Resources on or beneath the surface of K'ómoks Lands and, where the Subsurface Resources are owned by Canada or British Columbia, they will be transferred to K'ómoks in accordance with paragraph 29;
 - b. British Columbia and K'ómoks will negotiate provisions for access to K'ómoks Lands and provincial Crown land, respectively, for the purposes of extracting gravel to fulfill any obligations to construct, maintain, repair or upgrade provincial Crown Roads or public rights of way in the vicinity of K'ómoks Lands or K'ómoks Roads, as the case may be; and
 - c. British Columbia and K'ómoks will negotiate the water reservations for the northern portion of the K'ómoks Area.
7. On the Effective Date, British Columbia will reserve to itself, in perpetuity, all coniferous timber on the Royston lands illustrated in Appendix B-3, Map 8 subject to the following conditions:
- a. the harvest of coniferous timber will be subject to a timber harvest agreement executed by British Columbia and K'ómoks on the Effective Date;
 - b. the timber harvest agreement will be registered as a covenant under s. 219 of the *Land Title Act* and as a statutory right-of-way under s. 218 of the *Land Title Act* in priority to all financial charges on title;
 - c. on termination of the timber harvest agreement, British Columbia will issue a supplemental grant of timber to K'ómoks of all timber reserved under subparagraph 7.a; and
 - d. the timber harvest agreement will not form part of the Final Agreement.

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8. The Final Agreement will include provisions regarding the protected status of Sandy Islands, Wood Mountain, District Lot 7 (Union Bay) "A" and Williams Beach Forest.
 9. Inclusion of Western Goose Spit lands as K'ómoks Lands is subject to K'ómoks First Nation and Canada reaching an agreement on the terms of a replacement tenure and Final Agreement provisions that secure the continued use and occupation of the land by the Department of National Defence.

OWNERSHIP OF K'ÓMOKS LANDS

10. On the Effective Date, K'ómoks will own K'ómoks Lands in fee simple, being the largest estate known in law.
11. K'ómoks fee simple ownership of K'ómoks Lands will not be subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act*, or any comparable limitation under Federal Law or Provincial Law.
12. All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, will be abolished in relation to K'ómoks Lands.
13. If a parcel of or any interest in K'ómoks Lands finally escheats to the Crown, the Crown will transfer that parcel or interest to K'ómoks at no charge.
14. An estate, interest, reservation or exception held by K'ómoks or by a K'ómoks Public Institution in any parcel of K'ómoks Lands:
 - a. the title to which is not registered in the Land Title Office; or
 - b. in respect of which title no application for registration in the Land Title Office has been made,
 is not subject to attachment, charge, seizure, distress, execution or sale under a writ of execution, order for sale or other process unless the attachment, charge, seizure, distress, execution or sale under a writ of execution, order for sale or other process is:
 - c. allowed under K'ómoks Law; or
 - d. made or issued for the purpose of enforcing a lien in favour of Canada or British Columbia.
15. An estate, interest, reservation or exception held by K'ómoks or by a K'ómoks Public Institution in any parcel of K'ómoks Lands:
 - a. the title to which is registered in the Land Title Office; or
 - b. in respect of which title an application for registration in the Land Title Office has been made,
 is not subject to seizure or sale under a writ of execution, order for sale or other process

unless the writ of execution, order for sale or other process is:

- c. made or issued for the purpose of enforcing, in accordance with its terms, a security instrument granted by K'ómoks or by a K'ómoks Public Institution and permitted under K'ómoks Law;
- d. otherwise permitted under K'ómoks Law;
- e. made or issued for the purpose of enforcing a lien in favour of Canada or British Columbia; or
- f. by leave of the Supreme Court of British Columbia under paragraph 177 of the Self-Government Chapter.

CREATION OF INTERESTS IN K'ÓMOKS LANDS

16. In accordance with the Final Agreement, the K'ómoks Constitution, and K'ómoks Law, K'ómoks may, without the consent of Canada or British Columbia:
 - a. dispose of its fee simple interest in any parcel of K'ómoks Lands to any Person; and
 - b. from its fee simple interest, or its interest in any parcel of K'ómoks Lands, create or dispose of any lesser interest to any Person, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*.
17. Where K'ómoks, by agreement, disposes of its fee simple interest in a parcel of K'ómoks Lands to Canada, that parcel of land will be removed from K'ómoks Lands and upon transfer of ownership of the land the Parties will amend Appendix B under paragraph 9 of the Amendment Chapter to reflect the removal, and that parcel of land will cease to be K'ómoks Lands when the amendment takes effect.
18. Where K'ómoks disposes of a fee simple interest in a parcel of K'ómoks Lands, that parcel of land does not cease to be K'ómoks Lands except as provided in paragraph 17, section 13 of Appendix F - Part 1 and section 17 of Appendix F - Part 2, or with the consent of Canada and British Columbia in accordance with paragraph 68.
19. K'ómoks may not dispose of its fee simple interest in a parcel of K'ómoks Lands until indefeasible title to that parcel of land has been registered under the *Land Title Act* in accordance with the Land Title Chapter.
20. If K'ómoks disposes of a fee simple interest in a parcel of K'ómoks Lands and that interest is held by a Person other than a K'ómoks Member, a K'ómoks Corporation or a K'ómoks Public Institution, paragraphs 77 to 79 of this Chapter, and Appendix F will not apply to the expropriation of an interest in that parcel of land, including any interest that is less than a fee simple interest that is held by K'ómoks in that parcel of land.

SUBMERGED LANDS

21. Submerged Lands which are part of the Former K'ómoks First Nation Reserves form part of K'ómoks Lands.
22. Subject to paragraph 21, British Columbia owns the Submerged Lands within K'ómoks Lands.
23. British Columbia will notify K'ómoks of any proposed disposition of an interest in, or use or occupation of, Submerged Lands that are wholly contained within K'ómoks Lands.
24. British Columbia will not, in relation to Submerged Lands that are wholly contained within K'ómoks Lands:
 - a. grant a fee simple interest;
 - b. grant a lease that, with any rights of renewal, may exceed 25 years;
 - c. transfer administration and control for a period that may exceed 25 years; or
 - d. otherwise dispose of an interest in, or authorize the use or occupation of, Submerged Lands if that disposition, use or occupation would adversely affect K'ómoks Lands,without the consent of K'ómoks.
25. Paragraphs 23 and 24 do not affect the riparian rights of the upland owners of K'ómoks Lands adjacent to Submerged Lands.
26. K'ómoks ownership of submerged lands does not include:
 - a. property rights in fish;
 - b. the exclusive right to fish; or
 - c. the right to allocate fish.

ACCRETIONS TO K'ÓMOKS LANDS

27. K'ómoks will own lawful accretions to K'ómoks Lands.
28. Where K'ómoks provides to British Columbia and Canada a certificate issued by the Surveyor General of British Columbia confirming that there has been a lawful accretion to K'ómoks Lands, upon receipt of the certificate by British Columbia and Canada, the Parties will amend Appendix B in accordance with paragraph 9 of the Amendment Chapter to reflect the change to the boundary of K'ómoks Lands and the accreted land

will become K'ómoks Lands when the amendment takes effect.

SUBSURFACE RESOURCES

29. K'ómoks will own all Subsurface Resources on or beneath K'ómoks Lands where, prior to the Effective Date, Canada or British Columbia owns the Subsurface Resources.
30. As owner of Subsurface Resources, K'ómoks has the exclusive authority to set, collect and receive any fees, rents, royalties or charges other than taxes, for the exploration, development, extraction and production of those Subsurface Resources.
31. Paragraph 30 does not limit British Columbia from collecting and receiving fees or other payments for administering under Provincial Law the exploration, development, extraction and production of Subsurface Resources from K'ómoks Lands.
32. Nothing in the Final Agreement will confer jurisdiction on K'ómoks in relation to Nuclear Substances, nuclear facilities or prescribed equipment or information in relation to Nuclear Substances or nuclear facilities.
33. Nothing in the Final Agreement will confer authority on K'ómoks to make laws in relation to:
 - a. spacing and target areas related to Petroleum and Natural Gas, and conservation and allocation of Petroleum and Natural Gas among parties having interests in the same reservoir;
 - b. the protection and reclamation of land and watercourses, in relation to Subsurface Resource exploration, development and production; and
 - c. the closure, reclamation or abandonment of mines.
34. Before the Final Agreement, British Columbia and K'ómoks will address the relationship between Provincial Laws with respect to Subsurface Resources and K'ómoks Laws with respect to land use.
35. Before the Final Agreement, the Parties will discuss interests K'ómoks has with regards to Subsurface Resources in the Salmon River area.

TENURED SUBSURFACE RESOURCES

36. Any Subsurface Resource tenures listed in the Final Agreement and the Subsurface Resources under those Subsurface Resource tenures will:
 - a. continue in accordance with Provincial Law and the Final Agreement; and

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- b. be administered by British Columbia in accordance with Provincial Law and the Final Agreement,
- as if the Subsurface Resource tenures were owned by British Columbia.
37. In administering the Subsurface Resources and Subsurface Resource tenures, British Columbia may grant, as necessary, any related extensions, renewals, continuations, replacements or issue any further rights as the Subsurface Resource tenures are developed.
38. In administering the Subsurface Resources and Subsurface Resource tenures, British Columbia will notify K'ómoks before changing or eliminating any rents or royalties applicable to the Subsurface Resource tenures.
39. Notwithstanding paragraph 29, K'ómoks will not have the authority to establish fees, rents, royalties or other charges in relation to Subsurface Resource tenures, or the exploration, development, extraction or production of the Subsurface Resource tenures.
40. British Columbia will:
- a. ensure that any rents and royalties applicable to Subsurface Resource tenures that British Columbia would have been entitled to receive after the Effective Date if those Subsurface Resource tenures were owned by British Columbia, and any interest earned on those rents and royalties, are paid to K'ómoks; and
- b. retain any fees, charges or other payments for administrative purposes applicable to Subsurface Resource tenures and Subsurface Resources under Provincial Law.
41. K'ómoks Lands will be treated as Private Lands under Provincial Law in relation to Subsurface Resources for the purposes of resolving any access issues or compensation rights associated with any proposed entrance, occupation or use of K'ómoks Lands. Any dispute may be resolved under Provincial Law relating to access and compensation disputes involving Subsurface Resources.
42. If a Subsurface Resource tenure is forfeited under Provincial Law, the applicable K'ómoks Lands will no longer be subject to that Subsurface Resource tenure.

INTERESTS ON K'ÓMOKS LANDS

43. On the Effective Date, the title of K'ómoks to K'ómoks Lands is free and clear of all interests, except:
- a. those continuing interests as set out in the Final Agreement;
- b. those interests on former provincial crown land requiring replacement as set out in the Final Agreement;

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- c. those interests on Former K'ómoks First Nation Reserves requiring replacement as set out in the Final Agreement;
 - d. any other interest on K'ómoks Lands already registered in the Land Title Office; and
 - e. any other interest as set out in the Final Agreement.
44. On the Effective Date, every interest, other than those referred to in paragraph 43, that encumbered or applied to K'ómoks Lands before the Effective Date will cease to exist.
45. K'ómoks, a K'ómoks Corporation or a K'ómoks Public Institution will grant or issue replacement interests to those persons who are named in the Final Agreement as persons who, immediately before the Effective Date, had interests in the lands that comprise K'ómoks Lands on the Effective Date.
46. On the Effective Date, K'ómoks, a K'ómoks Corporation or a K'ómoks Public Institution will execute and deliver documents granting or issuing to each person named in the Final Agreement that person's interest as set out in the Final Agreement.
47. Documents executed under paragraph 46 will be in the applicable form set out in the Final Agreement, if any, and will include any modifications agreed upon in writing before the Effective Date by K'ómoks and the person entitled to the interest.
48. Documents referred to in paragraph 46 will be deemed to be:
- a. prepared, executed, and delivered by K'ómoks, a K'ómoks Corporation or a K'ómoks Public Institution on the Effective Date; and
 - b. executed and delivered by each person referred to in those paragraphs on the Effective Date, whether or not the document is actually executed or delivered by that person.
49. K'ómoks, a K'ómoks Corporation, or a K'ómoks Public Institution will physically deliver the applicable document:
- a. to each person named in the Final Agreement; or
 - b. to any person who, before the Effective Date, was identified in writing to the Parties as the person who, instead of a person named in the Final Agreement, should receive an interest referred to in the Final Agreement for any reason, including death, any form of transfer, error or operation of law.
50. If Canada or British Columbia notifies K'ómoks that an interest granted under paragraph 45:
- a. is in the name of a person who was not entitled to the interest on the Effective

Date; or

- b. contains a clerical error or a wrong description of a material fact,

The Parties will take reasonable measures to rectify the error.

51. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by K'ómoks under the Final Agreement is legally binding and enforceable notwithstanding that K'ómoks Lands to which the right of way applies are not registered under the *Land Title Act*.

INDEMNITIES

52. British Columbia will indemnify and save harmless K'ómoks from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that K'ómoks may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of:
- a. the omission from the Final Agreement of the name of a person who, immediately before the Effective Date, had an interest in K'ómoks Lands that had been granted by British Columbia; or
 - b. the incorrect naming of a person in the Final Agreement as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in K'ómoks Lands that had been granted by British Columbia.
53. K'ómoks will not release Canada from any damages, losses, liability or costs that Canada may otherwise be liable for before the Effective Date in relation to:
- a. the omission in the Final Agreement of the name of an individual who, immediately before the Effective Date, had an interest in or certificate of possession in relation to a Former K'ómoks First Nation Reserve that had been granted by Canada; or
 - b. the incorrect naming of an individual in the Final Agreement as an individual entitled to an interest or certificate of possession where another individual was actually entitled, immediately before the Effective Date, to the interest or the certificate of possession in relation to a Former K'ómoks First Nation Reserve that had been granted by Canada.

LAW-MAKING

54. K'ómoks may make laws in relation to:

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- a. the use of K'ómoks Lands, including management, planning, zoning, and development;
 - b. the creation, ownership and disposition of interests in K'ómoks Lands;
 - c. the creation, ownership and disposition of a K'ómoks Fee Simple Interest;
 - d. the establishment and operation of a K'ómoks land title or land registry system for K'ómoks Lands that are not registered in the Land Title Office; and
 - e. expropriation for public purposes or public works by K'ómoks of interests in K'ómoks Lands other than:
 - i. interests, including Rights of Way, granted or continued on the Effective Date, or thereafter replaced under the Final Agreement, unless specifically provided for otherwise in the Final Agreement; and
 - ii. interests expropriated or otherwise acquired by a Federal Expropriating Authority or expropriated by British Columbia or otherwise acquired by a Provincial Expropriating Authority,

if K'ómoks provides fair compensation to the owner of the interest and the expropriation is of the smallest interest necessary for the public purpose or public work.
55. Subject to paragraph 4 of the Land Title Chapter, K'ómoks Law under paragraph 54 prevails to the extent of a Conflict with Federal Law or Provincial Law.
56. Notwithstanding paragraph 55, in the event of a Conflict between a K'ómoks Law under subparagraph 54.b and a Federal Law or Provincial Law in relation to matrimonial real property, the Federal Law or Provincial Law prevails to the extent of the Conflict.
57. A K'ómoks Law under subparagraphs 54.b and 54.c in relation to interests that are recognized under Federal Law or Provincial Law must be consistent with Federal Law or Provincial Law in relation to interests in land.

ADDITIONS TO K'ÓMOKS LANDS

58. At any time after the Effective Date, with the agreement of Canada and British Columbia, K'ómoks may add to K'ómoks Lands, land that is:
- a. owned in fee simple by K'ómoks;
 - b. within the K'ómoks Area; and
 - c. outside of municipal boundaries, or within municipal boundaries if the

municipality consents.

59. In addition to the requirements under paragraph 58, Canada may require that any addition of Crown land to K'ómoks Lands will be in an area that is not an area to which another First Nation has a claim of legal interest, an area subject to treaty negotiations or an area subject to a treaty or land claims agreement, unless consent is obtained from the First Nation that has made the claim of legal interest or is party to the treaty negotiation or treaty.
60. When making a decision pursuant to paragraph 58, Canada and British Columbia may take into account other factors including:
 - a. interests of a Regional District in cases where the land is within a Regional District but not within a municipality; and
 - b. other matters that Canada or British Columbia considers relevant.
61. Nothing in paragraphs 58 and 59 obligates Canada or British Columbia to pay any costs associated with the purchase or transfer of the land that is added to K'ómoks Lands under paragraph 58 or any other costs related to the addition of the land to K'ómoks Lands.
62. Any interests will continue on lands that are added to K'ómoks Lands unless K'ómoks and the interest holder otherwise agree in writing.
63. K'ómoks will not own Subsurface Resources on lands that are added to K'ómoks Lands unless the fee simple interest includes Subsurface Resources ownership or British Columbia owns the Subsurface Resources and agrees to transfer the Subsurface Resources to K'ómoks.
64. If British Columbia and Canada consent to a request under paragraph 58, each will provide notice of its consent to the other Parties. Upon receipt by K'ómoks of the notices, the Parties will amend Appendix B in accordance with the process set out in paragraph 9 of the Amendment Chapter, and the parcel of land will become K'ómoks Lands when the amendment takes effect.
65. Before the Final Agreement, the Parties will attempt to agree on specific parcels of land which, if acquired by K'ómoks in fee simple, will become K'ómoks Lands.

REMOVAL OF K'ÓMOKS LANDS

66. After the Effective Date, before disposing of the fee simple interest in a parcel of K'ómoks Lands, K'ómoks may request the consent of Canada and British Columbia to having that parcel of land removed from K'ómoks Lands.
67. In deciding whether to consent to the removal of a parcel of land from K'ómoks Lands

under paragraph 66 Canada and British Columbia may consider:

- a. necessary jurisdictional, administrative and servicing arrangements;
 - b. the views of any affected Local Government and neighbouring First Nations;
 - c. whether removal of the land will have an impact on negotiated fiscal arrangements between K'ómoks and Canada or British Columbia;
 - d. whether removal of the land will create legal or financial implications for Canada or British Columbia; and
 - e. any other matter that Canada or British Columbia considers relevant.
68. If Canada and British Columbia consent to the removal of a parcel of land from K'ómoks Lands under paragraph 66, the parcel will cease to be K'ómoks Lands upon receipt by K'ómoks of written notice of the consent of each of Canada and British Columbia, and Appendix B will be amended in accordance with paragraph 9 of the Amendment Chapter.

INITIAL SURVEYS

69. No new survey will be required for a parcel of K'ómoks Lands where the Surveyor General of British Columbia determines that an Adequate Survey of the exterior boundary exists for that parcel.
70. In those cases where Adequate Surveys do not already exist, before the Effective Date, or as soon as practicable after the Effective Date, Adequate Surveys of exterior boundaries of K'ómoks Lands will be carried out by:
- a. Canada in respect of Former K'ómoks First Nation Reserves; and
 - b. British Columbia in respect of former provincial Crown land,
- in accordance with instructions to be issued by the Surveyor General of British Columbia.
71. The priority and timing of exterior boundary surveys not completed by the Effective Date will be set out in a survey and registration protocol agreed to between British Columbia and K'ómoks prior to the Effective Date having regard to:
- a. K'ómoks's priorities;
 - b. efficiency and economy, including the availability of British Columbia Land Surveyors; and

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- c. the necessity to clarify the boundaries because of imminent public or private development on adjacent lands.

72. Canada and British Columbia will, as agreed between them, pay the cost of surveys of the exterior boundaries of K'ómoks Lands.

PROVINCIAL EXPROPRIATION OF K'ÓMOKS LANDS

73. British Columbia acknowledges that it is of fundamental importance to maintain the size and integrity of K'ómoks Land and therefore, as a general principle, interests in K'ómoks Lands will not be expropriated under Provincial Law.
74. If a Provincial Expropriating Authority has determined that it requires an interest in K'ómoks Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire the interest through agreement with K'ómoks.
75. If a Provincial Expropriating Authority and K'ómoks are unable to reach an agreement under paragraph 74, that Provincial Expropriating Authority may expropriate K'ómoks Lands in accordance with Appendix F – Part 1.
76. If a Provincial Expropriating Authority expropriates K'ómoks Lands, only the most limited interest in K'ómoks Lands necessary will be expropriated for the shortest time possible.

FEDERAL EXPROPRIATION OF K'ÓMOKS LANDS

77. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of K'ómoks Lands and, therefore, as a general principle interests in K'ómoks Lands will not be expropriated under Federal Law.
78. Notwithstanding paragraph 77, any interest in K'ómoks Lands may be expropriated by a Federal Expropriating Authority as set out in Appendix F – Part 2.
79. If a Federal Expropriating Authority expropriates K'ómoks Lands, only the most limited interest in K'ómoks Lands necessary will be expropriated for the shortest time possible.

AGRICULTURAL LAND RESERVE

80. Before the Final Agreement, the Parties will address issues related to agricultural land reserve.

SITE REMEDIATION

81. Before the Final Agreement, the Parties will address issues related to contaminated sites and site remediation.

LAND TITLE

FEDERAL TITLE REGISTRATION

1. Federal land title and land registry laws, other than laws in relation to the survey and recording of interests that are owned by Canada and are in K'ómoks Lands, will not apply to any parcel of K'ómoks Lands.

LAND TITLES SYSTEM (TORRENS)

2. The *Land Title Act* will not apply to a parcel of K'ómoks Lands for which:
 - a. no application has been made under the *Land Title Act* in accordance with the Final Agreement for the registration of an indefeasible title;
 - b. an application has been made under the *Land Title Act* in accordance with the Final Agreement for the registration of an indefeasible title and that application has been withdrawn or rejected; or
 - c. the indefeasible title under the *Land Title Act* has been cancelled under that Act in accordance with the Final Agreement.
3. If K'ómoks applies under the *Land Title Act* in accordance with the Final Agreement, for the registration of an indefeasible title to a parcel of K'ómoks Lands, then, effective from the time of application and until the application has been withdrawn or rejected, or the indefeasible title is cancelled, the *Land Title Act*, but not any K'ómoks Law with respect to land title or land registration made pursuant to the Final Agreement, applies to the parcel.
4. Notwithstanding paragraph 55 of the Lands Chapter, where the *Land Title Act* applies to a parcel of K'ómoks Lands, that Act prevails to the extent of a Conflict with K'ómoks Law under paragraph 54 of the Lands Chapter in respect of that parcel.

APPLICATION FOR REGISTRATION OF INDEFEASIBLE TITLE

5. K'ómoks, and no other person, may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of K'ómoks Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of K'ómoks or on behalf of another person.
6. The Final Agreement will address whether K'ómoks Lands including any interests on K'ómoks Lands will be registered in the Land Title Office on the Effective Date.

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7. Any registration in accordance with paragraph 6, including a State of Title Certificate, will be at no cost to K'ómoks or the holder of an interest referred to in paragraph 5.

LAND TITLE FEES

8. If K'ómoks applies for the registration of an indefeasible title to a parcel of K'ómoks Lands for which no indefeasible title has been registered after the Effective Date, and the proposed registered owner in fee simple is K'ómoks, a K'ómoks Corporation, or a K'ómoks Public Institution, no land title fees are payable with respect to the application by which the proposed registered owner becomes the registered owner.

K'ÓMOKS CERTIFICATE

9. K'ómoks, when applying for the registration of an indefeasible title to a parcel of K'ómoks Lands under paragraph 5, will provide to the Registrar:
- a. a plan of the parcel that has been prepared by a British Columbia Land Surveyor and signed by the Surveyor General of British Columbia;
 - b. a certificate of K'ómoks that complies with the *Land Title Act* and certifies that, on the date of the K'ómoks Certificate, the person named as the owner of the fee simple interest in the K'ómoks Certificate is the owner of the fee simple interest of the parcel, and certifying that the K'ómoks Certificate sets out all:
 - i. subsisting conditions, provisos, restrictions, including restrictions on alienation, exceptions, and reservations contained in the original or any other conveyance or disposition from K'ómoks that are in favour of K'ómoks or another person;
 - ii. interests or estates; and
 - iii. charges, including charges in relation to a debt owed to K'ómoks, to which the fee simple interest in the parcel is subject; and
 - c. registrable instruments necessary to register all of the estates, interests, and other charges referred to in subparagraph 9.b.
10. A K'ómoks Certificate will expire if:
- a. within seven days of the date of the K'ómoks Certificate, K'ómoks has not made an application for registration of an indefeasible title to the parcel referred to in the K'ómoks Certificate, unless otherwise provided for under the *Land Title Act*;
or

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- b. an application under paragraph 5 has been made but that application has been withdrawn or rejected under the *Land Title Act*.

REGISTRATION OF INDEFEASIBLE TITLE

11. If K'ómoks makes an application for the registration of indefeasible title to a parcel of K'ómoks Lands under paragraph 5, and if the Registrar is satisfied that:
 - a. a good safe holding and marketable title in fee simple for the parcel has been established by K'ómoks;
 - b. the boundaries of the parcel are sufficiently defined by the plan provided by K'ómoks;
 - c. all of the estates, interests, and other charges set out in the K'ómoks Certificate are registrable under the *Land Title Act*; and
 - d. the K'ómoks Certificate complies with the *Land Title Act*,then the Registrar will:
 - e. register the indefeasible title to the parcel in the name of the person named in the K'ómoks Certificate;
 - f. make a note on the indefeasible title that the parcel is K'ómoks Lands and may be subject to conditions, provisos, restrictions, exceptions, and reservations in favour of K'ómoks or another person; and
 - g. register the estates, interests, and other charges set out in the K'ómoks Certificate.
12. The Registrar is entitled to rely on, and is not required to make any inquiries in relation to, the matters certified in the K'ómoks Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception, or reservation, in or to a parcel of K'ómoks Lands as a result of the reliance by the Registrar on the K'ómoks Certificate, and the issuance by the Registrar of an indefeasible title based on the K'ómoks Certificate, will have no recourse, at law or in equity, against the Registrar, the assurance fund under the *Land Title Act*, British Columbia or Canada.
13. No title adverse to, or in derogation of, the title of the registered owner of a parcel of K'ómoks Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply in relation to K'ómoks Lands.
14. Upon registration under paragraph 11, the Parties, where necessary, will amend Appendix B in accordance with paragraph 9 of the Amendment Chapter, to reflect any

adjustments to the boundaries of K'ómoks Lands.

CANCELLATION OF INDEFEASIBLE TITLE

15. K'ómoks, and no other person, may apply under the *Land Title Act* in accordance with the Land Title Chapter of the Final Agreement for cancellation of the registration of an indefeasible title to a parcel of K'ómoks Lands.
16. K'ómoks, when applying under the *Land Title Act* in accordance with the Land Title Chapter of the Final Agreement for the cancellation of the registration of an indefeasible title to a parcel of K'ómoks Lands, will provide to the Registrar an application for cancellation of registration and will deliver to the Registrar any duplicate indefeasible title that may have been issued with respect to that parcel.
17. Upon receiving an application from K'ómoks for cancellation of the registration of an indefeasible title to a parcel of K'ómoks Lands under paragraphs 15 and 16, the Registrar will cancel the registration of the indefeasible title, in accordance with the *Land Title Act*, if:
 - a. the registered owner of the fee simple interest in the parcel is K'ómoks, a K'ómoks Corporation, or a K'ómoks Public Institution;
 - b. the registered owner consents; and
 - c. the indefeasible title to the parcel is free and clear of all charges, except those in favour of K'ómoks.

ACCESS

GENERAL

1. All K'ómoks Lands are private lands except those identified as K'ómoks Public Lands in the Final Agreement.
2. Nothing in the Final Agreement will affect the public right of navigation.
3. Except as modified by the Final Agreement, as owner of K'ómoks Lands, K'ómoks will have the same rights and obligations in relation to public access to, occupation of, and trespass on, K'ómoks Lands as owners of estates in fee simple have in respect of their land.

K'ÓMOKS LAWS

4. K'ómoks may make laws in relation to access to K'ómoks Lands.
5. K'ómoks Law under paragraph 4 prevails to the extent of a Conflict with Federal Law or Provincial Law.
6. Notwithstanding paragraph 5, Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 4 in respect of public access to K'ómoks Public Lands.

K'ÓMOKS ACCESS OFF K'ÓMOKS LANDS

7. Agents, employees, contractors, subcontractors and other representatives of K'ómoks have access, in accordance with Federal Law or Provincial Law, at no cost, to Crown land in order to:
 - a. deliver and manage programs and services;
 - b. carry out inspections;
 - c. carry out duties under K'ómoks Law;
 - d. enforce K'ómoks Law;
 - e. respond to emergencies and natural disasters; or
 - f. carry out the terms of the Final Agreement.

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8. If practicable, Persons who access federal Crown land under paragraph 7 will provide Canada with reasonable notice before accessing those lands.

K'ÓMOKS ACCESS TO K'ÓMOKS LAND

9. If an authorized use or disposition of provincial Crown land would deny K'ómoks Members reasonable access to K'ómoks Lands, British Columbia will, as soon as practicable, provide K'ómoks Members with reasonable alternative means of access to K'ómoks Lands.
10. K'ómoks will have reasonable access to K'ómoks Land that was the Former K'ómoks First Nation Reserve at Goose Spit. The intent is for a portion of land to be released from Order in Council No. 959/44 along the south shoreline, with the remainder of the proposed access being below the high water mark as shown in Appendix E. The land will be released once the Parties reach agreement respecting the development of the access corridor.
11. Any dispute under paragraph 9 will be finally determined by arbitration under the Dispute Resolution without having to proceed through Stages One and Two.

CROWN ACCESS TO K'ÓMOKS LAND

12. Agents, employees, contractors, subcontractors and other representatives of Canada, British Columbia, Public Utilities, Railways, and members of the Canadian Armed Forces, and peace officers appointed under Federal Law or Provincial Law, have access, in accordance with Federal Law or Provincial Law, at no cost, to K'ómoks Lands in order to:
 - a. deliver and manage programs and services;
 - b. carry out inspections;
 - c. carry out duties under Federal Law or Provincial Law;
 - d. enforce laws;
 - e. respond to emergencies and natural disasters; or
 - f. carry out the terms of the Final Agreement.
13. Nothing in the Final Agreement will limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence or security on K'ómoks Lands, without payment of any fees or other charges to K'ómoks except as provided for under Federal Law.

ACCESS TO INTERESTS AND ESTATES IN FEE SIMPLE

14. K'ómoks will allow reasonable access to K'ómoks Lands, at no cost, to the interests that will be set out in the Final Agreement, consistent with the terms and conditions of those interests.
15. If no other reasonable access exists across Crown land, K'ómoks will allow reasonable access across K'ómoks Lands:
 - a. to any legal interest located on or beneath lands that are adjacent or in close proximity to K'ómoks Lands, consistent with the terms and conditions of those interests; and
 - b. to a fee simple interest located adjacent or in close proximity to K'ómoks Lands.
16. For greater certainty, nothing in paragraphs 14 or 15 obligates K'ómoks to pay any costs associated with access to the interests referred to in those paragraphs.

PUBLIC ACCESS TO K'ÓMOKS PUBLIC LANDS

17. K'ómoks will allow reasonable public access to K'ómoks Public Lands for temporary recreational and non-commercial purposes, including reasonable opportunities for the public to hunt and fish.
18. Any hunting or fishing by the public on K'ómoks Public Lands will be in accordance with Federal Law or Provincial Law.
19. Public access does not include:
 - a. harvesting or extracting resources owned by K'ómoks unless authorized by K'ómoks, or as in accordance with this Agreement;
 - b. causing a nuisance or causing damage to K'ómoks Public Lands or resources owned by K'ómoks; or
 - c. interfering with other uses authorized by K'ómoks or interfering with the ability of K'ómoks to authorize uses or dispositions of K'ómoks Public Lands.
20. If K'ómoks authorizes any use or disposition of K'ómoks Public Lands which has the effect of preventing public access to K'ómoks Public Lands, K'ómoks will:
 - a. take reasonable measures to notify the public; and
 - b. if access to an area or location is prevented where there is a public right of access under Federal Law or Provincial Law, including Crown Roads, allow reasonable alternative means of public access to that area or location.

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21. K'ómoks's liability for public access to K'ómoks Public Land is comparable to the liability of the provincial Crown for public access to unoccupied provincial Crown lands.

PUBLIC ACCESS PERMITS

22. K'ómoks may, for the purpose of monitoring and regulating public access to K'ómoks Public Lands, require persons other than K'ómoks Members to obtain a permit or licence.
23. K'ómoks will make any permits or licences which may be required under paragraph 22 reasonably available at a reasonable fee taking into account the administrative and other costs of monitoring and regulating access.
24. K'ómoks will take reasonable measures to notify the public of the terms and conditions respecting public access to K'ómoks Public Lands, including any requirements under paragraph 22.

ROADS AND RIGHTS OF WAY

LAW-MAKING

1. K'ómoks may make laws with respect to traffic, transportation and parking on K'ómoks Roads to the same extent as municipal governments have authority to make laws with respect to traffic, transportation and parking in municipalities in British Columbia.
2. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 1.

ENTRY ON K'ÓMOKS LANDS OUTSIDE CROWN ROADS, MUNICIPAL ROADS AND RIGHTS OF WAY

3. In addition to the provisions of the Access Chapter, British Columbia, a Public Utility, Railway or a Local Government and the agents, employees, contractors or other representatives of any of them will have access to K'ómoks Lands, including K'ómoks Roads, at no cost, for the purpose of undertaking works, including:
 - a. constructing drainage works;
 - b. maintaining slope stability;
 - c. removing dangerous trees or other hazards;
 - d. carrying out normal repairs; or
 - e. carrying out emergency repairs,

where this is necessary for constructing, operating, maintaining, repairing, replacing, removing or protecting Crown Roads, Municipal Roads, rights of way or Railways, or works located on Crown Roads, Municipal Roads, rights of way or Railways that are on or adjacent to K'ómoks Lands.

WORK PLAN

4. British Columbia, a Public Utility, a Local Government, or a Railway will, before commencing the work referred to in paragraph 3, notify K'ómoks, and will, at the request of K'ómoks, deliver a workplan to K'ómoks describing the effect and extent of the proposed work on K'ómoks Lands for the approval of K'ómoks which will not be unreasonably withheld.
5. If K'ómoks does not approve the work plan submitted by British Columbia under

paragraph 4 within 30 days of receipt by K'ómoks, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stages One and Two.

UNDERTAKING OF WORKS

6. A person undertaking works referred to in paragraph 3 will:
 - a. minimize the damage to and time spent on K'ómoks Lands;
 - b. pay fair compensation for any interference with or damage to K'ómoks Lands resulting from the works; and
 - c. perform such works or undertakings in a manner consistent with public health and safety.
7. Paragraph 6 is subject to the terms of any grant issued by K'ómoks or any agreement between K'ómoks and the person undertaking the works referred to in paragraph 3.

EMERGENCY WORKS

8. Notwithstanding any other provision of the Final Agreement, British Columbia, a Public Utility, Local Government or Railway, as the case may be, may undertake works and take steps on K'ómoks Lands that are urgently required in order to protect works constructed on Crown Roads, rights of way or Municipal Roads to protect Persons or vehicles using Crown Roads, Municipal Roads, rights of way or Railways.
9. A person undertaking works under paragraph 8 will notify K'ómoks that it has undertaken works on K'ómoks Lands.
10. Before the Final Agreement, the Parties will discuss K'ómoks's ability to access Crown lands adjacent to K'ómoks Lands to protect works constructed on K'ómoks Land.

CROWN ROADS

11. Crown Roads identified in the Final Agreement will not be part of K'ómoks Lands.
12. The location and dimensions of Crown Roads will be identified in the Final Agreement.
13. British Columbia is responsible for the maintenance and repair of Crown Roads.
14. Where British Columbia acquires by agreement or expropriates an interest in a parcel of K'ómoks Lands for the purpose of a Crown Road, and that parcel of land retains its status as K'ómoks Lands, the land remains subject to K'ómoks Law, but only to the

extent that such law does not duplicate or overlap with a matter directly or indirectly dealt with by a law passed by British Columbia.

15. If British Columbia acquires by agreement or expropriates an interest in a parcel of K'ómoks Lands for the purpose of realigning all or a portion of a Crown Road:
 - a. at the request of K'ómoks, British Columbia will transfer to K'ómoks that portion of the Crown Road adjacent to K'ómoks Lands that is no longer required and that land will become K'ómoks Lands;
 - b. the interest transferred to or expropriated by British Columbia for the purpose of such realignment will be the same as the interest held by British Columbia in the pre-existing Crown Road; and
 - c. upon completion of any transfers or expropriations under this paragraph, Appendix B will be amended if required in accordance with the process set out in paragraph 9 of the Amendment Chapter.
16. Where a Crown Road adjacent to K'ómoks Lands is closed and is no longer required as a Crown Road or for Public Utility purposes, Canada or British Columbia, as the case may be, will provide K'ómoks with a right of first refusal to acquire, on mutually acceptable terms, that portion of the land adjacent to K'ómoks Lands before otherwise disposing of the land.
17. Upon K'ómoks acquiring land under paragraph 16, and at the request of K'ómoks, the land will become K'ómoks Land and Appendix B will be amended in accordance with the process set out in paragraph 9 of the Amendment Chapter.

MUNICIPAL ROADS

18. Municipal Roads identified in the Final Agreement will not be part of K'ómoks Lands.
19. The location and dimensions of Municipal Roads will be identified in the Final Agreement.

WIDTH AND ALIGNMENT OF CROWN ROADS AND MUNICIPAL ROADS

20. The widths of Crown Roads and Municipal Roads are set out as offsets on either side of the centreline as described in plans included in the Final Agreement except where required to be wider to include those:
 - a. bridges, drainage and support works, and other road works; and
 - b. cuts and fills, plus an additional three metres, measured from the toe of fill, and the top of the cut,

that are part of the roads as of the date of the survey.

21. For the purposes of paragraph 20, road centrelines may be generalized to eliminate minor bends and compound curves or to allow alignment with existing boundaries of surveyed road rights-of-way, provided that the generalized centreline is within 3 metres of the true centreline of the travelled surface.

K'ÓMOKS ROADS

22. K'ómoks Roads are part of K'ómoks Lands.
23. K'ómoks Roads are owned by K'ómoks and are administered and controlled by K'ómoks.
24. K'ómoks is responsible for maintenance and repair of K'ómoks Roads.
25. Subject to the terms of the Final Agreement, K'ómoks Roads are open to the public unless designated otherwise by K'ómoks.
26. K'ómoks may temporarily close K'ómoks Roads for safety, public order or cultural reasons.
27. K'ómoks may permanently close a K'ómoks Road.
28. Before K'ómoks permanently closes a K'ómoks Road, K'ómoks will:
 - a. provide public notice and an opportunity for affected persons to make representations to K'ómoks; and
 - b. notify the operators of Public Utilities whose facilities or works may be affected.

PUBLIC UTILITIES

29. K'ómoks will issue interests to the Public Utilities identified in the Final Agreement, as provided for in paragraph 45 of the Lands Chapter.
30. With the prior written approval of K'ómoks, a Public Utility may extend or locate and install new works on K'ómoks Lands on substantially the same terms and conditions as contained in the Final Agreement, where it is necessary to meet demand for service on or off K'ómoks Lands.
31. K'ómoks will not unreasonably withhold approval for works referred to in paragraph 30.
32. Nothing in paragraph 30 requires a Public Utility to obtain the approval of K'ómoks for usual service extensions or connections to Public Utility works or to deliver and manage

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- services to customers of a Public Utility.
33. A Public Utility, including its agents, employees, contractors or other representatives will have access to K'ómoks Lands, including K'ómoks Roads, at no cost, for the purposes of and subject to the conditions set out in paragraphs 30 and 32.
34. Persons who access K'ómoks Lands under paragraph 33:
- a. are subject to K'ómoks Laws except to the extent that those laws unduly interfere with the carrying out of their duties; and
 - b. are not subject to payment of fees or compensation except as required by Federal Law or Provincial Law in relation to the payment of fees or compensation for access on land owned in fee simple.
35. K'ómoks Laws will not apply to the regulation of the business of a Public Utility or the planning, development, construction, repair, maintenance, operation or decommissioning of a Public Utility's authorized works.
36. Without limiting the generality of paragraph 35, K'ómoks Laws and K'ómoks's use or occupation of K'ómoks Lands will not impair or frustrate:
- a. a Public Utility's authorized use or occupation of its Public Utility right of way or the Public Utility's works located on its Public Utility right of way; or
 - b. a Public Utility's authorized use or occupation of K'ómoks Lands or the Public Utility's works located on K'ómoks Lands.
37. An interest of a Public Utility established after the Effective Date on or adjacent to K'ómoks Lands will be subject to the Final Agreement.

GENERAL

38. Nothing in the Final Agreement limits the authority of British Columbia to regulate all matters in relation to:
- a. the location and design of intersecting roads giving access to or from Crown Roads, including:
 - i. regulating or requiring signs, signals, or other traffic control devices on Crown Roads;
 - ii. regulating and requiring merging lanes, on ramps and off ramps; or
 - iii. requiring contributions to the cost of the matters referred to in subparagraphs 38.a.i and 38.a.ii; and
 - b. the height and location of structures on K'ómoks Lands adjacent to Crown

Roads to the extent reasonably required to protect the safety of the users of the Crown Road or the functional capacity of the Crown Road.

39. British Columbia will provide K'ómoks with any licence, permit or approval required under Provincial Law to join or cross a Crown Road with a K'ómoks Road where:
 - a. the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and
 - b. the intersecting or joining K'ómoks Road complies with standards established under Provincial Law for equivalent Crown Roads.
40. Where K'ómoks and British Columbia fail to agree on the location of an intersecting or joining K'ómoks Road under paragraph 39, K'ómoks or British Columbia may refer a dispute for resolution under the Dispute Resolution Chapter.
41. K'ómoks will Consult with British Columbia on land use decisions relating to the development of K'ómoks Lands adjacent to Crown Roads.

CONSULTATION REGARDING TRAFFIC REGULATION

42. At K'ómoks's request, British Columbia will Consult with K'ómoks with respect to existing regulation of traffic and transportation on a Crown Road that is adjacent to a settled area on K'ómoks Land.

FUTURE CROWN ROADS AND RIGHTS OF WAY

43. Crown Roads and rights of way established in the future, on or adjacent to K'ómoks Lands, will be subject to the provisions of the Final Agreement.

FISHERIES

GENERAL

1. As set out in paragraph 2 of the General Provisions Chapter, this Agreement does not address fisheries matters.
2. The Parties acknowledge that British Columbia and K'ómoks are negotiating an interim measure agreement on K'ómoks shellfish aquaculture.

WILDLIFE

GENERAL

1. K'ómoks will have the right to harvest Wildlife for Domestic Purposes in the K'ómoks Harvest Area in accordance with the Final Agreement.
2. K'ómoks Right to Harvest Wildlife will be limited by measures necessary for conservation, public health or public safety.
3. Canada or British Columbia will give notice of its intent to implement a public health or public safety measure identified under paragraph 2 to K'ómoks:
 - a. before the measure is implemented if it is practicable to do so; or
 - b. as soon as practicable after the measure is implemented.
4. K'ómoks Right to Harvest Wildlife will be held by K'ómoks and will not be alienated.
5. K'ómoks Right to Harvest Wildlife will be a right to harvest in a manner that is consistent with the communal nature of the K'ómoks harvest for Domestic Purposes and the traditional seasons of the K'ómoks harvest.
6. K'ómoks Members may exercise the K'ómoks Right to Harvest Wildlife except as otherwise provided under a K'ómoks Law.
7. The Final Agreement will not alter Federal Law or Provincial Law in respect of property in Wildlife.
8. The Minister will retain the authority for managing and conserving Wildlife and Wildlife habitat.

HARVEST AREAS

9. Before the Final Agreement, the Parties will discuss harvesting of Wildlife by K'ómoks in areas where K'ómoks has a protocol agreement in effect with another First Nation, and the Sliammon protocol is one such example.
10. K'ómoks Right to Harvest Wildlife may be exercised on lands that are owned in fee simple, other than K'ómoks Lands, within the K'ómoks Harvest Area but that harvesting is subject to Federal Law or Provincial Law in relation to access to fee simple lands.

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11. Notwithstanding paragraph 1, K'ómoks may exercise the K'ómoks Right to Harvest Wildlife on an Indian Reserve within the K'ómoks Harvest Area, if the Indian Band for whom the Indian Reserve was set aside agrees in writing to provide such access, but any such agreement:
 - a. will not cause an Indian Reserve to be included within the K'ómoks Harvest Area, and for greater certainty, paragraphs 29 to 38 will not apply to these lands; and
 - b. does not prevent the Indian Band for whom the Indian Reserve is set aside from revoking access to the Indian Reserve in accordance with that agreement.

HARVESTING OUTSIDE THE K'ÓMOKS HARVEST AREA

12. The Final Agreement will not preclude K'ómoks Members from harvesting Wildlife outside of the K'ómoks Harvest Area throughout Canada in accordance with:
 - a. Federal Law or Provincial Law;
 - b. any agreements, that are in accordance with Federal Law or Provincial Law, between K'ómoks and other aboriginal people; or
 - c. any arrangement between other aboriginal people and Canada or British Columbia.

INCIDENTAL USE OF RESOURCES

13. K'ómoks Members may use resources on provincial Crown land within the K'ómoks Harvest Area for purposes reasonably incidental to the exercise of the K'ómoks Right to Harvest Wildlife, subject to Federal Law or Provincial Law.

HARVESTING METHOD

14. The Minister may approve a method of harvest that differs from those methods permitted under Federal Law or Provincial Law, provided that the Minister is satisfied that the method is consistent with public safety.

SALE, TRADE AND BARTER

15. K'ómoks and K'ómoks Members may, in accordance with Federal Law or Provincial Law, sell Wildlife and Wildlife parts, including meat and furs, harvested under the

K'ómoks Right to Harvest Wildlife.

16. K'ómoks will have the right to Trade and Barter Wildlife and Wildlife parts, including meat and furs, harvested under the K'ómoks Right to Harvest Wildlife:
 - a. among themselves; or
 - b. with other aboriginal people of Canada.
17. The right to Trade and Barter under paragraph 16 will be held by K'ómoks and will not be alienated.
18. K'ómoks Members may exercise the right to Trade and Barter under paragraph 16 except as otherwise provided under K'ómoks Law.

TRANSPORT AND EXPORT

19. K'ómoks and K'ómoks Members may, in accordance with:
 - a. Federal Law or Provincial Law; and
 - b. K'ómoks Law under subparagraph 54.f ,transport Wildlife or Wildlife parts, including meat or fur, harvested under the K'ómoks Right to Harvest Wildlife.
20. K'ómoks and K'ómoks Members may, in accordance with Federal Law or Provincial Law, export Wildlife or Wildlife parts, including meat or fur, harvested under the K'ómoks Right to Harvest Wildlife.

LICENCES AND FEES

21. Subject to paragraphs 22 and 23, K'ómoks Members are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the exercise of the K'ómoks Right to Harvest Wildlife.
22. For greater certainty, K'ómoks Members will be required to have a licence to harvest Wildlife outside the K'ómoks Harvest Area if a licence is required under Federal Law or Provincial Law.
23. Nothing in the Final Agreement will affect the application of Federal Law or Provincial Law in relation to the possession, use and regulation of firearms.

DOCUMENTATION

24. K'ómoks will issue documentation to:
- a. K'ómoks Members who are authorized to harvest Wildlife under the K'ómoks Right to Harvest Wildlife; and
 - b. K'ómoks Members who transport Wildlife harvested under the K'ómoks Right to Harvest Wildlife, if documentation is otherwise required under Federal Law or Provincial Law.
25. Documentation issued under paragraph 24 will:
- a. be in the English language, which will be the authoritative version, and, at the discretion of K'ómoks, also in the appropriate K'ómoks language;
 - b. include sufficient information to identify the K'ómoks Member; and
 - a. meet any requirements under K'ómoks Laws.

REASONABLE OPPORTUNITY: PROVINCIAL PROCESS

26. British Columbia may authorize uses of or dispose of provincial Crown land and any authorized use or disposition may affect the method, times and locations of harvesting Wildlife under the K'ómoks Right to Harvest Wildlife, provided that British Columbia ensures that those authorized uses or dispositions do not deny K'ómoks the reasonable opportunity to harvest Wildlife under the K'ómoks Right to Harvest Wildlife.
27. For the purposes of paragraph 26, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or dispositions of provincial Crown land on K'ómoks's reasonable opportunity to harvest Wildlife.
28. K'ómoks Right to Harvest Wildlife will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 26.

REASONABLE OPPORTUNITY: FEDERAL PROCESS

29. Subject to paragraph 30, Canada may make a Land Management Decision concerning federal Crown land, and any such Land Management Decision may affect the methods, times and locations of the K'ómoks Right to Harvest Wildlife.

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30. Canada will ensure that any Land Management Decision does not result in K'ómoks being denied a reasonable opportunity to exercise its Right to Harvest Wildlife within the K'ómoks Harvest Area.
 31. K'ómoks Right to Harvest Wildlife will be exercised by K'ómoks in a manner that does not interfere with the use of, licenced use or occupation of, or intended grant or disposition of an interest in, federal Crown land as of the Effective Date or authorized in accordance with paragraph 29.
 32. Canada will provide to K'ómoks notice in writing of any proposed Land Management Decision that has the potential to deny K'ómoks the reasonable opportunity to exercise the K'ómoks Right to Harvest Wildlife, and the notice will include such information as Canada may have in its possession about the impact of the proposed Land Management Decision on harvesting opportunities and about harvesting opportunities on other lands within the K'ómoks Harvest Area.
 33. K'ómoks may, within 30 days of delivery of the notice under paragraph 32, provide Canada with a written summary of its concerns about the proposed Land Management Decision and the relevant facts.
 34. Within 14 days of delivery of the written summary under paragraph 33, Canada and K'ómoks will meet to discuss K'ómoks's views on the impact of the proposed Land Management Decision on the exercise of the K'ómoks Right to Harvest Wildlife and evaluate the impact of the proposed Land Management Decision on the K'ómoks Right to Harvest Wildlife, taking into account harvesting opportunities throughout the K'ómoks Harvest Area.
 35. Where the proposed Land Management Decision is likely to deny K'ómoks a reasonable opportunity to exercise the K'ómoks Right to Harvest Wildlife, Canada and K'ómoks will meet to discuss any measures required to mitigate the impact of the proposed Land Management Decision and the nature of any limitations respecting methods, times and locations of the K'ómoks Right to Harvest Wildlife on the federal Crown land in question.
 36. If Canada and K'ómoks:
 - a. are unable to agree, within 30 days of the meeting referred to in paragraph 34, on whether the proposed Land Management Decision is likely to deny K'ómoks a reasonable opportunity to exercise the K'ómoks Right to Harvest Wildlife; or
 - b. are unable to agree, within 60 days of commencing discussions pursuant to paragraph 35, on the measures required to mitigate the impact of the proposed Land Management Decision or the limitations respecting methods, times and locations of the K'ómoks Right to Harvest Wildlife on the federal Crown land in question,

either Canada or K'ómoks may refer the dispute to dispute resolution in accordance with

the Dispute Resolution Chapter.

37. The deliberations of Canada and K'ómoks under paragraphs 34 or 35 will be considered to be “collaborative negotiations” for the purposes of the Dispute Resolution Chapter, and will be deemed to fully satisfy the requirements set out in paragraphs 15 to 19 of that Chapter.
38. Canada agrees not to give effect to any Land Management Decision until the later of:
- a. 30 days from the delivery of a notice under paragraph 32;
 - b. the completion of a dispute resolution process initiated under paragraph 36; or
 - c. such additional time as K'ómoks and Canada may agree.

WILDLIFE MANAGEMENT

39. Representatives of K'ómoks and British Columbia will meet, at least once each calendar year, to:
- a. Discuss wildlife management issues with the K'ómoks Harvest Area;
 - b. make recommendations to the Minister on conservation measures if necessary; and
 - c. perform such other functions as agreed to by British Columbia and K'ómoks.
40. Where the Minister disagrees with any recommendation given under paragraph 39, the Minister must give written reasons.

CONSERVATION MEASURES

41. The Minister will Consult with K'ómoks regarding a conservation measure, proposed by the Minister or K'ómoks, in relation to a Wildlife species within the K'ómoks Harvest Area including K'ómoks's role in the development and implementation of the conservation measure.
42. When considering a conservation measure under paragraph 41, the Minister will take into account:
- a. the conservation risk to the Wildlife species;
 - b. the population of the Wildlife species:
 - i. within the K'ómoks Harvest Area; and

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- ii. within its normal range or area of movement outside the K'ómoks Harvest Area;
 - c. the necessity for and the nature of the proposed conservation measure; and
 - d. the nature and extent of the K'ómoks Right to Harvest Wildlife.
43. Conservation measures include:
- a. the determination that a Wildlife species should be designated;
 - b. the designation of the species;
 - c. determination of the Total Allowable Wildlife Harvest;
 - d. the establishment of allocations; and
 - e. limitations on harvesting allocated species, such as area closures, and closures based on sex and age of species.
44. Before authorizing the implementation of a conservation measure that will affect the K'ómoks Right to Harvest Wildlife, the Minister will:
- a. use reasonable efforts to minimize the impact of the conservation measure on the K'ómoks Right to Harvest Wildlife;
 - b. provide K'ómoks with a copy of any proposed conservation measure related to a species within the K'ómoks Harvest Area; and
 - c. at the request of K'ómoks, provide K'ómoks with written reasons for the adoption of any conservation measure.
45. British Columbia and K'ómoks will share information from time to time in relation to harvesting of any Wildlife species that are subject to a conservation measure.

K'ÓMOKS ALLOCATIONS

46. Where the Minister determines that establishing or varying an allocation for K'ómoks is the necessary conservation measure, British Columbia and K'ómoks will negotiate and attempt to reach agreement on the Wildlife allocation for K'ómoks, such allocations shall be expressed as a percentage of the total allowable harvest.
47. Where British Columbia and K'ómoks fail to agree to a Wildlife allocation under paragraph 46, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.

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48. In determining the Wildlife allocation, the arbitrator will take into account all relevant information provided by K'ómoks and British Columbia.

K'ÓMOKS ROOSEVELT ELK ALLOCATION

49. The Final Agreement will set out Roosevelt elk as a Designated Wildlife Species.
50. The K'ómoks Roosevelt elk allocation will be determined in accordance with the procedures established by the Kwakiutl District Council Hunt Committee.
51. If the Kwakiutl District Council Hunt Committee ceases to exist or function, or if K'ómoks withdraws from the Kwakiutl District Council Hunt Committee then, upon the request of K'ómoks, British Columbia and K'ómoks will negotiate the K'ómoks Roosevelt elk allocation:
- a. pursuant to paragraphs 46 and 47, and
 - b. that allocation shall not be less than the percentage share of the Kwakiutl District Council Hunt Committee allocation that would have been provided to K'ómoks under the Kwakiutl District Council Hunt Committee procedures.
52. For the purposes of subparagraph 51.b, British Columbia and K'ómoks acknowledge that the Kwakiutl District Council Hunt Committee allocation will be a percentage of the Total Allowable Wildlife Harvest and will be set out in the Final Agreement.

WILDLIFE ADVISORY MANAGEMENT PROCESSES

53. If British Columbia establishes a public Wildlife advisory committee for an area that includes any portion of the K'ómoks Harvest Area:
- a. K'ómoks has the right to participate in that committee; and
 - b. the Minister may request recommendations from the Wildlife advisory committee before determining:
 - i. whether a Wildlife species will be or continue to be a Designated Wildlife Species; and
 - ii. the Total Allowable Wildlife Harvest for any Designated Wildlife Species.

LAW-MAKING AUTHORITY

54. K'ómoks may make laws to regulate the K'ómoks Right to Harvest Wildlife that are consistent with the Final Agreement with respect to:
- a. the administration of documentation to identify K'ómoks Members as harvesters of Wildlife;
 - b. the designation of K'ómoks Members who may exercise the K'ómoks Right to Harvest Wildlife;
 - c. the methods, timing and geographic location of the harvest of Wildlife;
 - d. the distribution of harvested Wildlife among K'ómoks Members;
 - e. the Trade or Barter of Wildlife under paragraph 16;
 - f. identification of Wildlife and Wildlife parts, including meat and fur, that may be transported by an individual who is not a K'ómoks Member; and
 - g. other matters agreed to by the Parties.
55. K'ómoks Law under paragraph 54 prevails to the extent of a Conflict with Federal Law or Provincial Law.
56. K'ómoks will make laws to require K'ómoks Members harvesting under the K'ómoks Right to Harvest Wildlife to comply with any conservation measure established by the Minister.
57. K'ómoks will make laws to require all K'ómoks Members who harvest or transport Wildlife or Wildlife parts, including meat and furs, under the Final Agreement to carry documentation issued by K'ómoks.
58. Federal Law or Provincial Law prevails to the extent of the Conflict with a K'ómoks Law under paragraphs 56 to 57.

ENFORCEMENT

59. The Parties may negotiate agreements concerning enforcement of Federal Law, Provincial Law and K'ómoks Law in relation to Wildlife.

GUIDING AND TRAPPING

60. For the purposes of guide outfitting and trapping, K'ómoks Lands will be treated as

Private Lands.

61. Angling guide licences that are wholly or partially on any portion of a watercourse or water body within K'ómoks Lands that exist as of the Effective Date are retained by the persons who hold the interests and may be transferred or renewed in accordance with Provincial Law.
62. Where an angling guide area that is wholly or partially on any portion of a watercourse or water body within K'ómoks Lands becomes vacant by reason of abandonment or operation of law, British Columbia will not issue a new angling guide licence in relation to the portion of the watercourse or water body located on K'ómoks Lands without the consent of K'ómoks.

MIGRATORY BIRDS

GENERAL

1. K'ómoks will have the right to harvest Migratory Birds for Domestic Purposes in the K'ómoks Harvest Area throughout the year in accordance with the Final Agreement.
2. K'ómoks Right to Harvest Migratory Birds will be limited by measures necessary for conservation, public health or public safety.
3. Canada or British Columbia will give notice of its intent to implement a public health or public safety measure identified under paragraph 2 to K'ómoks:
 - a. before the measure is implemented if it is practicable to do so; or
 - b. as soon as practicable after the measure is implemented.
4. K'ómoks Right to Harvest Migratory Birds will be held by K'ómoks and will not be alienated.
5. K'ómoks Right to Harvest Migratory Birds will be exercised in a manner that is consistent with the communal nature of K'ómoks harvest for Domestic Purposes.
6. K'ómoks Members may exercise the K'ómoks Right to Harvest Migratory Birds except as otherwise provided under a K'ómoks Law.
7. The Final Agreement will not alter Federal Law or Provincial Law with respect to property in Migratory Birds.
8. The Minister will retain authority for managing and conserving Migratory Birds and Migratory Bird habitat.

HARVEST AREAS

9. Before the Final Agreement, the Parties will discuss harvesting of Migratory Birds by K'ómoks in areas where K'ómoks has a protocol agreement in effect with another First Nation, and the Sliammon protocol is one such example.
10. K'ómoks Right to Harvest Migratory Birds may be exercised on lands that are owned in fee simple, other than K'ómoks Lands, within the K'ómoks Harvest Area but that harvesting is subject to Federal Law or Provincial Law in relation to access to fee simple lands.
11. Notwithstanding paragraph 1, K'ómoks may exercise the K'ómoks Right to Harvest Migratory Birds on an Indian Reserve within the K'ómoks Harvest Area, if the Indian

Band for whom the Indian Reserve was set aside agrees in writing to provide such access, but any such agreement:

- a. will not cause an Indian Reserve to be included within the K'ómoks Harvest Area, and for greater certainty, paragraphs 30 to 39 will not apply to these lands; and
- b. does not prevent the Indian Band for whom the Indian Reserve is set aside from revoking access to the Indian Reserve in accordance with that agreement.

HARVESTING OUTSIDE THE K'ÓMOKS HARVEST AREA

12. The Final Agreement will not preclude K'ómoks Members from harvesting Migratory Birds outside of the K'ómoks Harvest Area throughout Canada in accordance with:
 - a. Federal Law or Provincial Law;
 - b. any agreements that are in accordance with Federal Law or Provincial Law, between K'ómoks and other aboriginal people; or
 - c. any arrangements between other aboriginal people and Canada or British Columbia.

INCIDENTAL USE OF RESOURCES

13. K'ómoks Members may use resources on provincial Crown land within the K'ómoks Harvest Area for purposes reasonably incidental to the exercise of the K'ómoks Right to Harvest Migratory Birds, subject to Federal Law or Provincial Law.

SALE, TRADE AND BARTER

14. K'ómoks and K'ómoks Members may sell Migratory Birds harvested under the K'ómoks Right to Harvest Migratory Birds where the sale of Migratory Birds is permitted under and in accordance with:
 - a. Federal Law or Provincial Law; and
 - b. any K'ómoks Law enacted under subparagraph 49.a
15. K'ómoks and K'ómoks Members may, in accordance with:
 - a. Federal Law or Provincial Law; and
 - b. K'ómoks Law under subparagraph 47.f,sell inedible by-products, including down, of Migratory Birds harvested under the K'ómoks Right to Harvest Migratory Birds.
16. K'ómoks will have the right to Trade and Barter Migratory Birds harvested under the

K'ómoks Right to Harvest Migratory Birds:

- a. among themselves; and
 - b. with other aboriginal people of Canada.
17. The right to Trade and Barter under paragraph 16 will be held by K'ómoks and will not be alienated.
 18. K'ómoks Members may exercise the right to Trade and Barter under paragraph 16 except as otherwise provided under K'ómoks Law.

TRANSPORT AND EXPORT

19. K'ómoks and K'ómoks Members may, in accordance with:
 - a. Federal Law or Provincial Law; and
 - b. K'ómoks Law under paragraph 50.transport Migratory Birds, and their inedible by-products, including down, harvested under the K'ómoks Right to Harvest Migratory Birds.
20. Notwithstanding paragraph 19, Migratory Birds harvested under the Final Agreement may be transported within Canada throughout the year.
21. K'ómoks and K'ómoks Members may, in accordance with Federal Law or Provincial Law, export Migratory Birds, and their inedible by-products, including down, harvested under the K'ómoks Right to Harvest Migratory Birds.

LICENCES AND FEES

22. Subject to paragraphs 23 and 24 K'ómoks Members are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia relating to the exercise of the K'ómoks Right to Harvest Migratory Birds.
23. For greater certainty, while harvesting in accordance with paragraph 12, K'ómoks Members will be required to have a licence to harvest Migratory Birds if one is required under Federal Law or Provincial Law.
24. Nothing in the Final Agreement will affect the application of Federal Law or Provincial Law with respect to the possession, use and regulation of firearms.

DOCUMENTATION

25. K'ómoks will issue documentation to:
 - a. K'ómoks Members who are authorized to harvest Migratory Birds under the K'ómoks Right to Harvest Migratory Birds; and
 - b. K'ómoks Members who transport Migratory Birds harvested under the K'ómoks Right to Harvest Migratory Birds, if documentation is otherwise required under Federal Law or Provincial Law.
26. Documentation issued under paragraph 25 will:
 - a. be in the English language, which will be the authoritative version, and, at the discretion of K'ómoks, also in the appropriate K'ómoks language;
 - b. include sufficient information to identify the K'ómoks Member; and
 - c. meet any requirements under K'ómoks Law.

REASONABLE OPPORTUNITY: PROVINCIAL PROCESS

27. British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Migratory Birds under the K'ómoks Right to Harvest Migratory Birds, provided that British Columbia ensures that those authorized uses or dispositions do not deny K'ómoks the reasonable opportunity to harvest Migratory Birds under the K'ómoks Right to Harvest Migratory Birds.
28. For the purposes of paragraph 27, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or dispositions of provincial Crown land on K'ómoks's reasonable opportunity to harvest Migratory Birds.
29. K'ómoks Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 27.

REASONABLE OPPORTUNITY: FEDERAL PROCESS

30. Subject to paragraph 31, Canada may make a Land Management Decision concerning federal Crown land, and any such Land Management Decision may affect the methods, times and locations of the K'ómoks Right to Harvest Migratory Birds.
31. Canada will ensure that any Land Management Decision does not result in K'ómoks being denied a reasonable opportunity to exercise its Right to Harvest Migratory Birds

within the K'ómoks Harvest Area.

32. K'ómoks Right to Harvest Migratory Birds will be exercised by K'ómoks in a manner that does not interfere with the use of, licenced use or occupation of, or intended grant or disposition of an interest in, federal Crown land as of the Effective Date or authorized in accordance with paragraph 30.
33. Canada will provide to K'ómoks notice in writing of any proposed Land Management Decision that has the potential to deny K'ómoks the reasonable opportunity to exercise the K'ómoks Right to Harvest Migratory Birds, and the notice will include such information as Canada may have in its possession about the impact of the proposed Land Management Decision on harvesting opportunities and about harvesting opportunities on other lands within the K'ómoks Harvest Area.
34. K'ómoks may, within 30 days of delivery of the notice under paragraph 33, provide Canada with a written summary of its concerns about the proposed Land Management Decision and the relevant facts.
35. Within 14 days of delivery of the written summary under paragraph 34, Canada and K'ómoks will meet to discuss K'ómoks's views on the impact of the proposed Land Management Decision on the exercise of the K'ómoks Right to Harvest Wildlife and evaluate the impact of the proposed Land Management Decision on the K'ómoks Right to Harvest Migratory Birds, taking into account harvesting opportunities throughout the K'ómoks Harvest Area.
36. Where the proposed Land Management Decision is likely to deny K'ómoks a reasonable opportunity to exercise the K'ómoks Right to Harvest Migratory Birds, Canada and K'ómoks will meet to discuss any measures required to mitigate the impact of the proposed Land Management Decision and the nature of any limitations respecting methods, times and locations of the K'ómoks Right to Harvest Migratory Birds on the federal Crown land in question.
37. If Canada and K'ómoks:
 - a. are unable to agree, within 30 days of the meeting referred to in paragraph 35, on whether the proposed Land Management Decision is likely to deny K'ómoks a reasonable opportunity to exercise the K'ómoks Right to Harvest Migratory Birds; or
 - b. are unable to agree, within 60 days of commencing discussions pursuant to paragraph 36, on the measures required to mitigate the impact of the proposed Land Management Decision or the limitations respecting methods, times and locations of the K'ómoks Right to Harvest Migratory Birds on the federal Crown land in question,either Canada or K'ómoks may refer the dispute to dispute resolution in accordance with the Dispute Resolution Chapter.
38. The deliberations of Canada and K'ómoks under paragraphs 35 or 36 will be considered

to be “collaborative negotiations” for the purposes of the Dispute Resolution Chapter, and will be deemed to fully satisfy the requirements set out in paragraphs 15 to 19 of that Chapter.

39. Canada agrees not to give effect to any Land Management Decision until the later of:
- a. 30 days from the delivery of a notice under paragraph 33;
 - b. the completion of a dispute resolution process initiated under paragraph 37; or
 - c. such additional time as K'ómoks and Canada may agree.

CONSULTATION ON CONSERVATION MEASURES

40. If, in the opinion of the Minister, conservation measures are needed within the K'ómoks Harvest Area to protect a particular population of Migratory Bird that is harvested by K'ómoks under the K'ómoks Right to Harvest Migratory Birds, and those measures are likely to affect the K'ómoks Right to Harvest Migratory Birds, prior to undertaking such conservation measures the Minister will Consult with K'ómoks in relation to:
- a. the necessity of the conservation measures;
 - b. the nature of the conservation measures;
 - c. measures to minimize or mitigate restrictions or limitations on the K'ómoks Right to Harvest Migratory Birds resulting from the proposed conservation measures; and
 - d. if applicable, K'ómoks's role in the development and the implementation of the conservation measures.
41. Conservation measures are activities required to maintain or increase a Migratory Bird population and may include:
- a. internationally negotiated changes to limits and seasons for non-aboriginal harvesters within the range of that species of Migratory Birds;
 - b. habitat enhancement;
 - c. establishment of protected areas;
 - d. negotiated changes to harvests by aboriginal people within the range of that species of Migratory Bird; and
 - e. the total closure of the harvest of that Migratory Bird population.
42. In establishing a conservation measure for a Migratory Bird population, the Minister will take into account, among other things, the K'ómoks Right to Harvest Migratory Birds.
43. If K'ómoks is of the opinion that conservation measures are needed, should be continued, or should be removed in relation to a species of Migratory Bird that is harvested by K'ómoks under its K'ómoks Right to Harvest Migratory Birds, K'ómoks

may present its views to Canada in relation to the need for such conservation measures and its proposed role in the development and implementation of them, and Canada will give full and fair consideration to K'ómoks's proposal.

44. If K'ómoks makes a recommendation to the Minister respecting a conservation measure or the removal of a conservation measure of a Migratory Bird population and the Minister's decision varies from that recommendation, the Minister will, at the request of K'ómoks, provide K'ómoks with written reasons for that decision.
45. Where the Minister has authorized the implementation of conservation measures and the conservation measures will affect the K'ómoks Right to Harvest Migratory Birds:
 - a. the Minister will use reasonable efforts to avoid, minimize, or mitigate restrictions or limitations on the K'ómoks Right to Harvest Migratory Birds to the extent possible; and
 - b. the Minister, if requested, will provide written reasons to K'ómoks on the conservation measures adopted.
46. If Canada believes on reasonable grounds that an emergency exists it may, after providing notice to K'ómoks, act without first Consulting K'ómoks in accordance with paragraph 40. However, as soon as practicable thereafter, Canada will inform K'ómoks of, and provide reasons for, its action.

LAW-MAKING

47. K'ómoks may make laws to regulate the K'ómoks Right to Harvest Migratory Birds that are consistent with the Final Agreement with respect to:
 - a. the administration of documentation to identify K'ómoks Members as harvesters of Migratory Birds;
 - b. the designation of K'ómoks Members who may exercise the K'ómoks Right to Harvest Migratory Birds;
 - c. the methods, timing and geographic location of harvest of Migratory Birds;
 - d. the distribution of harvested Migratory Birds among the K'ómoks Members;
 - e. the Trade and Barter of harvested Migratory Birds under paragraph 16;
 - f. sale of inedible by-products, including down, of harvested Migratory Birds; and
 - g. other matters agreed to by the Parties.
48. K'ómoks Law under paragraph 47 prevails to the extent of a Conflict with Federal Law or Provincial Law.
49. K'ómoks may make laws to regulate the K'ómoks Right to Harvest Migratory Birds with respect to:

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- a. the sale of Migratory Birds, other than their inedible by-products including down, if permitted by Federal Law or Provincial Law;
 - b. the management of Migratory Birds and Migratory Bird habitat on K'ómoks Lands; and
 - c. other matter agreed to by the Parties
50. K'ómoks will make laws to require all K'ómoks Members, who harvest or transport Migratory Birds under the Final Agreement, to carry documentation issued by K'ómoks.
 51. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraphs 49 and 50.

PARTICIPATION IN MIGRATORY BIRD ADVISORY PROCESSES

52. K'ómoks will have the right to participate in any Migratory Bird advisory committee established by Canada or British Columbia, and any Wildlife Committee established under the Wildlife Chapter, that addresses matters regarding Migratory Birds that occur in or impact the K'ómoks Migratory Bird Harvest Area.

CONSULTATION ON INTERNATIONAL DISCUSSIONS

53. Canada will Consult with K'ómoks on the formation of Canada's positions in respect of international discussions or negotiations that may adversely affect the K'ómoks Right to Harvest Migratory Birds.

CONSERVATION AGREEMENTS

54. The Parties may negotiate and attempt to reach agreement with respect to conservation issues including, but not limited to:
 - a. information sharing;
 - b. actions to be taken by the Parties to jointly address conservation issues;
 - c. local management of Migratory Birds and their habitats;
 - d. population, harvest and habitat monitoring; and
 - e. enforcement.

GATHERING PLANTS

GENERAL

1. K'ómoks will have the right to gather Plants for Domestic Purposes on provincial Crown lands within the K'ómoks Harvest Area.
2. K'ómoks Right to Gather Plants will be limited by measures necessary for conservation, public health or public safety.
3. Canada or British Columbia will give notice of its intent to implement a public health or public safety measure identified under paragraph 2 to K'ómoks:
 - b. before the measure is implemented if it is practicable to do so; or
 - c. as soon as practicable after the measure is implemented.
4. K'ómoks Right to Gather Plants will be held by K'ómoks and will not be alienated.

INCIDENTAL USE OF RESOURCES

5. K'ómoks Members may use resources on provincial Crown land within the K'ómoks Area for purposes reasonably incidental to the exercise of the K'ómoks Right to Gather Plants, subject to Federal Law or Provincial Law.

HARVESTING METHOD

6. The Minister may, for measures necessary for conservation, public health or public safety, require K'ómoks to prepare a gathering plan with respect to those species of Plants for which there is a conservation, public health or public safety concern.
7. Where a gathering plan is required under paragraph 6, K'ómoks will exercise the K'ómoks Right to Gather Plants in accordance with any jointly approved gathering plan.

TRADE AND BARTER

8. K'ómoks will have the right to Trade and Barter Plants and household goods and apparel made from Plants gathered under the K'ómoks Right to Gather Plants:
 - a. among themselves; or
 - b. with other aboriginal people of Canada.

LICENCES AND FEES

9. K'ómoks Members are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia related to the K'ómoks Right to Gather Plants.

REASONABLE OPPORTUNITY: PROVINCIAL PROCESS

10. British Columbia may authorize uses of or dispose of provincial Crown land and any authorized use or disposition may affect the methods, times and locations of gathering Plants under the K'ómoks Right to Gather Plants, provided that British Columbia ensures that those authorized uses or dispositions do not deny K'ómoks the reasonable opportunity to gather Plants under the K'ómoks Right to Gather Plants.
11. For the purposes of paragraph 10, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or dispositions of provincial Crown lands on K'ómoks's reasonable opportunity to gather Plants.
12. K'ómoks Right to Gather Plants will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 10.

LAW-MAKING

13. K'ómoks may make laws in relation to the K'ómoks Right to Gather Plants for:
 - a. the designation of K'ómoks Members to gather Plants;
 - b. the distribution among K'ómoks Members of the gathered Plants;
 - c. the administration of documentation to identify K'ómoks Members who have been designated under subparagraph 13.a, including the requirement to carry the documentation; and
 - d. the Trade and Barter of Plants gathered under the K'ómoks Right to Gather Plants.
14. K'ómoks Law under paragraph 13 prevails to the extent of a Conflict with Federal Law or Provincial Law.
15. K'ómoks may make laws in respect of the documentation of K'ómoks Members who have been designated under subparagraph 13.a.
16. K'ómoks will make laws to require K'ómoks Members gathering under the K'ómoks

Right to Gather Plants to comply with any conservation measures.

17. Federal or Provincial law prevails to the extent of Conflict with K'ómoks Law under paragraph 16.

DOCUMENTATION

18. Where documentation is required under Provincial Law K'ómoks will issue documentation to K'ómoks Members who gather Plants under the K'ómoks Right to Gather Plants.
19. Documentation issued under paragraph 18 will:
 - a. be in the English language, which will be the authoritative version, and, at the discretion of K'ómoks, also in the appropriate K'ómoks language;
 - b. include sufficient information to identify the K'ómoks Member; and
 - c. meet any requirements to which K'ómoks and British Columbia may agree.

COMMERCIAL HARVESTING

20. K'ómoks and K'ómoks Members may harvest Plants on provincial Crown land for commercial purposes in accordance with Federal or Provincial Law.

PARKS AND PLANNING

PROVINCIAL PUBLIC PLANNING PROCESSES

1. K'ómoks will have the right to participate in any Public Planning Process on provincial Crown land that may be established by British Columbia for an area wholly or partially within the area set out in the K'ómoks Area, in accordance with terms of reference and procedures established by British Columbia for that Public Planning Process.
2. K'ómoks may make proposals to British Columbia to establish a Public Planning Process for an area wholly or partially within the K'ómoks Area.
3. Nothing in the Final Agreement will obligate British Columbia to establish a Public Planning Process.
4. K'ómoks will have the right to participate in the development of the terms of reference and procedures of any Public Planning Process under paragraphs 1 or 2.
5. In participating in any Public Planning Process under paragraphs 1 or 2, K'ómoks may bring forward any matters it considers relevant, including any rights set out in the Final Agreement.
6. British Columbia will review any matters brought forward by K'ómoks under paragraph 5 and take them into consideration when undertaking a Public Planning Process.
7. British Columbia will provide K'ómoks with the draft plan or plans resulting from any Public Planning Process referred to in paragraphs 1 or 2. K'ómoks may provide written recommendations to the Minister on the draft plan which may be made public.
8. After considering any written recommendations from K'ómoks and any matters the Minister considers appropriate, the Minister will provide written reasons for any K'ómoks recommendations that are not accepted.
9. Where any K'ómoks recommendations are not accepted under paragraph 8, the Minister will, at the request of K'ómoks, meet with K'ómoks to discuss any concerns that K'ómoks has with the Minister's response.
10. British Columbia may proceed with any Public Planning Process even if K'ómoks does not participate in the process.

NEW RELATIONSHIP

11. Nothing in the Final Agreement will preclude K'ómoks from participating in a provincial process or institution, including a process or institution that may address

matters of shared decision-making and revenue and benefit sharing, or from benefiting from any future provincial program, policy or initiative of general application to First Nations as British Columbia develops a new relationship with First Nations, including the enactment of legislation to support these initiatives.

12. Nothing in the Final Agreement will preclude K'ómoks from participating in, or benefiting from, provincial benefit sharing programs of general application in accordance with the general criteria established for those programs from time to time.
13. Nothing in the Final Agreement will preclude K'ómoks from entering into arrangements for economic opportunities with third parties, provided that these arrangements are consistent with the Final Agreement.
14. Before the Effective Date, K'ómoks and British Columbia will negotiate and attempt to reach agreement respecting the establishment of a process or institution, including shared decision-making, with respect to the Puntledge, Oyster and Salmon River Watersheds, as set out in Appendix I.

COURTENAY RIVER ESTUARY

15. Before the Effective Date, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a shared decision-making agreement with respect to the Courtenay River Estuary as set out in Final Agreement.
16. Before the Final Agreement, K'ómoks and British Columbia will negotiate the principles associated with a shared decision-making agreement with respect to the Courtenay River Estuary.
17. The agreement referenced in paragraph 15 will not form part of the Final Agreement.
18. As part of the negotiations referred to in paragraph 15, Canada will participate as an observer.
19. British Columbia and K'ómoks acknowledge that management of the Courtenay River Estuary must include the following considerations:
 - a. the historic and ongoing presence of K'ómoks in the Courtenay River Estuary;
 - b. the archaeological significance of the Courtenay River Estuary;
 - c. the jurisdictional responsibilities of the federal, provincial and Local Governments;
 - d. the rights and jurisdictional responsibilities of K'ómoks; and
 - e. other legal interests in the Courtenay River Estuary.

PROVINCIAL PROTECTED AREAS

20. K'ómoks may make proposals to British Columbia to establish new Protected Areas wholly or partly within the K'ómoks Area.
21. Nothing in the Final Agreement will obligate British Columbia to establish any new Protected Areas.
22. Any Protected Area established after the Effective Date will not include K'ómoks Lands without the consent of K'ómoks.
23. Before the Final Agreement, British Columbia and K'ómoks will attempt to reach agreement on the Protected Area Collaborative Management Agreement, consistent with the Final Agreement and legislation establishing Protected Areas, that addresses:
 - a. Protected Area planning;
 - b. management and operations;
 - c. economic opportunities; and
 - d. other matters agreed to by British Columbia and K'ómoks, for Protected Areas within the K'ómoks Area.

HORNBY ISLAND PROTECTED AREA

24. As soon as practicable after the Effective Date, British Columbia will name the new provincial Protected Area on Hornby Island with a name provided by K'ómoks in accordance with Provincial Law and provincial policies and procedures.

NATIONAL PARKS AND NATIONAL MARINE CONSERVATION AREAS

25. Canada will Consult with K'ómoks with respect to the establishment of any National Park or National Marine Conservation Area that lies wholly or partly within the K'ómoks Area.
26. If, after the Effective Date, any National Park or National Marine Conservation Area is proposed to be established that lies either wholly or partly within the K'ómoks Area, prior to the establishment of such National Park or National Marine Conservation Area, K'ómoks and Canada will negotiate and attempt to reach agreement for the exercise of:
 - a. the K'ómoks Right to Harvest Wildlife;
 - b. the K'ómoks Right to Harvest Migratory Birds; and

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- c. the K'ómoks Right to Gather Plants,
in that proposed National Park or National Marine Conservation Area.
27. If, after the Effective Date, any National Park or National Marine Conservation Area is established that lies wholly or partly within the K'ómoks Area, K'ómoks and Canada will negotiate and attempt to reach agreement regarding K'ómoks's participation in a planning and management process to provide advice to the Minister for that National Park or National Marine Conservation Area.

NATIONAL WILDLIFE AREAS

28. Canada will Consult with K'ómoks with respect to:
- a. any proposed expansion of the Qualicum National Wildlife Area;
 - b. any new National Wildlife Area; and
 - c. any proposed management plan for the Qualicum National Wildlife Area or any National Wildlife Area,
- that is located wholly or partly within the K'ómoks Area.

ENVIRONMENTAL ASSESSMENT AND PROTECTION

ENVIRONMENTAL ASSESSMENT

1. Federal Law or Provincial Law in relation to environmental assessment will apply on K'ómoks Lands.
2. Notwithstanding any decision made by Canada or British Columbia in relation to a Federal Project or Provincial Project, no Federal Project or Provincial Project on K'ómoks Lands will proceed without the consent of K'ómoks.
3. Before the Final Agreement, the Parties will address the application of paragraph 2 to any third party interests or expropriations.

K'ÓMOKS PARTICIPATION IN PROVINCIAL ENVIRONMENTAL ASSESSMENT PROCESSES

4. If a Provincial Project is located within the K'ómoks Area, or may reasonably be expected to adversely affect K'ómoks Lands, the residents of such lands or K'ómoks Section 35 Rights as set out under the Final Agreement, British Columbia will ensure that K'ómoks:
 - a. receives timely notice of and relevant available information on the Provincial Project;
 - b. is Consulted regarding the environmental, economic, social, heritage or health effects of the Provincial Project; and
 - c. receives an opportunity to participate in any environmental assessment of that Provincial Project.
5. British Columbia will respond to any views provided by K'ómoks to British Columbia in paragraph 4 before making a decision that would have the effect of enabling the Provincial Project to be carried out in whole or in part.

K'ÓMOKS PARTICIPATION IN FEDERAL ENVIRONMENTAL ASSESSMENTS

6. If a proposed Federal Project may reasonably be expected to adversely affect K'ómoks Lands or K'ómoks Section 35 Rights under the Final Agreement, Canada will ensure that K'ómoks is provided with timely notice of the environmental assessment and information describing the proposed Federal Project in sufficient detail to permit K'ómoks to determine if it is interested in participating in the environmental assessment.

7. If K'ómoks confirms that it is interested in participating in the environmental assessment of the proposed Federal Project, Canada will:
 - a. provide K'ómoks with an opportunity to comment on the environmental assessment including:
 - i. the scope of the proposed Federal Project;
 - ii. the environmental effects of the proposed Federal Project;
 - iii. any mitigation measures to be implemented; and
 - iv. any follow-up programs to be implemented;
 - b. during the course of the environmental assessment process, give full and fair consideration to any comments referred to in subparagraph 7 a , and will respond to the comments prior to taking any decision to which those comments pertain; and
 - c. provide K'ómoks with access to information in Canada's possession related to the environmental assessment of the proposed Federal Project in accordance with the public registry provisions in the *Canadian Environmental Assessment Act*.
8. If a proposed Federal Project that is referred to a panel under the *Canadian Environmental Assessment Act* may reasonably be expected to have adverse environmental effects on K'ómoks Lands or on K'ómoks Section 35 Rights under the Final Agreement, Canada will provide K'ómoks with:
 - a. the opportunity to propose to the Minister a list of names that the Minister may consider for appointment to the panel unless the panel is a decision-making body, such as the National Energy Board, or K'ómoks is a proponent of the proposed Federal Project; and
 - b. formal standing before that panel.
9. If a proposed Federal Project that is referred to a panel under the *Canadian Environmental Assessment Act* will be located on K'ómoks Lands, Canada will provide K'ómoks with:
 - a. the opportunity to propose to the Minister a list of names from which the Minister will appoint one member in accordance with the requirements of the *Canadian Environmental Assessment Act*, unless the panel is a decision-making body, such as the National Energy Board, or if the K'ómoks is a proponent of the proposed Federal Project;
 - b. the opportunity to comment on the terms of reference of the panel; and
 - c. formal standing before that panel.

LAW-MAKING

10. K'ómoks may make laws applicable on K'ómoks Lands in relation to:

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- a. environmental assessment for K'ómoks Projects;
 - b. environmental management relating to the protection, preservation and conservation of the Environment, including:
 - i. prevention, mitigation and remediation of pollution and degradation of the Environment;
 - ii. waste management, including solid and liquid waste;
 - iii. protection of local air and water quality; and
 - iv. emergency measures.
11. K'ómoks Laws under subparagraph 10 a in relation to K'ómoks Projects that are also Federal Projects will have the equivalent effect of, or exceed the requirements of, the *Canadian Environmental Assessment Act*.
 12. Where K'ómoks exercises law-making authority under subparagraph 10 a, Canada and K'ómoks will negotiate and attempt to reach agreement:
 - a. to co-ordinate their respective environmental assessment requirements; and
 - b. to avoid duplication where a K'ómoks Project is also a Federal Project.
 13. Federal Law or Provincial Law will prevail to the extent of the Conflict with a K'ómoks Law under paragraph 10.

ENVIRONMENTAL EMERGENCIES

14. K'ómoks may enter into agreements with Canada, British Columbia, Local Government or other aboriginal groups for the prevention of, preparedness for, response to and recovery from Environmental emergencies occurring on K'ómoks Lands or on land or waters adjacent to K'ómoks Lands.

FOREST RESOURCES

1. On the Effective Date, K'ómoks owns all Forest Resources on K'ómoks Lands.
2. K'ómoks Lands will be treated as Private Lands for the purposes of Provincial Law with respect to Forest Resources, Forest Practices and Range Practices.
3. K'ómoks, as owner, has the exclusive authority to determine, collect and administer any fees, rents, royalties or charges, other than taxes, relating to Forest Resources owned by K'ómoks on K'ómoks Lands.

LAW-MAKING

4. K'ómoks may make laws with respect to Forest Resources, Forest Practices and Range Practices on K'ómoks Lands.
5. Federal Law or Provincial Law will prevail to the extent of a Conflict with a K'ómoks Law under paragraph 4.

TIMBER MARKING AND SCALING

6. Nothing in the Final Agreement will confer authority on K'ómoks to make laws with respect to timber marks, timber marking or timber scaling.

MANUFACTURE AND EXPORT OF TIMBER

7. Timber Resources harvested from K'ómoks Lands will not be subject to any requirements under Provincial Law for use or manufacturing in British Columbia.
8. K'ómoks, or a person authorized by K'ómoks, may export Logs harvested from K'ómoks Lands in accordance with Federal Law and policy.

FOREST AND RANGE HEALTH

9. K'ómoks is responsible on K'ómoks Lands for the control of insects, diseases, invasive plants, animals or abiotic factors that may affect the health of Forest Resources on K'ómoks Lands.
10. If Canada or British Columbia becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Crown land that may threaten the health of Forest

Resources on K'ómoks Lands, Canada or British Columbia, as the case may be, will notify K'ómoks.

11. If K'ómoks becomes aware of insects, diseases, invasive plants, animals or abiotic factors on K'ómoks Lands that may threaten the health of Forest Resources on Crown land, K'ómoks will notify Canada or British Columbia, as the case may be.
12. Following notification under paragraph 10 or 11, K'ómoks and British Columbia will develop an appropriate and reasonable co-operative response to minimize the impacts of such insects, diseases, invasive plants, animals or abiotic factors.

WILDFIRE SUPPRESSION AND CONTROL

13. Subject to the Wildfire Suppression Agreement entered into in accordance with paragraph 14 and subject to paragraphs 15 and 17, Provincial Law with respect to the protection of resources from wildfire and for wildfire prevention and control will apply to K'ómoks Lands as Private Lands.
14. On the Effective Date the Parties will enter into the K'ómoks Wildfire Suppression Agreement that will set out how the Parties will share the costs incurred by British Columbia for wildfire control on K'ómoks Lands for wildfires that originate on K'ómoks Lands.
15. Subject to the limitations on the scope of K'ómoks's responsibility to pay wildfire control costs set out in K'ómoks Wildfire Suppression Agreement, K'ómoks will be responsible for one third of the costs incurred by British Columbia for wildfire control on K'ómoks Lands for wildfires that originate on K'ómoks Lands.
16. For greater certainty, the responsibility of K'ómoks under paragraph 15 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off K'ómoks Land.
17. British Columbia will respond to a wildfire originating on K'ómoks Lands on the same priority basis as for provincial Crown lands and in accordance with any priorities as set by the Minister.
18. For the purposes of paragraph 14:
 - a. unless terminated at the written request of K'ómoks, the K'ómoks Wildfire Suppression Agreement will remain in effect between K'ómoks and British Columbia, on the same terms, subject to those terms which K'ómoks and British Columbia agree will be negotiated on a periodic basis; and
 - b. Canada's participation in the K'ómoks Wildfire Suppression Agreement will be limited to assuming a share of costs under that agreement for a period of 10 years commencing on the Effective Date.

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19. Subject to any cost-sharing arrangement that may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided pursuant to land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time with respect to Canada's continuing participation in the K'ómoks Wildfire Suppression Agreement following the 10-year period referred to in subparagraph 18.b.
 20. Nothing under paragraphs 14 or 15 limits the Parties' ability to pursue legal action against third parties.
 21. At the request of K'ómoks, or in accordance with Provincial Law, British Columbia may enter on K'ómoks Lands and assist in the provision of, or carry out, wildfire control.

FOREST RESEARCH PLOTS

22. On the Effective Date, K'ómoks will grant British Columbia a licence to enter K'ómoks Lands for the purpose of conducting forestry related studies, tests and experiments for the research plot on the Salmon River parcel shown in Appendix B-3, Map 2.
23. British Columbia and K'ómoks will not materially change or alter the Forest Resources under the licence granted under paragraph 22 for the term of the licence.

DISPOSITION OF THIRD PARTY RIGHTS

24. British Columbia will ensure that on the Effective Date, any portion of:
 - a. any agreement under the *Forest Act* or *Range Act*; and
 - b. any plan, permit or authorization associated with any agreement under the *Forest Act* or *Range Act*,that applies on K'ómoks Lands ceases to be valid.

FULFILLMENT OF THIRD PARTY OBLIGATIONS

25. Unless otherwise requested by K'ómoks, British Columbia will ensure that any obligations on K'ómoks Lands with respect to Forest Practices and Range Practices, including road deactivation and reforestation, will be fulfilled in accordance with Provincial Law.
26. K'ómoks will provide access to K'ómoks Lands at no cost to British Columbia and to any person whose rights referred to in paragraph 24 cease to be valid, and to their

respective employees, agents, contractors, successors or assigns, so that they may fulfill the obligations referred to in paragraph 25.

INFORMATION SHARING

27. British Columbia and K'ómoks agree to share information with respect to Forest Practices and Range Practices on K'ómoks Lands and on provincial Crown land immediately adjacent to K'ómoks Lands from time to time.
28. Before the Final Agreement, British Columbia and K'ómoks will explore opportunities for K'ómoks to obtain a commercially sustainable volume of timber.

WATER

GENERAL

1. The Final Agreement will not alter Federal Law or Provincial Law with respect to proprietary interests in water.
2. Storage, diversion, extraction or use of water and Groundwater will be in accordance with Federal Law or Provincial Law.
3. K'ómoks may only sell water in accordance with Federal Law or Provincial Law that permit the sale of water.

LAW-MAKING

4. K'ómoks may make laws with respect to:
 - a. the consent of K'ómoks under subparagraph 12.a to applications for Water Licences from the water reservation; and
 - b. the supply and the use of water from a Water Licence issued under paragraph 12.
5. K'ómoks Law under subparagraph 4.a prevails to the extent of a Conflict with Federal Law or Provincial Law.
6. Federal Law or Provincial Law prevails to the extent of a Conflict with K'ómoks Law under subparagraph 4.b.

WATER RESERVATION

7. On the Effective Date, British Columbia will establish a water reservation under the *Water Act* in favour of K'ómoks, of 11,893 cubic decametres of water per year from Streams set out in Schedule 1 of this Chapter, for all purposes under the *Water Act* including domestic, agricultural, and industrial uses but excluding those purposes set out in paragraphs 28 to 30 of this Chapter.
8. Any water reservation established in paragraph 7 will have priority over all Water Licences other than:
 - a. Water Licences issued before January 14, 2011;
 - b. Water Licences issued pursuant to an application made before January 14, 2011;

and

- c. Water Licences issued pursuant to water reservations established before January 14, 2011.
9. Before the Final Agreement, the Parties will negotiate water reservations for rivers in the northern part of the K'ómoks Area. During this timeframe, the Parties will explore the opportunity for a water reservation on the Tsable River.

WATER LICENCES

10. K'ómoks or, with the consent of K'ómoks, a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member may apply to British Columbia for Water Licences for volumes of flow to be applied against K'ómoks's water reservation under paragraph 7.
11. The total volume of flow under the Water Licences to be applied against K'ómoks's water reservation under paragraph 7 will not exceed the monthly percentage of the Available Flow of each Stream as set out in the Final Agreement.
12. If K'ómoks, a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member applies to British Columbia for a Water Licence under paragraph 10, and:
 - a. K'ómoks has consented to the application;
 - b. the application conforms to provincial regulatory requirements;
 - c. there is sufficient unrecorded volume of flow in K'ómoks's water reservation;
 - d. the application is for a volume of flow that, together with the total volume of flow licenced for that Stream under the Final Agreement, does not exceed the monthly percentage of Available Flow for that Stream as set out in the Final Agreement; and
 - e. where required, the application includes provision for storage where the monthly Available Flow is insufficient to meet proposed demand,

British Columbia will approve the application and issue the Water Licence.

13. The volume of flow approved in a Water Licence issued under paragraph 12 will be deducted from the unrecorded volume of flow in K'ómoks's water reservation under paragraph 7.
14. If a Water Licence issued under paragraph 12 is cancelled, expires, or otherwise terminates, the volume of flow in that Water Licence will be added to the unrecorded volume of flow in K'ómoks's water reservation under paragraph 7.
15. A Water Licence issued under paragraph 12 for use on K'ómoks Lands will not be

subject to any rentals, fees, royalties, or other charges, except taxes, by British Columbia.

16. The Final Agreement will not preclude K'ómoks or a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member from applying for additional Water Licences under Provincial Law not provided for under the water reservation under paragraph 7.

WATER LICENCE ACCESS

17. Where K'ómoks, a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member has a Water Licence issued under paragraph 12 or obtains a Water Licence under paragraph 16 and reasonably requires access across, or an interest in, provincial Crown land for the construction, maintenance, improvement or operation of works authorized under the licence, British Columbia will grant the access or interest on reasonable terms.
18. Where a Person other than K'ómoks, a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member has a Water Licence and reasonably requires access across, or an interest in, K'ómoks Lands for the construction, maintenance, improvement, or operation of works authorized under the licence, K'ómoks may not unreasonably withhold consent to, and will take reasonable steps to ensure, that access or the granting of that interest where the licence holder offers fair compensation to the owner of the interest affected.
19. For greater certainty, paragraph 18 does not apply to works, or access to works, on K'ómoks Lands which are:
- a. authorized under the associated Water Licences referred to in the Final Agreement; and
 - b. continue as provincial permits of occupation in accordance with Provincial Law or are replaced by K'ómoks under paragraph 43 of the Lands Chapter.
20. British Columbia will Consult with K'ómoks respecting applications for Water Licences made after the Effective Date where the applicant may reasonably require access across, or an interest in, K'ómoks Lands.

GROUNDWATER

21. If:
- a. British Columbia brings into force Provincial Law regulating the volume of Groundwater under K'ómoks Lands which may be extracted and used; and
 - b. Groundwater is reasonably available,

British Columbia and K'ómoks will negotiate and attempt to reach agreement on the volume of Groundwater which may be extracted and used for domestic, agricultural and industrial purposes by K'ómoks on K'ómoks Lands for as long as such Provincial Law is in effect.

22. For the purposes of paragraph 21, British Columbia and K'ómoks will:
 - a. determine the volume of flow of Groundwater which can reasonably be withdrawn from the Groundwater aquifer under consideration while maintaining the sustainability and quality of the Groundwater from the aquifer;
 - b. determine the existing and reasonable future needs for Groundwater of K'ómoks and K'ómoks Members on K'ómoks Lands, as well as the existing and future needs of other users in the area; and
 - c. take into account any applicable requirement under Federal Law or Provincial Law.
23. If British Columbia and K'ómoks fail to agree under paragraph 21 and 22 on the volume of Groundwater which may be extracted and used by K'ómoks, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.
24. Access to K'ómoks Lands to extract Groundwater will require the consent of K'ómoks.

WATER MANAGEMENT

25. K'ómoks may participate in provincial water planning processes in the K'ómoks Area.
26. K'ómoks and Canada or British Columbia may negotiate agreements in respect of management of water within the K'ómoks Area to define respective roles and responsibilities of the Parties and coordinate activities related to:
 - a. flood response and public safety;
 - b. protection of water quality;
 - c. water conservation;
 - d. Groundwater management and regulation;
 - e. resource inventory;
 - f. monitoring of water quality and quantity;
 - g. management of and access to information;
 - h. water management objectives and planning;

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- i. identify watersheds that require water management planning; and
 - j. any other matters as agreed to by the Parties.
27. Where a watershed includes both K'ómoks Lands and provincial Crown land, and if K'ómoks or British Columbia considers that the watershed is an important source of drinking water, British Columbia and K'ómoks may negotiate agreements on the protection of drinking water in that watershed.

FIRST NATION HYDRO POWER RESERVATION

28. Before the Final Agreement, British Columbia and K'ómoks will negotiate water reservations on specific Streams to enable K'ómoks to investigate the suitability of Streams for hydro power purposes.
29. If:
- a. K'ómoks applies for a Water Licence for hydro power purposes and any related storage purposes in relation to a water reservation established for K'ómoks in accordance with paragraph 28;
 - b. the proposed hydro power project conforms to Federal Law or Provincial Law; and
 - c. there is sufficient Available Flow in the Stream subject to that water reservation, British Columbia will grant the Water Licence.
30. If British Columbia issues a Water Licence in accordance with paragraph 29, the water reservation established in accordance with paragraph 28 will terminate in relation to that Stream.

SCHEDULE 1

Puntledge River	3056 dam ³ /yr
Trent River	3362 dam ³ /yr
Hart Creek	1668 dam ³ /yr
Oyster River	3807 dam ³ /yr

FISCAL RELATIONS

1. The Parties acknowledge they each have a role in supporting K'ómoks, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements pursuant to the Final Agreement.
2. Every five years, or other periods as may be agreed, the Parties will negotiate and attempt to reach agreement on a Fiscal Financing Agreement that will:
 - a. set out the Agreed-Upon Programs and Services, including, where appropriate, the recipients of those programs and services;
 - b. set out the responsibilities of each of the Parties in relation to the Agreed-Upon Programs and Services;
 - c. set out the funding for Agreed-Upon Programs and Services;
 - d. set out the contribution of K'ómoks to the funding of Agreed-Upon Programs and Services from its own source revenues as determined under paragraphs 4 and 5 of this Chapter;
 - e. set out mechanisms for the transfer of funds to K'ómoks from Canada or British Columbia;
 - f. set out procedures for:
 - i. the collection and exchange of information, including statistical and financial information, required for the administration of Fiscal Financing Agreements;
 - ii. dispute resolution in relation to Fiscal Financing Agreements;
 - iii. accountability requirements, including those respecting reporting and audit, of K'ómoks;
 - iv. negotiating the inclusion of additional programs and services to the list of Agreed-Upon Programs and Services within a Fiscal Financing Agreement;
 - v. addressing exceptional circumstances and emergencies; and
 - vi. negotiation of subsequent Fiscal Financing Agreements; and
 - g. address other matters as agreed to by the Parties.

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3. In negotiating a Fiscal Financing Agreement, the Parties will take into account:
 - a. the cost of providing, either directly or indirectly, Agreed-Upon Programs and Services that are reasonably comparable to similar programs and services available in other communities of similar size and circumstance in the Comox Valley Regional District;
 - b. efficiency and effectiveness, including opportunities for economies of scale, in the provision of Agreed-Upon Programs and Services, which may include, where appropriate, cooperative arrangements with other governments, First Nations, or existing service providers;
 - c. the costs of operating K'ómoks;
 - d. existing levels of funding provided by Canada or British Columbia;
 - e. prevailing fiscal policies of Canada or British Columbia;
 - f. the location and accessibility of communities on K'ómoks Lands;
 - g. the jurisdictions, authorities, programs and services assumed by K'ómoks under the Final Agreement;
 - h. the desirability of reasonably stable, predictable and flexible fiscal arrangements;
 - i. changes in price and volume, which may include the number of persons eligible to receive Agreed-Upon Programs and Services; and
 - j. other matters as agreed to by the Parties.
 4. In negotiating K'ómoks's contribution to the funding of Agreed-Upon Programs and Services under subparagraph 2.d, the Parties will take into account:
 - a. the capacity of K'ómoks to generate revenues;
 - b. the existing K'ómoks own source revenue arrangements negotiated under the Final Agreement;
 - c. the prevailing fiscal policies with respect to the treatment of First Nation own source revenue in self government fiscal arrangements;
 - d. that own source revenue arrangements should not unreasonably reduce incentives for K'ómoks to generate revenues;
 - e. that the reliance of K'ómoks on fiscal transfers should decrease over time as it becomes more self-sufficient; and
 - f. other matters as agreed to by the Parties.

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5. In negotiating the own source revenue contribution of K'ómoks to the funding of Agreed-Upon Programs and Services under subparagraph 2.d, unless otherwise agreed:
- a. own source revenue arrangements will not include:
 - i. the Capital Transfer received under the Final Agreement, in the manner set out in the initial agreement in relation to own source revenues;
 - ii. proceeds from the sale of K'ómoks Lands;
 - iii. any federal or provincial payments under Fiscal Financing Agreements or other agreements for programs and services with K'ómoks;
 - iv. gifts or charitable donations;
 - v. amounts received as compensation for specific losses or damages to property or assets;
 - vi. a Specific Claim Settlement; and
 - vii. other sources agreed to by the Parties; and
 - b. own source revenue arrangements will not permit:
 - i. Canada to benefit from the decision of British Columbia to vacate tax room or to transfer revenues or tax authorities to K'ómoks; or
 - ii. British Columbia to benefit from the decision of Canada to vacate tax room or to transfer revenues or tax authorities to K'ómoks.
6. If the Parties do not reach agreement on a subsequent Fiscal Financing Agreement by the expiry date of an existing Fiscal Financing Agreement, that Fiscal Financing Agreement:
- a. will continue in effect for up to two years from its original expiry date, or for such other period of time as the Parties may agree to in writing; and
 - b. will terminate the earlier of:
 - i. the expiry of the extended term determined in accordance with subparagraph 6.a; or
 - ii. the date of commencement of a subsequent Fiscal Financing Agreement.
7. Unless otherwise agreed by the Parties in a Fiscal Financing Agreement, the creation of K'ómoks Government, the provision of K'ómoks legislative authority under the Final Agreement, or the exercise of K'ómoks legislative authority, does not create or imply any financial obligation or service responsibility on the part of any Party.

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8. Any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are required or permitted under any provision of the Final Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
 - a. in the case of Canada, by the Parliament of Canada;
 - b. in the case of British Columbia, by the Legislature of British Columbia; or
 - c. in the case of K'ómoks, by K'ómoks Government.

PENDING FEDERAL POLICY DEVELOPMENT

9. The Parties acknowledge that Canada is developing a new national fiscal policy including a transparent methodology for determining levels of ongoing federal funding that may be provided to self governing aboriginal groups in Canada to support the delivery of agreed upon programs and services, taking into account the capacity of each self governing aboriginal group to generate revenues from its own sources.
10. Notwithstanding paragraphs 1 to 8, based on this new policy, Canada intends to propose Final Agreement provisions regarding the ongoing fiscal relationship among the Parties, which will not include a commitment to periodically renegotiate federal funding levels. Canada also intends that the Parties will address fiscal matters, including funding arrangements, that will set out terms, conditions and funding with respect to the responsibilities assumed by K'ómoks.
11. For greater certainty, nothing obliges any Party to agree to the existing language in paragraphs 1 to 8 or to any future proposals related to the Fiscal Relations Chapter of the Final Agreement.

CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT

1. The Capital Transfer from Canada and British Columbia to K'ómoks will be \$17.5 million (Q1 2010\$) and will be paid in accordance with the provisions of the Final Agreement.
2. The cost of any lands acquired under paragraph 5 of the Land Chapter will be deducted from the Capital Transfer amount in paragraph 1.
3. A provisional schedule of payments will be negotiated before the initialing of the Final Agreement such that:
 - a. the timing and amounts of payments in the provisional schedule of payments will provide for a one-time payment to K'ómoks on the Effective Date or a first payment to K'ómoks on the Effective Date and subsequent payments on each anniversary of the Effective Date;
 - b. the net present value of the amounts listed in the provisional schedule of payments will equal the amount set out in paragraph 1; and
 - c. the net present value of the amounts listed in the provisional schedule of payments will be calculated using as a discount rate the most recent and appropriate Consolidated Revenue Fund Lending Rate available from the Department of Finance, Canada prior to the initialing of the Final Agreement, less one-eighth of one percent.
4. A final schedule of payments will be determined on the Revision Date in accordance with the following formula:

$$\text{Final Amount} = \text{Provisional Amount} * (\text{Effective Date FDDIPI} / 1^{\text{st}} \text{ Q 2010 FDDIPI})$$

Where,

“*” means multiplied by;

/ means divided by;

“Final Amount” refers to each amount in the final schedule of payments;

“Provisional Amount” refers to the corresponding amount in the provisional schedule of payments;

“Effective Date FDDIPI” refers to the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the quarter prior to the Effective Date;

“1st Q 2010 FDDIPI” refers to the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the 1st quarter of the year 2010; and

the Effective Date FDDIPI and 1st Q 2010 FDDIPI values used will be the latest published values available from Statistics Canada on the Revision Date.

5. Canada and British Columbia, subject to paragraph 10, will make a one-time payment or payments to K'ómoks in accordance with the final schedule of payments determined in accordance with paragraph 4.

NEGOTIATION LOAN REPAYMENT

6. Before the Final Agreement, Canada will determine the outstanding amount of negotiation loans made to K'ómoks, including any interest that may have accrued to that date, in accordance with K'ómoks negotiation support agreements.
7. When it determines the outstanding negotiation loan amount in paragraph 6, Canada will also prepare a provisional repayment schedule such that the repayment of the outstanding negotiation loan amount will be through a one-time payment on the Effective Date or be proportional to the provisional schedule of payments referred to in paragraph 3.
8. The provisional repayment schedule will use an interest rate equal to the discount rate referred to in subparagraph 3.c.
9. A final repayment schedule will be determined on the Revision Date by:
 - a. determining the amount of any additional negotiation loans made by Canada to K'ómoks after the initialing of the Final Agreement and before the Effective Date, and any further interest that may have accrued in relation to any negotiation loans, in accordance with K'ómoks negotiation support agreements; and
 - b. pro-rating the additional amount in subparagraph 9 a over the provisional repayment schedule.
10. Canada may deduct any amounts due pursuant to the final repayment schedule referred to in subparagraph 9 a from Capital Transfer payments payable to K'ómoks in accordance with paragraph 5.
11. K'ómoks may pay to Canada, in advance and on account, without bonus or penalty, amounts that will be credited against the loan repayment amounts set out in paragraph 9.

TAXATION

DIRECT TAXATION POWERS

1. K'ómoks may make laws in relation to:
 - a. Direct taxation of K'ómoks Members, within K'ómoks Lands, in order to raise revenue for K'ómoks Government purposes; and
 - b. the implementation of any taxation agreement entered into between it and Canada or British Columbia.
2. K'ómoks law-making authority under paragraph 1 does not limit the taxation powers of Canada or British Columbia.
3. Notwithstanding any other provision of the Final Agreement, any K'ómoks Law made under this chapter, or any exercise of power by K'ómoks Government, is subject to and shall conform with Canada's international legal obligations respecting taxation and is not subject to the provisions contained in the "International Legal Obligations" sections of the Final Agreement.

TAXATION POWERS AGREEMENTS

4. From time to time, at the request of K'ómoks, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with K'ómoks respecting:
 - a. the extent to which the Direct taxation law-making authority of K'ómoks under subparagraph 1.a. may be extended to apply to Persons other than K'ómoks Members, within K'ómoks Lands; and
 - b. the manner in which K'ómoks law-making authority under subparagraph 1.a., as extended by the application of subparagraph 4.a., will be coordinated with existing federal or provincial tax systems, including:
 - i. the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by K'ómoks, and;
 - ii. the terms and conditions under which Canada or British Columbia may administer, on behalf of K'ómoks, taxes imposed by K'ómoks.

Adjudication

5. Notwithstanding the provisions of the Self-Government Chapter, parties to an agreement under paragraph 4 may provide for an alternative approach to the appeal, enforcement or adjudication of a K'ómoks Law in respect of taxation.

Penalties

6. A K'ómoks Law in respect of taxation may provide for:
 - a. a fine that is greater than the limits set out in paragraph 145 of the Self-Government Chapter; or
 - b. a term of imprisonment that is greater than the limit set out in paragraph 147 of the Self-Government Chapter,where there is an agreement to that effect as contemplated in paragraph 4 of this Chapter.

Real Property Tax Coordination Agreement

7. Before the Final Agreement, K'ómoks and British Columbia will negotiate and attempt to reach agreement on:
 - a. K'ómoks's authority to impose property taxes on persons who are not K'ómoks Members in relation to those persons' ownership or occupation of K'ómoks Lands; and
 - b. the coordination of the exercise of the K'ómoks taxation authority with British Columbia's tax systems.

K'ÓMOKS LANDS

8. K'ómoks is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of K'ómoks in K'ómoks Lands on which there are no improvements or on which there is a designated improvement.

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9. In paragraph 8, “designated improvement” means:
 - a. a residence of a K'ómoks Member;
 - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
 - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for K'ómoks cultural or spiritual purposes;
 - ii. works of public convenience constructed or operated for the benefit of K'ómoks Members, occupiers of K'ómoks Lands or persons visiting or in transit through K'ómoks Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks and public parking lots; or
 - iii. other improvements similar in nature to those described in subparagraphs 9.i and 9.ii;
 - c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a Forest Resource or a fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
 - d. Forest Resources and forest roads.
 10. In subparagraph 9.b, “public purpose” does not include the provision of property or services primarily for the purpose of profit.
 11. For the purposes of paragraphs 8 and 9:
 - a. for greater certainty, K'ómoks Lands include the improvements on those lands; and
 - b. an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.
 12. For greater certainty, the exemption from taxation in paragraph 8 does not apply to a taxpayer other than K'ómoks nor does it apply with respect to a disposition of K'ómoks Lands, or interests in those lands, by K'ómoks.
 13. For federal and provincial income tax purposes, proceeds of disposition received by K'ómoks on expropriation of K'ómoks Lands in accordance with the Lands Chapter and Appendix F are not taxable.

TRANSFER OF K'ÓMOKS CAPITAL

14. A transfer under the Final Agreement of K'ómoks Capital is not taxable and a recognition of ownership of K'ómoks Capital under the Final Agreement is not taxable.
15. For purposes of paragraph 14, an amount paid to a K'ómoks Member is deemed to be a transfer of K'ómoks Capital under the Final Agreement if the payment:
 - a. reasonably can be considered to be a distribution of a Capital Transfer received by K'ómoks; and
 - b. becomes payable within 90 days and is paid within 270 days from the date that K'ómoks receives the Capital Transfer.
16. For federal and provincial income tax purposes, K'ómoks Capital is deemed to have been acquired by K'ómoks at a cost equal to its fair market value on the latest of:
 - a. the Effective Date; and
 - b. the date of transfer of ownership or the date of recognition of ownership, as the case may be.

INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION

17. Before the Final Agreement, the Parties agree to negotiate transitional tax measures to address the fact that section 87 of the *Indian Act* will no longer apply after the Effective Date. These transitional measures will be negotiated in a way that provides a reasonably comparable effect to transitional tax measures in other treaties negotiated with other aboriginal groups in British Columbia.

TAX TREATMENT AGREEMENT

18. The Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date.
19. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the tax treatment agreement be given effect and force of law under federal and provincial legislation.

APPROVAL OF THIS AGREEMENT

1. The chief negotiators for the Parties will jointly recommend in writing to their respective principals approval of this Agreement.
2. K'ómoks will have approved this Agreement when it is signed by the Chief and Council, after a community vote.
3. British Columbia will have approved this Agreement when it is signed by a Minister authorized by the Lieutenant-Governor-in-Council.
4. Canada will have approved this Agreement when it is signed by a Minister authorized to do so by the federal Cabinet.

ELIGIBILITY AND ENROLLMENT

GENERAL

1. Enrollment under the Final Agreement does not:
 - a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
 - b. except as set out in the Final Agreement or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

ELIGIBILITY CRITERIA

2. An individual is eligible to be enrolled under the Final Agreement if that individual is:
 - a. an individual with K'ómoks ancestry by matrilineal or patrilineal descent;
 - b. a band member listed or entitled to be listed as a band member on the K'ómoks list under the *Indian Act* as of the day before the Effective Date;
 - c. a descendant of an individual described in subparagraphs 2.a and 2.b;
 - d. a Child adopted under the laws recognized in Canada or by K'ómoks Law by an individual described in subparagraphs 2.a, 2.b or 2.c; or
 - e. after the Effective Date, is accepted according to a community acceptance process set out in K'ómoks Law.
3. Notwithstanding subparagraph 2.c, where an individual having no K'ómoks ancestry became a member of K'ómoks First Nation under the *Indian Act* before April 17, 1985, because of marriage to a K'ómoks member, and that individual subsequently has a Child with another individual having no K'ómoks ancestry, that Child will not be entitled to be enrolled.

APPLICATIONS FOR ENROLLMENT

4. An individual may:
 - a. apply to the Enrollment Committee for enrollment under the Final Agreement;

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- b. appeal a decision of the Enrollment Committee to the Enrollment Appeal Board;
or
 - c. seek judicial review of a decision of the Enrollment Appeal Board,
 - on the individual's own behalf, or on behalf of a Child, or an adult, whose affairs the individual has legal authority to manage.
 5. Each individual has the burden of demonstrating to the Enrollment Committee that he or she, or the Child or adult on whose behalf the individual makes an application, meets the Eligibility Criteria.

OTHER LAND CLAIMS AGREEMENTS AND BAND MEMBERSHIP

6. On the Effective Date, an individual may not at the same time be enrolled under the Final Agreement and:
 - a. receive benefits under another treaty or land claims agreement in Canada;
 - b. be enrolled under another treaty or land claims agreement in Canada; or
 - c. be on an *Indian Act* band list, other than that of K'ómoks First Nation under the *Indian Act*.
7. For greater certainty, as provided in paragraph 39 of the General Provisions Chapter, after the Effective Date, upon becoming a K'ómoks Member an individual ceases to be a member or a registered Indian of any Band.
8. An individual who was a member or a registered Indian of a Band other than K'ómoks First Nation will:
 - a. within 120 days after the Effective Date; or
 - b. where the decision to accept his or her application to be enrolled under subparagraph 12.g is made after the Effective Date, within 120 days of receiving notification from the Enrollment Committee or a body established under subparagraph 12.g that he or she has been enrolled,do all things necessary to request Canada to change his or her affiliation to K'ómoks and to issue a new status card.

THE ENROLLMENT COMMITTEE

9. The Enrollment Committee will be established by K'ómoks at a time agreed upon by the Parties, and will be comprised of three members appointed by K'ómoks.

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10. The Enrollment Committee will operate for the Initial Enrollment Period, which may be extended by agreement of the Parties.
 11. K'ómoks will notify Canada and British Columbia of the members of the Enrollment Committee as soon as practicable upon their appointment.
 12. The Enrollment Committee will:
 - a. establish its enrollment procedures and set its time limits, including a time limit for making enrollment decisions;
 - b. publish its procedures and time limits, including the Eligibility Criteria and a list of the documentation and information required of each Applicant, in time for any individual to review before making their application for enrollment;
 - c. take reasonable steps to notify individuals potentially eligible to be enrolled of the Eligibility Criteria and application procedures;
 - d. provide an application form to any individual who wishes to apply for enrollment;
 - e. receive enrollment applications, provide confirmation of receipt to the Applicant, consider and make a decision on each application based on the Eligibility Criteria, request further information if required, enroll on or before the Ratification Vote Date the Applicants who meet the Eligibility Criteria, and maintain a record of those decisions;
 - f. establish and maintain the Enrollment Register, and add names to, remove names from or amend names on the Enrollment Register in accordance with this Chapter and decisions of the Enrollment Appeal Board;
 - g. notify in writing each Applicant and the Parties of its decision and, if enrollment is refused, provide written reasons;
 - h. provide information with respect to an Applicant's enrollment application, in confidence, on request to the Parties and the Enrollment Appeal Board;
 - i. unless otherwise provided in this Chapter, keep information provided by and about Applicants confidential;
 - j. provide a copy of the Enrollment Register, and any other relevant information requested, to the Ratification Committee;
 - k. provide a true copy of the Enrollment Register to the Parties on request; and
 - l. report to the Parties on the enrollment process as requested.
 13. After a decision by the Enrollment Committee during the Initial Enrollment Period, the

Applicant may submit new information to the Enrollment Committee.

14. The Enrollment Committee may, before an appeal of a decision is commenced, vary, or rescind and re-make, the decision on the basis of new information, if it considers the decision was in error.
15. If the Enrollment Committee fails to decide upon an application for enrollment within the time established in its procedures, the application will be deemed to be refused and the deemed refusal will constitute grounds for appeal to the Enrollment Appeal Board.
16. If:
 - a. a K'ómoks Member; or
 - b. an individual who has legal authority to manage the affairs of a K'ómoks Member,applies to have the name of the K'ómoks Member removed from the Enrollment Register, the Enrollment Committee will remove the K'ómoks Member's name and will notify the individual who made the application.
17. Subject to this Chapter, a decision of the Enrollment Committee that is not appealed to the Enrollment Appeal Board will be final and binding.

ENROLLMENT APPEAL BOARD

18. K'ómoks and Canada will establish the Enrollment Appeal Board 120 days before the Ratification Vote Date or at a date to be agreed to by the Parties.
19. The Enrollment Appeal Board will be comprised of two members appointed by K'ómoks and one member appointed by Canada.
20. A member of the Enrollment Committee will not be a member of the Enrollment Appeal Board.
21. An Applicant or a Party may appeal by written notice to the Enrollment Appeal Board:
 - a. any decision of the Enrollment Committee made under subparagraph 12.e or paragraph 14; and
 - b. an application deemed to be refused under paragraph 15.
22. The Enrollment Appeal Board will:
 - a. establish its own procedures and set its time limits;
 - b. publish its procedures;

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- c. hear and determine any appeal brought under paragraph 21 and decide whether the individual will be enrolled;
 - d. maintain a record of its decisions and communicate them to the Enrollment Committee as required;
 - e. conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in an open hearing;
 - f. provide written reasons for its decision to the Applicant and the Parties; and
 - g. report to the Parties on the appeal process as requested.
23. As of the Effective Date, the Enrollment Appeal Board may:
- a. by subpoena require any individual to appear before the Enrollment Appeal Board as a witness and produce any relevant document in that individual's possession; and
 - b. require any witness to answer on oath or solemn affirmation any relevant question posed to the witness.
24. If an individual fails to comply with a direction of the Enrollment Appeal Board made under paragraph 23 on application by the Enrollment Appeal Board, a judge of the Provincial Court of British Columbia or other court of competent jurisdiction may enforce a subpoena or direction.
25. Any Applicant, Party or witness appearing before the Enrollment Appeal Board may be represented by counsel or an agent.
26. Subject to paragraphs 32 to 35, all decisions of the Enrollment Appeal Board will be final and binding.

ACTIONS AGAINST THE ENROLLMENT APPEAL BOARD

27. No action lies or may be commenced against the Enrollment Appeal Board, or any member of the Enrollment Appeal Board, for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

FUNDING

28. Canada and British Columbia will provide agreed upon funding for the Enrollment

Committee and the Enrollment Appeal Board.

29. The Enrollment Committee and the Enrollment Appeal Board will operate within their approved budgets.

ENROLLMENT AFTER THE INITIAL ENROLLMENT PERIOD

30. The Enrollment Committee and the Enrollment Appeal Board will be dissolved when they have rendered decisions with respect to those applications or appeals commenced before the end of the Initial Enrollment Period.
31. As of the Effective Date, K'ómoks will:
- a. be responsible for an enrollment process, including the application of the Eligibility Criteria and the administrative costs of that process;
 - b. maintain the Enrollment Register;
 - c. provide a true copy of the Enrollment Register to Canada and British Columbia each year or as otherwise requested by Canada or British Columbia; and
 - d. provide information concerning enrollment to Canada and British Columbia upon request by Canada or British Columbia.

JUDICIAL REVIEW

32. An Applicant or a Party may apply to the Supreme Court of British Columbia to review or set aside a decision of the Enrollment Appeal Board, or any body established under subparagraph 31.a, on the grounds that the Enrollment Appeal Board or body:
- a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - b. failed to observe procedural fairness;
 - c. erred in law; or
 - d. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
33. On an application for judicial review, the Supreme Court of British Columbia may either dismiss the application or set aside the decision and refer the matter back to the Enrollment Appeal Board or any body established under subparagraph 31.a for determination in accordance with such directions as the Court considers appropriate.

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34. If the Enrollment Appeal Board, or any body established under subparagraph 31.a, refuses or fails to hear or decide an appeal within a reasonable time, the Applicant or a Party may apply to the Supreme Court of British Columbia for an order directing the Enrollment Appeal Board or body to hear or decide the appeal in accordance with such directions as the Court considers appropriate.
 35. An Applicant or Party may apply for judicial review within 60 days of receiving notification of the decision of the Enrollment Appeal Board or a longer time where determined by the court.

RATIFICATION OF THE FINAL AGREEMENT

GENERAL

1. Ratification of the Final Agreement by the Parties in accordance with this Chapter is a condition precedent to the validity of the Final Agreement and, unless so ratified, the Final Agreement has no force or effect.

RATIFICATION BY K'ÓMOKS

Final Agreement

2. Ratification of the Final Agreement by K'ómoks requires:
 - a. that K'ómoks Individuals have a reasonable opportunity to review the Final Agreement;
 - b. a vote by way of secret ballot;
 - c. in the Ratification Vote, at least fifty percent plus one of Eligible Voters on the final Official Voters List vote in favour of entering into the Final Agreement;
 - d. ratification of the K'ómoks Constitution under paragraph 3; and
 - e. that the Final Agreement be signed by an individual authorized to sign on behalf of K'ómoks.

K'ómoks Constitution

3. Ratification of K'ómoks Constitution requires that:
 - a. K'ómoks Individuals have a reasonable opportunity to review the K'ómoks Constitution;
 - b. a vote by secret ballot on or before the date of the vote on the Final Agreement;
 - c. a majority of Eligible Voters participate in the vote; and
 - d. a majority of those participating voters vote to ratify the K'ómoks Constitution.
4. The Ratification Committee will be established by K'ómoks.
5. The Ratification Committee will be comprised of three members, and will include a representative of K'ómoks, a representative of Canada and a representative of British Columbia.

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6. Conduct of the Ratification Vote requires that the Ratification Committee:
- a. establish and publish its procedures;
 - b. set its time limits;
 - c. take reasonable steps to provide an opportunity for Eligible Voters to review the Final Agreement;
 - d. prepare and publish a preliminary list of voters based on the information provided by the Enrollment Committee under subparagraph 12.j of the Eligibility and Enrollment Chapter;
 - e. prepare and publish an Official Voters List based on the preliminary list of voters prepared under subparagraph 6.d at least 30 days before the first day of general voting in the Ratification Vote by:
 - i. determining whether each individual whose name is provided to it by the Enrollment Committee is eligible to vote under paragraph 7; and
 - ii. including on the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under subparagraph 6.e.i;
 - f. update the Official Voters List by:
 - i. at any time before the end of general voting, adding to the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 7;
 - ii. adding to the Official Voters List the name of each individual who casts a ballot under paragraph 8 and whose ballot is counted under paragraph 9;
 - iii. removing from the Official Voters List the name of each individual who died on or before the last day of voting without having voted in the Ratification Vote;
 - iv. removing from the Official Voters List the name of each individual who did not vote in the Ratification Vote and who provides, within seven days of the last scheduled day of voting in the Ratification Vote, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for general voting; and
 - v. preparing and publishing a final Official Voters List;
 - g. approve the form and content of the ballot;

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- h. authorize and provide general direction to Voting Officers;
 - i. establish polling stations;
 - j. conduct the Ratification Vote on a day or days determined by the Ratification Committee;
 - k. ensure that information about the dates set for voting and the location of the polling stations are made publically available;
 - l. count the vote and provide the results of the Ratification Vote to the Parties;
 - m. publish the results of the Ratification Vote; and
 - n. prepare and provide to the Parties a written report on the outcome of the Ratification Vote within 90 days of the last day of voting.

ELIGIBLE VOTERS

7. An individual is eligible to vote in the Ratification Vote if that individual:
 - a. has been enrolled under the Final Agreement in accordance with the Eligibility and Enrollment Chapter; and
 - b. will be at least 18 years of age on the last scheduled day of voting for the Ratification Vote.
8. An individual whose name is not included on the Official Voters List may cast a ballot in the Ratification Vote if that individual:
 - a. provides a Voting Officer with a completed enrollment application form or evidence satisfactory to a Voting Officer that the individual has submitted a completed enrollment application form to the Enrollment Committee; and
 - b. provides evidence satisfactory to a Voting Officer that the individual meets the requirements set out in subparagraph 7.b.
9. The ballot of an individual described under paragraph 8 will be counted in the Ratification Vote, and the name of the individual added to the Official Voters List, only if the Enrollment Committee notifies the Ratification Committee that the individual meets the Eligibility Criteria.

FUNDING

10. Canada and British Columbia will provide an amount of funding agreed upon by the

Parties for the Ratification Committee to carry out the duties and responsibilities set out in this Chapter.

RATIFICATION BY BRITISH COLUMBIA

11. Ratification of the Final Agreement by British Columbia requires:
 - a. that the Final Agreement be signed by an authorized Minister; and
 - b. the coming into force of Provincial Settlement Legislation giving effect to the Final Agreement.

RATIFICATION BY CANADA

12. Ratification of the Final Agreement by Canada requires:
 - a. that the Final Agreement be signed by an authorized Minister; and
 - b. the coming into force of Federal Settlement Legislation giving effect to the Final Agreement.

IMPLEMENTATION

GENERAL

1. The Parties will, before the Final Agreement, conclude an Implementation Plan that will take effect on the Effective Date of the Final Agreement and have a term of up to 10 years, which may be renewed or extended upon agreement of the Parties.

IMPLEMENTATION PLAN

2. The Implementation Plan for the Final Agreement:
 - a. identifies the obligations in the Final Agreement, the activities to be undertaken to fulfill those obligations, the responsible Party and the timeframe for completion of those activities;
 - b. specifies how the Implementation Plan may be amended;
 - c. specifies how the Implementation Plan may be renewed or extended; and
 - d. addresses other matters agreed to by the Parties.
3. Without limiting paragraph 65 of the General Provisions Chapter, the Implementation Plan:
 - a. does not create legal obligations;
 - b. does not alter any rights or obligations set out in the Final Agreement; and
 - c. is not to be used to interpret the Final Agreement.

IMPLEMENTATION WORKING GROUP

4. The Parties agree to establish a tripartite implementation working group during Final Agreement negotiations which will:
 - a. be responsible for the development of an Implementation Plan before the Final Agreement; and
 - b. be responsible for the development of a closing plan for the activities that the Parties must complete by the Effective Date of the Final Agreement.

IMPLEMENTATION COMMITTEE

5. The Implementation Committee is established on the Effective Date for a term of ten years which may be extended for a period as agreed to by the Parties.
6. On the Effective Date, K'ómoks, Canada and British Columbia will each appoint one member as their representative on the Implementation Committee. Other individuals may participate in Implementation Committee meetings to support or assist a member.
7. The Implementation Committee will:
 - a. be a forum for the Parties to:
 - i. discuss the implementation of the Final Agreement; and
 - ii. attempt to resolve implementation issues arising among the Parties in relation to the Final Agreement;
 - b. establish its own procedures and operating guidelines;
 - c. develop a communications strategy in relation to the implementation and content of the Final Agreement;
 - d. recommend revisions to the Implementation Plan, as required;
 - e. provide for the preparation of annual reports on the implementation of the Final Agreement;
 - f. before the expiry of the Implementation Plan, review the Implementation Plan and advise the Parties on the further implementation of the Final Agreement; and
 - g. address other matters agreed to by the Parties.

TRANSITION

GENERAL

1. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of an individual who died testate or intestate before the Effective Date and who, at the time of death, was a member of K'ómoks.
2. Before the Effective Date, Canada will take reasonable steps to:
 - a. notify in writing all members of K'ómoks who have deposited wills with the Minister; and
 - b. provide information to all members of K'ómoks who have not deposited wills with the Minister and to all other individuals who may be eligible to be enrolled under the Final Agreement,that their wills may not be valid after the Effective Date and that their wills should be reviewed to ensure validity under Provincial Law.
3. Section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property of a K'ómoks Member whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date, until that individual is declared to be no longer incapable under the *Patients Property Act*.
4. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a K'ómoks Member:
 - a. who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before the Effective Date;
 - b. whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date and at the time of death; and
 - c. who did not execute a will that complies with the requirements as to form and execution under Provincial Law during a period after the Effective Date in which that individual was declared to be no longer incapable under the *Patients Property Act*.
5. Sections 52 and 52.2 to 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which a K'ómoks Member who is a Child of an Indian is entitled, if the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister with respect to the administration have been discharged.

TRANSFER OF BAND ASSETS

6. On the Effective Date, all the rights, titles, interests, assets, obligations and liabilities of K'ómoks First Nation will vest in K'ómoks and K'ómoks First Nation will cease to exist.
7. All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of K'ómoks First Nation, including capital and revenue moneys of the Band, will be transferred by Canada to K'ómoks on or as soon as practicable after the Effective Date.
8. Upon transfer of the moneys referred to in paragraph 7, Canada will no longer be responsible for the collection of moneys payable:
 - a. to or for the benefit of K'ómoks; or
 - b. except as provided in paragraphs 1 and 3 to 5, to or for the benefit of a K'ómoks Member.
9. For greater certainty, Canada will not be liable for any errors or omissions in the administration of all moneys held by K'ómoks for the use and benefit of K'ómoks that occur subsequent to the transfer of capital and revenue moneys of K'ómoks First Nation from Canada to K'ómoks.

CONTINUATION OF INDIAN ACT BY-LAWS

10. The bylaws, if any, of K'ómoks First Nation under the *Indian Act*, that were in effect on the day before the Effective Date, continue in effect for 12 months after the Effective Date on those parcels of K'ómoks Lands that comprised the Former K'ómoks First Nation Reserves.
11. As of the Effective Date, the relationship between a bylaw referred to in paragraph 10 and a Federal Law or Provincial Law will be governed by the provisions of the Final Agreement governing the relationship between K'ómoks Law and Federal Law or Provincial Law in relation to the subject matter of the bylaw.
12. K'ómoks may repeal, but not amend, a bylaw referred to in paragraph 10.
13. Nothing in the Final Agreement precludes a person from challenging the validity of a bylaw referred to in paragraph 10.

DISPUTE RESOLUTION

DEFINITIONS

1. In this Chapter and in Appendix M-1 to M-6, “Appendix” means Appendix M-1, M-2, M-3, M-4, M-5, or M-6 to this Agreement.

GENERAL

2. In this Chapter, and in each Appendix, a Party will be deemed to be directly engaged in a Disagreement if another Party, acting reasonably, gives the first Party a written notice requiring it to participate in a process described in this Chapter to resolve the Disagreement.
3. The Parties share the following objectives:
 - a. to cooperate with each other to develop harmonious working relationships;
 - b. to prevent or minimize Disagreements;
 - c. to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner possible; and
 - d. to resolve Disagreements in a non-adversarial, collaborative, and informal atmosphere.
4. Except as otherwise provided, participating Parties may agree to vary a procedural requirement contained in this Chapter, or in an Appendix, as it applies to a particular Disagreement.
5. Participating Parties may agree to, or the Supreme Court of British Columbia on application may order:
 - a. the shortening of a time limit; or
 - b. the extension of a time limit, despite the expiration of that time limit,as set out in this Chapter or in an Appendix.

SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT

6. This Chapter does not apply to all disputes between or among the Parties, but is limited to the disputes or negotiations described in paragraph 7.

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7. This Chapter only applies to:
 - a. a dispute in relation to:
 - i. the interpretation, application, or implementation of the Final Agreement, or
 - ii. a breach or anticipated breach of the Final Agreement;
 - b. a dispute, where provided for in the Final Agreement; or
 - c. negotiations required to be conducted under any provision of the Final Agreement that provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”.
 8. This Chapter does not apply to:
 - a. an agreement between or among the Parties that is ancillary, subsequent, or supplemental to the Final Agreement unless the Parties have agreed that this Chapter applies to that agreement;
 - b. the implementation plan; or
 - c. disputes where excluded from this Chapter.
 9. Nothing in this Chapter limits the application of a dispute resolution process, under any law, to a dispute involving a person if that dispute is not a Disagreement.
 10. Nothing in Federal Law or Provincial Law limits the right of a Party to refer a Disagreement to this Chapter.

DISAGREEMENTS TO GO THROUGH STAGES

11. The Parties desire and expect that most Disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this Chapter.
12. Except as otherwise provided in the Final Agreement, Disagreements not resolved informally will progress, until resolved, through the following stages:
 - a. Stage One: formal, unassisted efforts to reach agreement between or among the Parties, in collaborative negotiations under Appendix M-1;
 - b. Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a Neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix M-2, M-3, M-4, or M-5 as applicable; and

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- c. Stage Three: final adjudication in arbitral proceedings under Appendix M-6 or in judicial proceedings.
 13. Except as otherwise provided in the Final Agreement, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and a facilitated process in Stage Two as required in this Chapter.
 14. Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
 - a. to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
 - b. to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this Chapter.

STAGE ONE: COLLABORATIVE NEGOTIATIONS

15. If a Disagreement is not resolved by informal discussion, and a Party directly engaged in the Disagreement wishes to invoke this Chapter, that Party will deliver a written notice, as required under Appendix M-1, to the other Parties, requiring the commencement of collaborative negotiations.
16. Upon receiving the notice under paragraph 15, each Party directly engaged in the Disagreement will participate in the collaborative negotiations.
17. A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving written notice to the other Parties, preferably before the collaborative negotiations commence.
18. If the Parties have commenced negotiations in the circumstances described in subparagraph 7.c, then, those negotiations will be deemed collaborative negotiations.
19. Collaborative negotiations terminate in the circumstances set out in Appendix M-1.

STAGE TWO: FACILITATED PROCESSES

20. Within 15 days of termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement, by delivering notice to the other Parties, may require the commencement of a facilitated process.
21. Notice under paragraph 20:
 - a. will include the name of the Party or Parties directly engaged in the

Disagreement and a summary of the particulars of the Disagreement; and

- b. may propose the use of a particular facilitated process described in paragraph 24.
22. Upon receiving notice under paragraph 20, a Party directly engaged in the Disagreement will participate in a facilitated process described in paragraph 24.
23. A Party not directly engaged in the Disagreement may participate in the facilitated process by giving written notice to the other Parties within 15 days of delivery of notice under paragraph 20.
24. Within 30 days after delivery of notice under paragraph 20, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:
- a. mediation under Appendix M-2;
 - b. technical advisory panel under Appendix M-3;
 - c. neutral evaluation under Appendix M-4;
 - d. community advisory council under Appendix M-5; or
 - e. any other non-binding dispute resolution process assisted by a Neutral,
- and if they fail to agree, they will be deemed to have selected mediation under Appendix M-2.
25. A facilitated process terminates:
- a. in the circumstances set out in the applicable Appendix; or
 - b. as agreed by the participating Parties, if an Appendix does not apply.

NEGOTIATING CONDITIONS

26. In order to enhance the prospect of reaching agreement, the Parties participating in collaborative negotiations or a negotiation component of a facilitated process will:
- a. at the request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;
 - b. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
 - c. negotiate in good faith.

SETTLEMENT AGREEMENT

27. Any agreement reached in a process under this Chapter:
- a. will be:
 - i. recorded in writing;
 - ii. signed by authorized representatives of the Parties to the agreement; and
 - iii. delivered to all Parties; and
 - b. is binding only on the Parties who have signed the agreement.

STAGE THREE: ADJUDICATION – ARBITRATION

28. Where a Disagreement arises out of any provision of the Final Agreement that provides that a matter will be “finally determined by arbitration”, the Disagreement will, on delivery of notice by a Party directly engaged in the Disagreement to all Parties as required under Appendix M-6, be referred to and finally resolved by arbitration in accordance with that Appendix.
29. A Disagreement, other than a Disagreement referred to in paragraph 28, with the written agreement of all Parties directly engaged in the Disagreement, will be referred to and finally resolved by arbitration in accordance with Appendix M-6.
30. If two Parties make a written agreement under paragraph 29, they will deliver a copy of the agreement as soon as practicable to the other Party that is not directly engaged in the Disagreement.
31. Upon delivering a written notice to the participating Parties to the arbitration within 15 days after receiving a notice under paragraph 28 or copy of a written agreement under paragraph 29, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.
32. Notwithstanding paragraph 31, an arbitral tribunal may make an order adding a Party as a participating Party at any time, if the arbitral tribunal considers that:
- a. the participating Parties will not be unduly prejudiced; or
 - b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under paragraph 28 or the written agreement to arbitrate in paragraph 29,

and, in that event, the arbitral tribunal may make any order it considers appropriate or necessary in the circumstances in relation to conditions, including the payment of costs, upon which the Party may be added.

EFFECT OF ARBITRAL AWARD

33. An arbitral award is final and binding on all Parties whether or not a Party has participated in the arbitration.
34. Despite paragraph 33, an arbitral award is not binding on a Party that has not participated in the arbitration if:
 - a. the Party did not receive copies of:
 - i. the notice of arbitration or agreement to arbitrate; or
 - ii. the pleadings and any amendments or supplements to the pleadings; or
 - b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 32.

APPLICATION OF LEGISLATION

35. No legislation of any Party respecting arbitration, except the Settlement Legislation, applies to an arbitration conducted under this Chapter.
36. A court must not intervene or offer assistance in an arbitration or review an arbitral award under this Chapter except as provided in Appendix M-6.

STAGE THREE: ADJUDICATION – JUDICIAL PROCEEDINGS

37. Nothing in this Chapter creates a cause of action where none otherwise exists.
38. Subject to paragraph 39, at any time a Party may commence proceedings in the Supreme Court of British Columbia with respect to a Disagreement.
39. A Party may not commence judicial proceedings with respect to a Disagreement if the Disagreement:
 - a. is required to be referred to arbitration under paragraph 28 or has been agreed to be referred to arbitration under paragraph 29;
 - b. has not been referred to collaborative negotiations or a facilitated process as

required under this Chapter; or

- c. has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.
40. Nothing in paragraph 39 prevents an arbitral tribunal or the participating Parties from requesting the Supreme Court of British Columbia to make a ruling with respect to a question of law as permitted in Appendix M-6.

NOTICE TO PARTIES

41. If, in any judicial or administrative proceeding, an issue arises with respect to:

- a. the interpretation or validity of the Final Agreement; or
- b. the validity, or applicability of:
 - i. any Settlement Legislation; or
 - ii. any K'ómoks Law,

the issue will not be decided until the Party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada, and the K'ómoks Government.

42. In any judicial or administrative proceeding to which paragraph 41 applies, the Attorney General of British Columbia, the Attorney General of Canada, and the K'ómoks Government may appear and participate in the proceedings as parties with the same rights as any other party.

COSTS

43. Except as provided otherwise in Appendices M-1 to M-6, each participating Party will bear the costs of its own participation, representation and appointments in collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
44. Subject to paragraph 43 and except as provided otherwise in Appendices M-1 to M-6, the participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
45. For purposes of paragraph 44, costs include:
- a. fees of the Neutrals;
 - b. costs of hearing and meeting rooms;

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- c. actual and reasonable costs of communications, accommodation, meals, and travel of the Neutrals;
 - d. costs of required secretarial and administrative support for the Neutrals, as permitted in Appendices M-1 to M-6; and
 - e. administration fees of a Neutral Appointing Authority.

AMENDMENT

1. Any Party may propose an amendment to the Final Agreement.
2. Before proceeding with an amendment to the Final Agreement under paragraph 1, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.
3. Except as provided under paragraphs 9 and 12, amendments to the Final Agreement require the consent of all Parties.
4. Where the Parties agree to amend the Final Agreement, they will determine the form and wording of the amendment, including additions, substitutions and deletions.
5. Except as provided under paragraphs 9 and 10, the Parties will provide consent to an amendment to the Final Agreement in the following manner:
 - a. Canada, by order of the Governor-in-Council;
 - b. British Columbia, by resolution of the Legislative Assembly; and
 - c. K'ómoks, by a resolution adopted by at least two-thirds of the elected members of K'ómoks.
6. Where federal or provincial legislation is required to give effect to an amendment to the Final Agreement, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.
7. Unless the Parties agree otherwise, an amendment to the Final Agreement takes effect once the consent requirements under paragraph 5 are completed and any legislation required under paragraph 6 has been brought into force.
8. Each Party will give notice to the other Parties when consent in accordance with paragraph 5 has been given and when any legislation required under paragraph 6 has been brought into force.
9. Where the Final Agreement provides that the Parties will amend the Final Agreement upon the happening of an event:
 - a. the requirements for consent set out in paragraphs 3 and 5 will not apply;
 - b. paragraph 7 will not apply;
 - c. as soon as practicable after the happening of the event:
 - i. the Parties will take all steps necessary to conclude and give effect to the

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- amendment including those steps referred to in paragraph 4 and, if applicable, paragraph 6; and
- ii. each Party will provide notice to the other Parties when it has completed all of its respective requirements to conclude and give effect to the amendment; and
 - d. the amendment will take effect on the date agreed by the Parties, but if no date is agreed to, on the date that the last Party provides notice to the other Parties that it has completed all of its requirements to conclude and give effect to the amendment.
10. Notwithstanding paragraphs 2 to 9 where:
- a. the Final Agreement provides that:
 - i. the Parties, or any two of them, will negotiate and attempt to reach agreement in relation to a matter that will result in an amendment to the Final Agreement; and
 - ii. if agreement is not reached, the matter will be finally determined by arbitration in accordance with the Dispute Resolution Chapter; and
 - b. those Parties have reached an agreement or the matter has been finally determined by arbitration,
the Final Agreement will be deemed to be amended on the date that the agreement or the decision of the arbitrator takes effect, as the case may be.
11. In relation to deemed amendments contemplated by paragraph 10, the applicable Parties will:
- a. provide notice to any Party not a party to the agreement reached or of an arbitrator's decision, as the case may be; and
 - b. agree on the wording or form of the amendment.
12. In the case of an arbitrator's decision referred to in paragraph 10, if the Parties are unable to agree, the form and wording of the deemed amendment will be finally determined by the arbitrator.
13. The Parties agree to take the necessary steps to implement an amendment to the Final Agreement as soon as possible after the amendment takes effect.
14. Amendments to the Final Agreement will be:
- a. published by Canada in the Canada Gazette;

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- b. published by British Columbia in the British Columbia Gazette; and
 - c. deposited by K'ómoks in the K'ómoks registry of laws established under the Final Agreement.

GOVERNANCE CAPACITY DEVELOPMENT

1. K'ómoks has created a K'ómoks First Nation Capacity Development Plan.
2. The Parties acknowledge K'ómoks' interest in governance capacity development.
3. Prior to Final Agreement negotiations, the Parties will establish a working group to:
 - a. assist K'ómoks in preparing a governance capacity development strategy; and
 - b. share information with respect to existing programs and services, including education and training programs and services that K'ómoks may wish to explore.
4. The working group will complete its work prior to the initialing of the Final Agreement
5. Nothing in this Agreement will obligate Canada or British Columbia to pay any costs or provide any funding with respect to the results of any discussions or recommendations pursuant to paragraph 3. K'ómoks will be eligible to apply for the programs referenced in paragraph 3b in accordance with general criteria established for those programs on the same basis as other First Nations.
6. Paragraphs 1 to 5 are for the purpose of this Agreement and will not form part of the Final Agreement.

DEFINITIONS

In this Agreement:

“Adequate Survey” means a survey that:

- a. accurately and unambiguously describes the extent of a parcel of land, including the location of the natural boundary, to current technical survey standards having regard to current posting requirements with permanent survey monuments at all corners;
- b. is prepared by a British Columbia Land Surveyor and determined to be acceptable by the Surveyor General of British Columbia; and
- c. if prepared from a combination of new field work and existing records has:
 - i. been prepared from records that date after 1970;
 - ii. monuments that have been verified in good condition by a British Columbia Land Surveyor; and
 - iii. an accurately depicted natural boundary verified by a British Columbia Land Surveyor;

“Administrative Penalty” means a sanction or monetary penalty established under a statutory regime in which liability for breach of a regulatory requirement and imposition of sanctions is determined through an administrative process, rather than through prosecution or through an action in the civil courts;

“Agreed-Upon Programs and Services” means those programs and services, set out in a Fiscal Financing Agreement, that will be made available by K'ómoks and towards which Canada or British Columbia agree to contribute funding;

“Agreement” means this Agreement-in-Principle including all Schedules and Appendices to it;

“Applicant” means an individual applying to be enrolled under the Final Agreement and includes an individual applying on behalf of a Child or an adult whose affairs that individual has the legal authority to manage;

“Aquatic Plants” includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all freshwater flowering plants, ferns and mosses, growing in water or in soils that are saturated during most of the growing season;

“Archaeological Human Remains” means human remains that are determined to be of aboriginal ancestry and not the subject of a police or coroner investigation;

“Available Flow” means the volume of flow of water, determined by British Columbia, to be above that required:

- a. to ensure conservation of Fish and Stream habitats;
- b. to continue navigability; and
- c. under Water Licences issued before January 14, 2011, and Water Licences issued under applications made before January 14, 2011;

and taking into account any applicable requirements under Federal Law or Provincial Law;

“Band” has the same meaning as “band” under the *Indian Act*;

“British Columbia” means, unless the context otherwise requires, Her Majesty the Queen in right of the Province of British Columbia;

“British Columbia Building Code” means the building code established for British Columbia under the *Local Government Act*;

“British Columbia Land Surveyor” means a “practising land surveyor” as defined in the *Land Surveyors Act*;

“Canada” means, unless the context otherwise requires, Her Majesty the Queen in right of Canada;

“Capital Transfer” means an amount paid by Canada to K'ómoks under the Capital Transfer Chapter of the Final Agreement;

“Child” means an individual under the age of majority under Provincial Law;

“Child Care” means the care, supervision, social or educational training, including pre-school education, or physical or mental rehabilitative therapy of children under the age of 13 years, with or without charge, by caregivers other than the child’s parent or the person with whom the child resides and who stands in the place of the child’s mother or father, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a K'ómoks Law under paragraph 105 of the Self-Government Chapter;

“Child in Care” means a Child who is in the custody, care or guardianship of a Director or an individual designated with comparable authority under K'ómoks Law;

“Child in Need of Protection” means a Child in need of protection under the *Child, Family and Community Services Act*;

“Child Protection Service” means a service that provides for:

- a. the protection from abuse, neglect, or harm, or threat of abuse, neglect, or harm, and any need for intervention;

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- b. the custody, care and guardianship responsibilities of Children in Care,
 - c. the support of families and caregivers to provide a safe environment and prevent abuse, neglect, or harm, or threat of abuse, neglect, or harm; and
 - d. the support of kinship ties and a Child's attachment to the extended family;

“Community Correctional Services” means:

- a. community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody centre;
- b. preparation of reports for courts, correctional centres, youth custody centres, crown counsel and parole boards;
- c. supervision of diverted offenders and development and operation of diversion programs;
- d. community-based programs and interventions for offenders, including alternatives to custody programs;
- e. identification of and referral to appropriate community resources;
- f. programs to meet the needs of youth in conflict with the law; and
- g. other community correctional and community youth justice services as may be delivered by British Columbia or Canada from time to time;

“Conflict” means actual conflict in operation or operational incompatibility;

“Consult” and “Consultation” means provision to a Party or a person of:

- a. notice of the matter to be decided;
- b. sufficient information in respect of the matter to permit the Party to prepare its views on the matter;
- c. a reasonable period of time to permit the Party to prepare its views on the matter;
- d. an opportunity for the Party to present its views on the matter; and
- e. a full and fair consideration of any views on the matter so presented by the Party;

“Crown” means Canada or British Columbia, as the case may be;

“Crown Road” means a road, including the road allowance, under the administration and control of British Columbia;

“Designated Wildlife Species” means a species of Wildlife for which the Minister has determined that there should be a Total Allowable Wildlife Harvest in the K'ómoks Harvest Area;

“Direct” has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*;

“Director” means an individual designated as a director by the Minister under the *Child, Family and Community Service Act* or the *Adoption Act*;

“Disagreement” means a dispute or negotiation to which the Dispute Resolution Chapter applies as set out in paragraph 7 of that Chapter;

“Domestic Purposes” means food, social and ceremonial purposes;

“Effective Date” means the date upon which the Final Agreement takes effect;

“Eligible Voter” means an individual who:

- a. is eligible to vote under paragraph 7 of the Ratification Chapter; or
- b. who votes under paragraph 8 and whose vote is counted under paragraph 9 of the Ratification Chapter;

“Eligibility Criteria” means the criteria under paragraph 2 of the Eligibility and Enrollment Chapter;

“Enrollment Appeal Board” means the board established under paragraph 18 of the Eligibility and Enrollment Chapter;

“Enrollment Committee” means the committee established under paragraph 9 of the Eligibility and Enrollment Chapter;

“Enrollment Register” means a list of individuals who have been accepted for enrollment under the Eligibility and Enrollment Chapter;

“Environment” means the components of the earth and includes:

- a. air, land and water, including all layers of the atmosphere;
- b. all organic and inorganic matter and living organisms; and
- c. the interacting natural systems that include components referred to in subparagraphs a and b;

“Federal Expropriating Authority” means a federal department or agency or any Person with the authority to expropriate land under Federal Law;

“Federal Law” includes federal statutes, regulations, ordinances, Orders-in-Council, and the common law;

“Federal Project” means a “project” as defined in the *Canadian Environmental Assessment Act* that is subject to an environmental assessment under that Act;

“Federal Settlement Legislation” means the Act of Parliament that gives effect to the Final Agreement;

“Final Agreement” means the agreement among K'ómoks, Canada and British Columbia which will be negotiated based on this Agreement;

“First Nation Government in British Columbia” means the government of a First Nation in British Columbia which has a treaty or a land claims agreement in effect with Canada and British Columbia;

“Fiscal Financing Agreement” means an agreement negotiated among the Parties under the Fiscal Relations Chapter of the Final Agreement;

“Fish” means

- a. fish, shellfish, crustaceans, and marine animals excluding cetaceans;
- b. the parts of fish, shellfish, crustaceans and marine animals excluding cetaceans;
and
- c. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals excluding cetaceans;

“Forest Practices” means timber harvesting, road construction, road maintenance, road use, road deactivation, silviculture treatments and other related activities, including grazing for the purposes of brushing, botanical forest product collecting and fire use, but does not include timber marking or scaling, manufacture of timber, or export of timber;

“Forest Resources” means all Timber Resources and Plants, but does not include Aquatic Plants;

“Former K'ómoks First Nation Reserves” means the lands that:

- a. were, on the day before the Effective Date, Indian Reserves set apart for the use and benefit of the K'ómoks First Nation; and
- b. are identified for illustrative purposes in Appendix B-2, Part 2 as “Former K'ómoks First Nation Reserves”;

“Groundwater” means water below the surface of the ground;

“Heritage Site” means a site of archaeological, historical or cultural significance including graves and burial sites;

“Implementation Committee” means the committee established under the Implementation

Chapter of the Final Agreement;

“Implementation Plan” means the plan described under the Implementation Chapter of the Final Agreement;

“Indian” has the same meaning as “Indian” under the *Indian Act*;

“Indian Reserve” has the same meaning as “reserve” under the *Indian Act*;

“Initial Enrollment Period” means the period during which the Enrollment Committee operates, to be set out in the Final Agreement;

“Intellectual Property” includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including any rights relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights;

“International Legal Obligation” means an obligation binding on Canada under international law, including those that are in force before, on or after the Effective Date;

“K'ómoks” means the collectivity of those individuals eligible to be enrolled under the Final Agreement;

“K'ómoks Area” means the traditional territory of K'ómoks as illustrated in Appendix A;

“K'ómoks Artifact” means any object created by, traded to, commissioned by, or given as a gift to a K'ómoks Individual or the K'ómoks community, or that originated from the K'ómoks community, and that has past and ongoing importance to K'ómoks culture or spiritual practices, but does not include any object traded to, or commissioned by, or given as a gift to another aboriginal group, aboriginal individual or aboriginal community, or Person;

“K'ómoks Capital” means all land, cash, and other assets transferred to or recognized as owned by K'ómoks under the Final Agreement;

“K'ómoks Certificate” means a certificate of the K'ómoks Government as described under paragraph 9 of the Land Title Chapter;

“K'ómoks Child” means a Child who is a K'ómoks Member;

“K'ómoks Constitution” means the constitution of K'ómoks described in the Self-Government Chapter of the Final Agreement;

“K'ómoks Corporation” means a corporation that is incorporated under Federal Law or Provincial Law all of the shares of which, except any qualifying shares that directors are required to own under Federal Law or Provincial Law, are owned legally and beneficially by:

-
- a. K'ómoks;
 - b. one or more K'ómoks settlement trusts;
 - c. one or more corporations where each such corporation is itself a K'ómoks Corporation; or
 - d. any combination of Persons set out in subparagraphs a, b and c;

“K'ómoks Family” means a family where one or both parents or guardians live together with one or more Children and:

- a. at least one of the parents or guardians is a K'ómoks Member; and
- b. at least one of the Children is a K'ómoks Child;

“K'ómoks Fee Simple Interest” means a fee simple interest that may only be alienated to K'ómoks Members;

“K'ómoks First Nation” means the K'ómoks First Nation which was, on the day before the Effective Date, a Band;

“K'ómoks Government” means the government of K'ómoks as set out in the Self-Government Chapter of the Final Agreement;

“K'ómoks Harvest Area” means the area set out in Appendix G, but does not include:

- a. lands that are administered or occupied by the Minister of National Defence, or areas temporarily being used for military exercises from the time that notice has been given to K'ómoks until the temporary use is completed; or
- b. Indian Reserves;

“K'ómoks Individual” means an individual who is eligible to be enrolled under the Final Agreement in accordance with the Eligibility and Enrollment Chapter;

“K'ómoks Institution” means the K'ómoks Government or a K'ómoks Public Institution;

“K'ómoks Lands” means those lands set out in Appendix B of this Agreement;

“K'ómoks Law” means a law made pursuant to K'ómoks law-making authority set out in the Final Agreement and includes regulations and the K'ómoks Constitution;

“K'ómoks Member” means an individual who is enrolled under the Final Agreement in accordance with the Eligibility and Enrollment Chapter;

“K'ómoks Project” means a project on K'ómoks Lands that is subject to an environmental assessment under K'ómoks Law, but does not include a Provincial Project;

“K'ómoks Public Institution” means a body, board, commission or any other similar entity

established by K'ómoks under K'ómoks Law, including a school board or health board;

“K'ómoks Public Lands” means those K'ómoks Lands designated in the Final Agreement as public lands;

“K'ómoks Public Officer” means:

- a. a member, commissioner, director, or trustee of a K'ómoks Public Institution;
- b. a director, officer or employee of a K'ómoks Corporation whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or municipal governments, rather than to engage in commercial activities;
- c. an officer or employee of K'ómoks or a K'ómoks Institution;
- d. an election official within the meaning of a K'ómoks Law; or
- e. a volunteer who participates in the delivery of public programs or services by K'ómoks, a K'ómoks Institution, or a body referred to in subparagraph b, under the supervision of an officer or employee of K'ómoks, a K'ómoks Institution, or a body referred to in subparagraph b;

“K'ómoks Right to Gather Plants” means the right of K'ómoks to gather Plants under the Final Agreement;

“K'ómoks Right to Harvest Migratory Birds” means the right of K'ómoks to harvest Migratory Birds under the Final Agreement;

“K'ómoks Right to Harvest Wildlife” means the right of K'ómoks to harvest Wildlife under the Final Agreement;

“K'ómoks Road” means any road, including the road allowance, on K'ómoks Lands under the administration and control of K'ómoks;

“K'ómoks Section 35 Rights” means the rights, anywhere in Canada, of K'ómoks, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Kwakiutl District Council Hunt Committee” means the Kwakiutl District Council Roosevelt Elk Management Committee, or its successor, as mandated by the policy statement of guidelines for Roosevelt Elk Management of the Kwakiutl District Council for the Kwakiutl member nations adopted December 14, 2005;

“Land Management Decision” means a decision by Canada to change the use of, licence a new use or occupation of, or grant or dispose of an interest in, federal Crown land within the K'ómoks Harvest Area;

“Land Title Office” means the Land Title Office, as established and described in the *Land Title Act*;

“Local Government” has the same meaning as “local government” under the *Local Government Act*;

“Logs” means logs of all species of wood which are controlled under Canada’s Export Control List, Group 5, Item number 5101, pursuant to section 3(1)(e) of the *Export and Import Permits Act*;

“Migratory Birds” means migratory birds as defined under Federal Law enacted further to international conventions and for greater certainty includes the eggs and inedible by-products, such as feathers and down;

“Minister” means the federal or provincial Minister having responsibility for the exercise of powers with respect to the matter in question, and any person with authority to act for the Minister with respect to the matter in question;

“Municipal Road” means a highway that is vested, or the right to possession of which is vested, in a municipality in accordance with section 35 of the *Community Charter*;

“National Marine Conservation Area” means the lands and waters named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law and includes a national marine conservation area reserve;

“National Park” means the lands and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law and includes a national park reserve;

“National Wildlife Area” means a national wildlife area as defined under Federal Law;

“Neutral” means a person appointed to assist the Parties to resolve a Disagreement and, except as set out in subparagraph 24.e of the Dispute Resolution Chapter and Appendix M-4, includes an arbitrator;

“Neutral Appointing Authority” means the British Columbia International Commercial Arbitration Centre or, if the Centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties;

“Non- Member” means an individual who has reached the age of majority under Provincial Law, who is ordinarily resident on K'ómoks Lands and who is not a K'ómoks Member;

“Nuclear Substance” means:

- a. deuterium, thorium, uranium or an element with an atomic number greater than 92;
- b. a derivative or compound of deuterium, thorium, uranium or of an element with an atomic number greater than 92;
- c. a radioactive nuclide;
- d. a substance that is prescribed as being capable of releasing nuclear energy or as being required for the production or use of nuclear energy;
- e. a radioactive by-product of the development, production or use of nuclear energy; and
- f. a radioactive substance or radioactive thing that was used for the development or production, or in connection with the use, of nuclear energy;

“Official Voters List” means the list of Eligible Voters prepared by the Ratification Committee under the Ratification Chapter of the Final Agreement;

“Parties” means K'ómoks, Canada and British Columbia and “Party” means any one of them;

“Periodic Review Date” means the 15th anniversary of the Effective Date or a date that occurs every 15 years after that date;

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity, or a government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

“Plants” means all flora and fungi, but does not include Aquatic Plants or Timber Resources except for the bark, branches, burls, cones, foliage and roots of Timber Resources;

“Private Land” means land that is not Crown land;

“Protected Area” means provincial Crown land established or designated as a provincial park, ecological reserve, conservancy or protected area under Provincial Law;

“Provincial Expropriating Authority” means a provincial ministry or agency or any Person with the authority to expropriate land under Provincial Law;

“Provincial Law” includes provincial statutes, regulations, ordinances, Orders-in-Council, and the common law;

“Provincial Project” means a “reviewable project”, as defined in the British Columbia *Environmental Assessment Act*, that is subject to an environmental review under that Act;

“Provincial Settlement Legislation” means the Acts of the Legislature that give effect to the Final Agreement;

“Public Planning Process” means a planning process established by British Columbia to develop:

- a. regional land or resource use management plans or guidelines, including land and resource management plans, landscape unit plans and integrated watershed plans; and
- b. public plans or guidelines for specific sectors such as commercial recreation, but not operational plans that give specific direction to government staff;

“Public Utility” means a Person, or the Person’s lessee, trustee, receiver or liquidator that owns or operates in British Columbia equipment or facilities for the:

- a. production, gathering, generating, processing, storage, transmission, sale, supply, distribution or delivery of petroleum (including petroleum products or by-products), gas (including natural gas, natural gas liquids, propane and coalbed gas), electricity, steam, water, sewage, or any other agent for the production of light, heat, cold or power; or
- b. emission, conveyance, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation,

and for the purposes of this definition, Person includes a partnership and a corporation, including a Crown corporation or agent of the Crown;

“Railway” means a company, established under Federal Law or Provincial Law, authorized to construct and operate a railway. For greater certainty, railway, as used in this definition, includes:

- a. all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels or other structures connected with the railway; and
- b. communications or signalling systems and related facilities and equipment used for railway purposes;

“Range Practices” mean:

- a. grazing of livestock;
- b. cutting of hay;
- c. activities relating to grazing of livestock or cutting of hay; or
- d. activities related to constructing, modifying, or maintaining a structure, an excavation, a livestock trail, or an improvement to forage quality or quantity for purposes of range development;

“Ratification Committee” means the committee established under the Ratification Chapter of the Final Agreement;

“Ratification Vote” means the vote conducted by the Ratification Committee for the ratification of the K'ómoks Constitution and the Final Agreement;

“Ratification Vote Date” means the date K'ómoks votes on the ratification of the Final Agreement;

“Regional District” has the same meaning as “regional district” under the *Local Government Act*;

“Registrar” has the same meaning as “registrar” under the *Land Title Act*;

“Review Period” means a time period beginning on a Periodic Review Date and ending on a date six months later, or another date as the Parties may agree;

“Revision Date” means the date which is 30 days before the Effective Date, or as otherwise agreed to by the Parties;

“Safety and Well-Being of Children” includes the principle that the cultural identity of aboriginal children should be preserved and those other guiding principles under section 2 of the *Child, Family and Community Service Act*;

“Settlement Legislation” means the Federal Settlement Legislation and the Provincial Settlement Legislation;

“Specific Claims Policy” means the policy described in Canada’s Specific Claims Policy and Process Guide (2009);

“Specific Claim Settlement” means any sum paid by Canada to K'ómoks pursuant to the terms and conditions of the Specific Claims Policy, as compensation for the claim;

“Stream” means a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch, but does not include Groundwater;

“Submerged Lands” means lands below the “natural boundary” as defined in the *Land Act*;

“Subsurface Resources” include the following:

- a. earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash and rock;
- c. minerals, namely an ore of metal or natural substance that can be mined,

including:

- i. rock and other materials from mine tailings, dumps and previously mined deposits of minerals;
 - ii. dimension stone; and
 - iii. precious and base metals;
- d. placer minerals, namely an ore of metal and every natural substance that can be mined and that is either loose, or found in fragmentary or broken rock that is not talus rock and occurs in loose earth, gravel and sand, and includes rock or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals;
- e. coal;
- f. petroleum, namely crude petroleum and all other hydrocarbons, regardless of specific gravity, that are or can be recovered in liquid form from a pool or that are or can be recovered from oil sand or oil shale;
- g. natural gas, namely all fluid hydrocarbons that are not defined as Petroleum, and includes coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well;
- h. fossils, namely remains, traces or imprints of animals or Plants that have been preserved in rocks, and includes bones, shells, casts and tracks; and
- i. geothermal resources, namely the natural heat of the earth and all substances that derive thermal energy from it, including steam, water and water vapour heated by the natural heat of the earth and all substances dissolved in the steam, water and water vapour, but does not include:
- i. water that has a temperature less than 80°C at the point where it reaches the surface; or
 - ii. hydrocarbons;

“Timber Resources” means trees, whether standing, fallen, living, dead, limbed, bucked or peeled;

“Total Allowable Wildlife Harvest” means the maximum number of a Designated Wildlife Species that may be harvested by all harvesters in the K'ómoks Harvest Area in each year;

“Trade and Barter” does not include sale;

“Voting Officer” means an individual authorized by the Ratification Committee to issue ballots for the Ratification Vote;

“Water Licence” means a licence, approval or other authorization under Provincial Law for the storage, diversion, extraction or use of water, and for the construction, maintenance and operation of works;

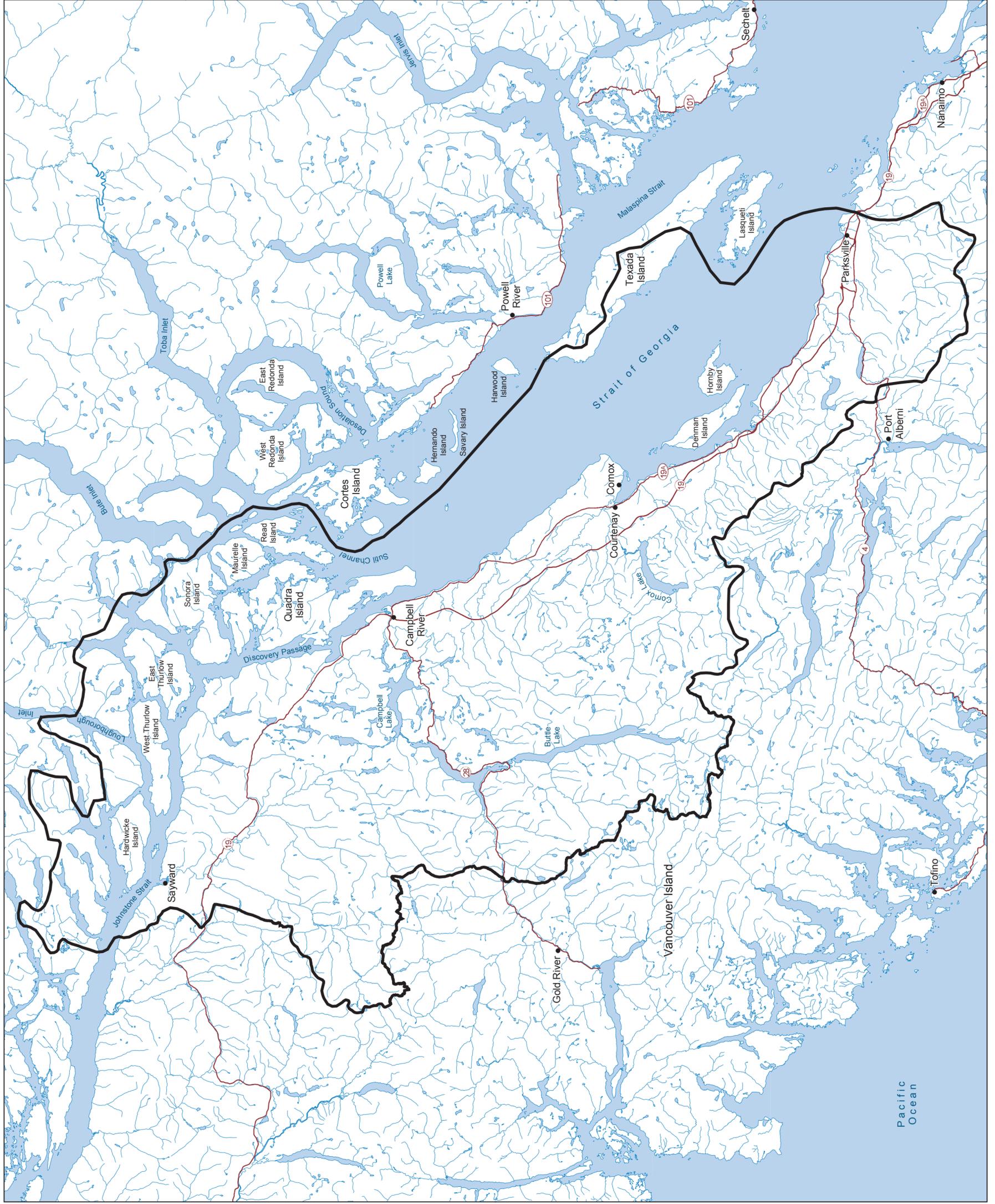
“Western Goose Spit” means the lands legally described as District Lot 113G, Comox District, and shown for illustrative purposes on Map 1, Part 2 of Appendix B-4;

“Wildfire Suppression Agreement” means an agreement entered into by Canada, British Columbia and K'ómoks under paragraph 14 of the Forest Resources Chapter; and

“Wildlife” means:

- a. all vertebrate and invertebrate animals, including mammals, birds, reptiles, and amphibians; and
- b. the eggs, juvenile stages, and adult stages of all vertebrate and invertebrate animals, but does not include Fish or Migratory Birds.

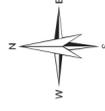
Appendix A
Map of K'ómoks Area



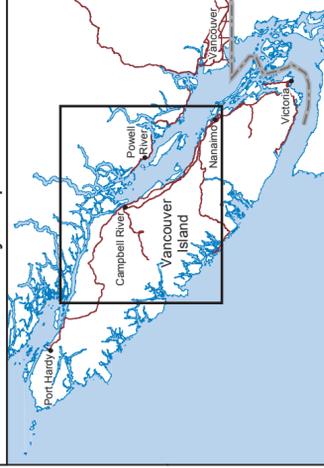
K'ómoks First Nation Area

Legend

-  K'ómoks First Nation Area
-  Highway



Key Map



Base map derived from 1:250,000 NTS data
 Land Districts: Alberni, Cameron, Clayquot, Comox,
 Dunsmuir, Nanaimo, Nanoose, Nelson, Newcastle,
 New Westminster, Nooika, Range 1 Coast,
 Rupert, Sayward, and Texada Island
 UTM Zone 10

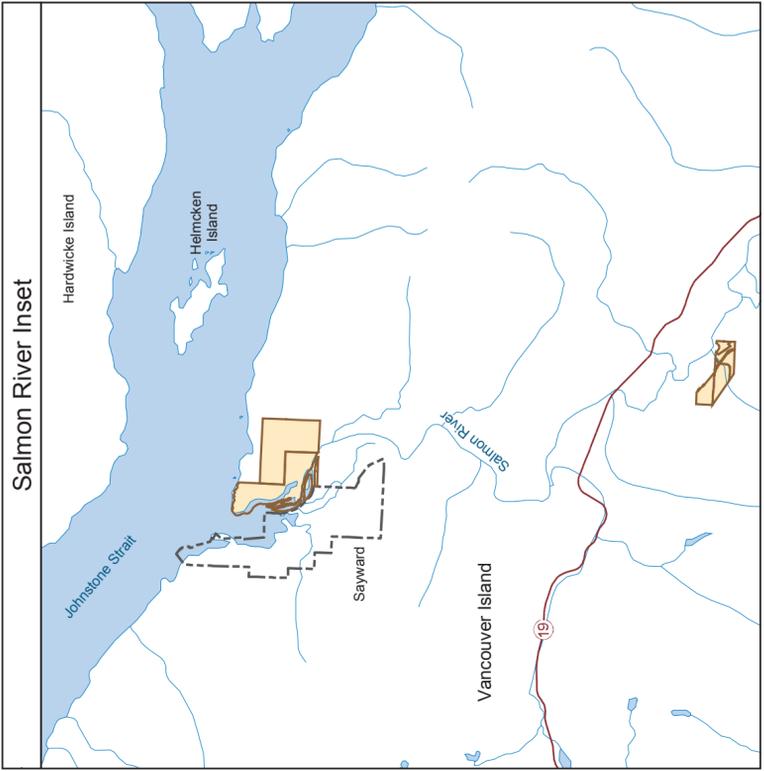
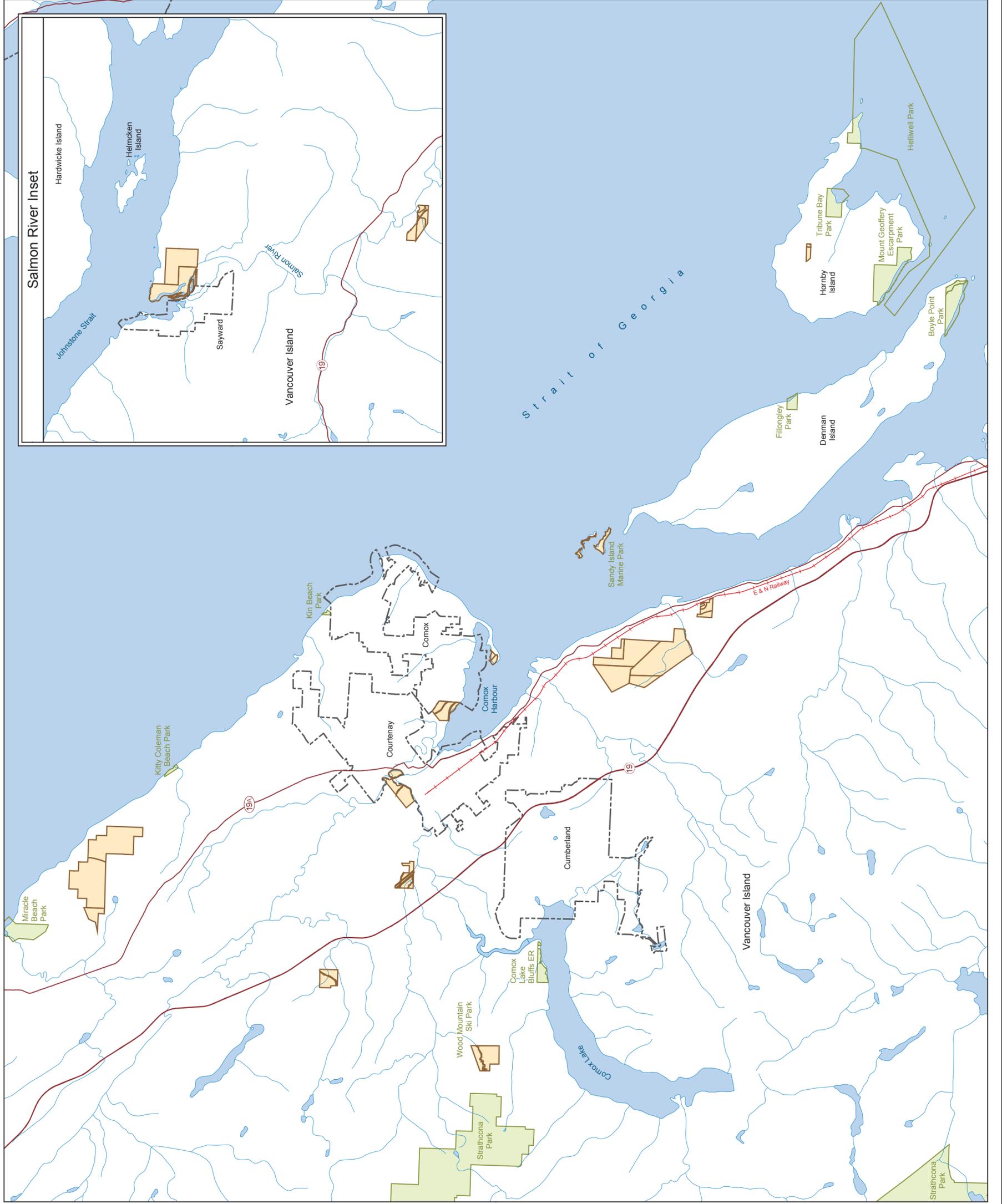
Appendix: A
 K'ómoks First Nation Area

Appendix B

K'ómoks Lands

Appendix B-1	Map of K'ómoks Lands Overview
Appendix B-2	Former K'ómoks First Nation Reserves
Part 1:	Descriptions of Former K'ómoks First Nation Reserves
Part 2:	Maps of Former K'ómoks First Nation Reserves
Appendix B-3	Maps of Former Provincial Crown Land
Appendix B-4	Western Goose Spit
Part 1:	Description of Western Goose Spit
Part 2:	Map of Western Goose Spit

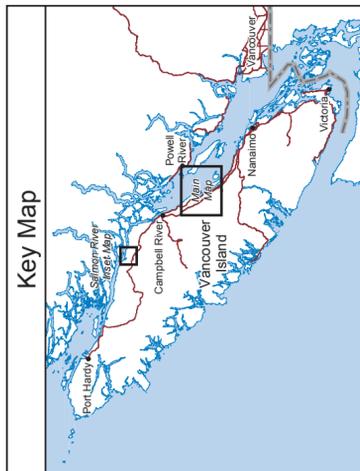
Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands

- Legend**
- Proposed K'ómoks Lands
 - Provincial Protected Area
 - Municipality
 - Highway
 - Railway

THIS MAP IS NOT TO BE USED FOR DETERMINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DESCRIPTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



Base map derived from 1:250,000 NTS data
Land Districts: Comox, Nanaimo, Nelson,
and Sayward
UTM Zone 10

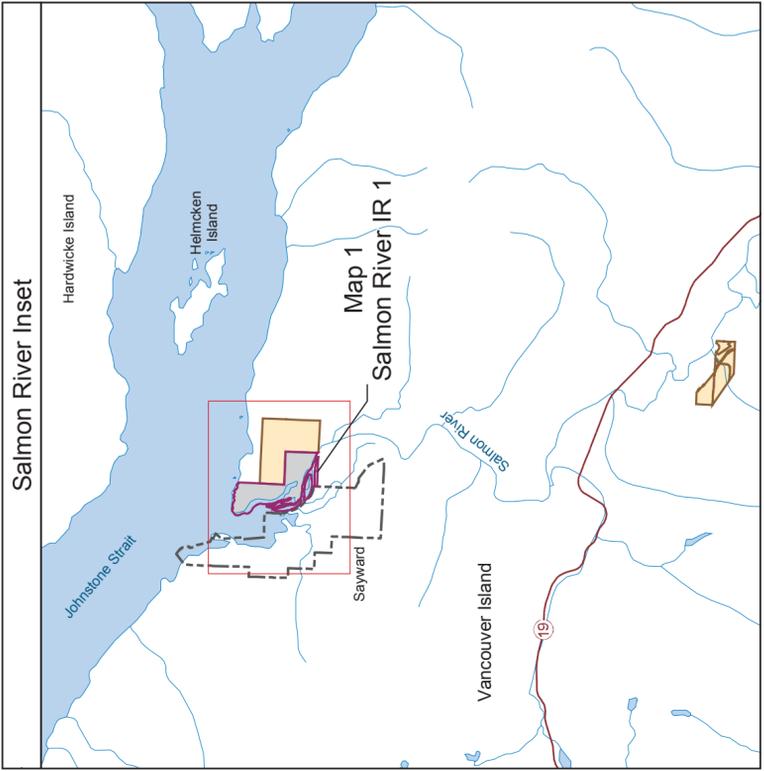
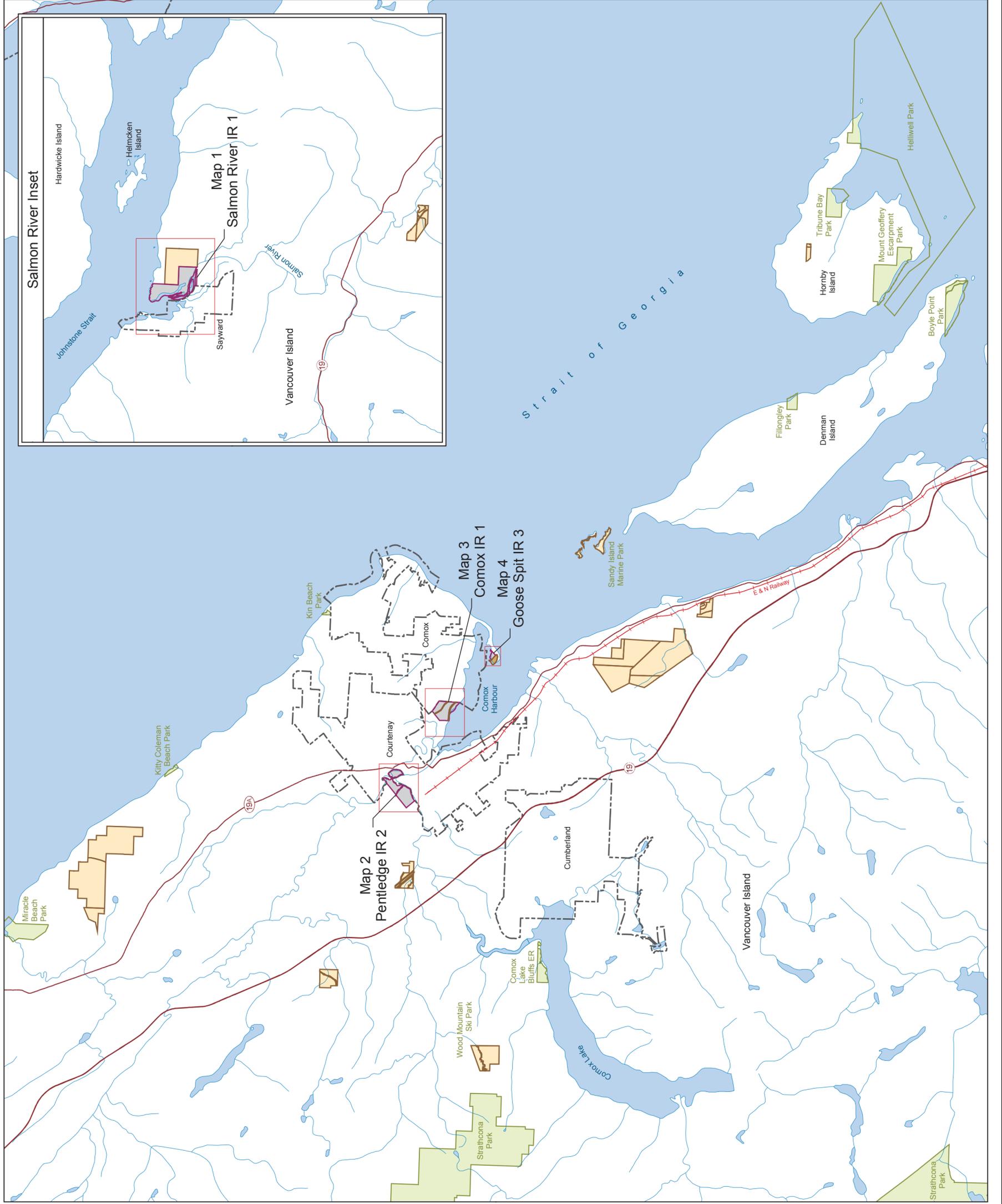
Appendix: B - 1
K'ómoks Lands
Overview

Appendix B-2

Part 1: Descriptions of Former K'ómoks First Nation Reserves

Former K'ómoks Reserve No. and Name	Land Description
Comox #1	Plan BC227, save and except the roads as shown on Plan RD3173
Salmon River #1	Plan BC184
Pentledge #2	Plan BC227, save and except road shown on Plan 1535A
Goose Spit #3	Plan BC227

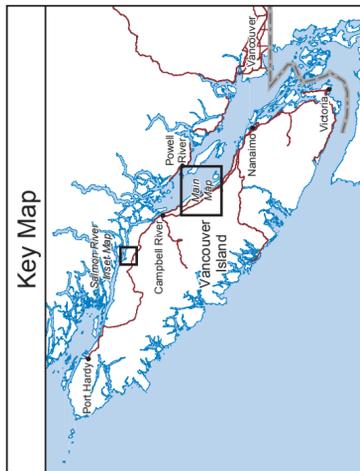
Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands Former K'ómoks Reserves

- Legend**
- Former K'ómoks Reserve
 - Western Goose Spit
 - Former Provincial Crown Land
 - Provincial Protected Area
 - Municipality
 - Highway
 - Railway

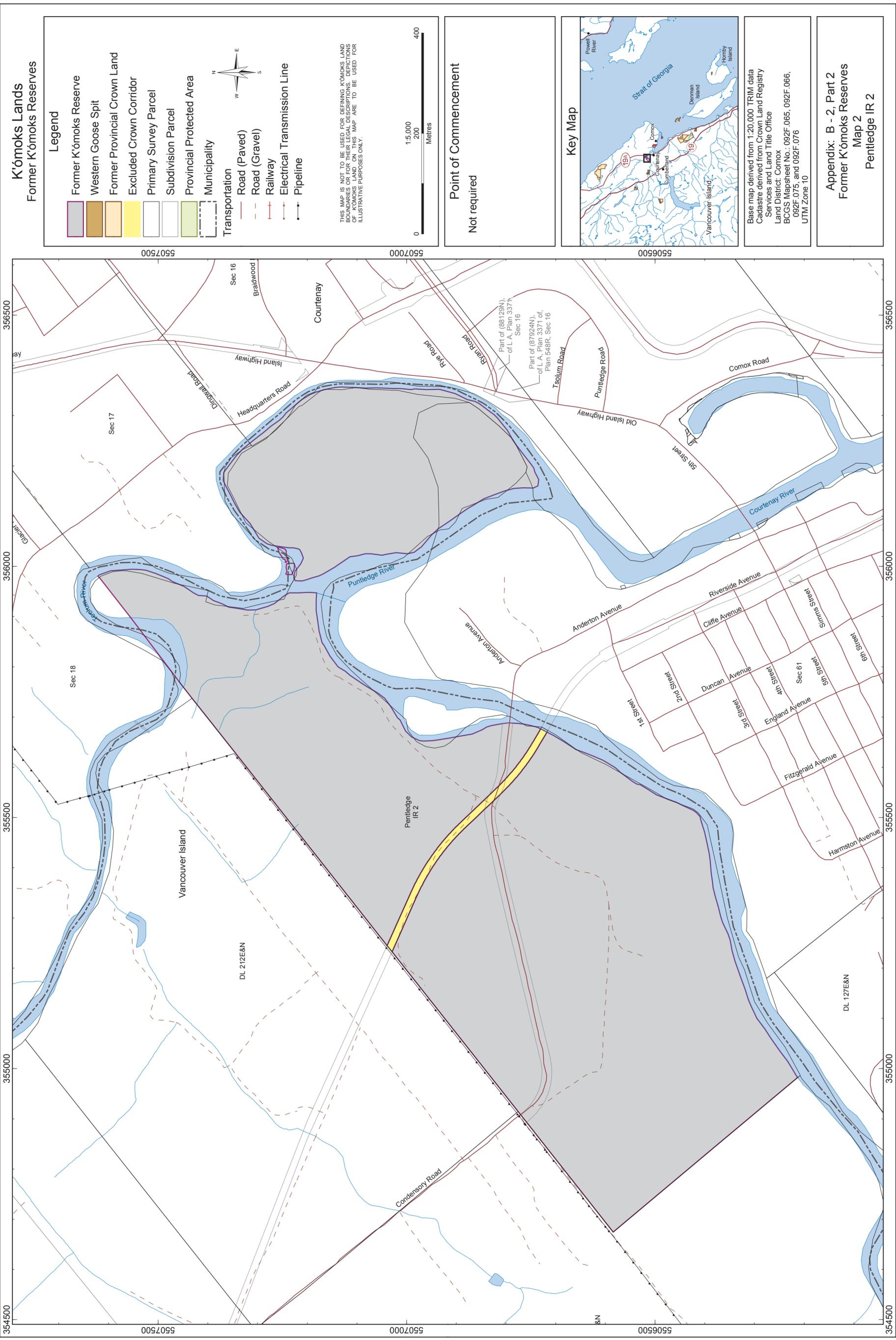
THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



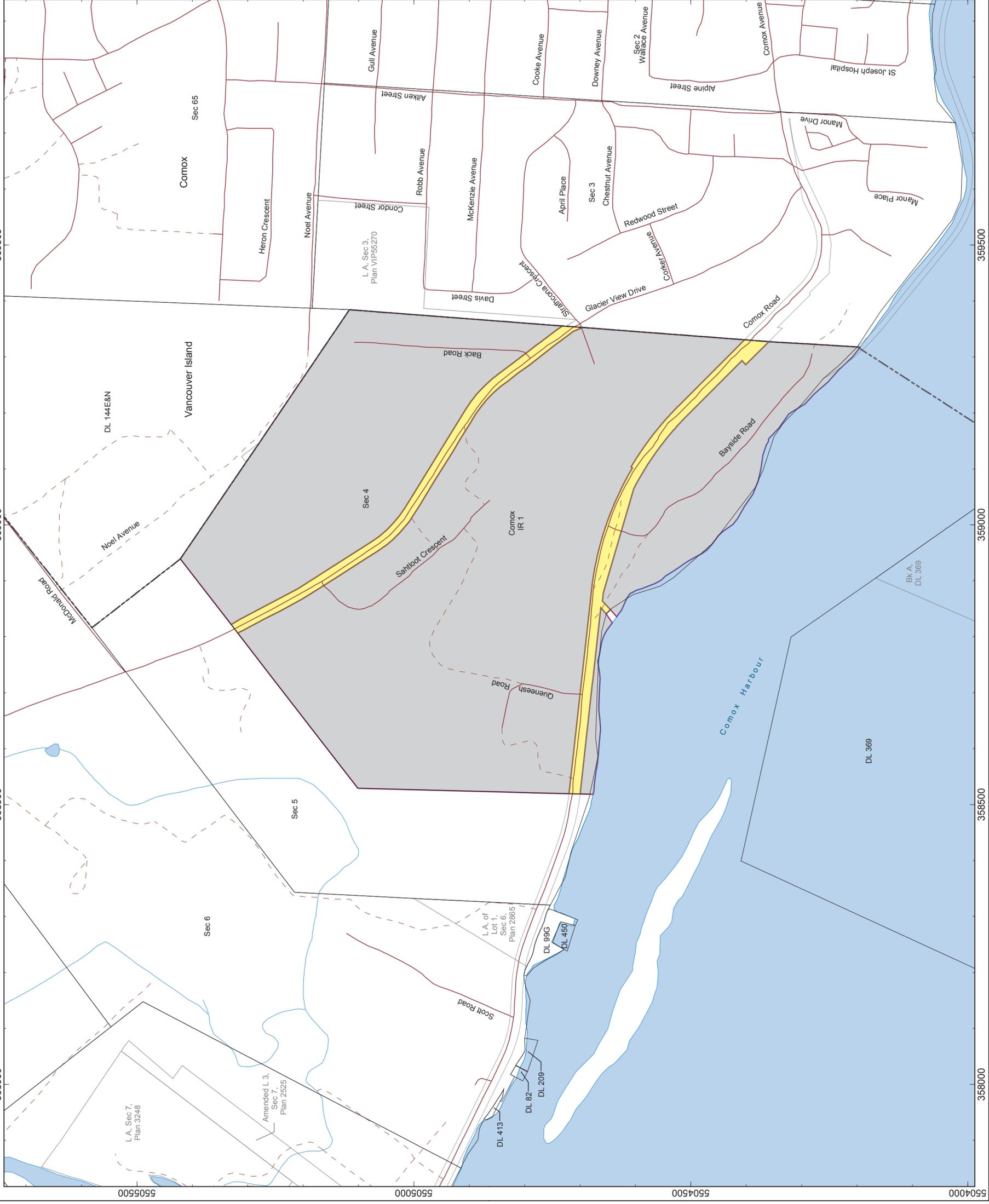
Base map derived from 1:250,000 NTS data
Land Districts: Comox, Nanaimo, Nelson,
and Sayward
UTM Zone 10

Appendix: B - 2, Part 2
Former K'ómoks Reserves
Index

Note: the Parties will update the Appendices before the Effective Date.



Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands Former K'ómoks Reserves

Legend

- Former K'ómoks Reserve
- Western Goose Spit
- Former Provincial Crown Land
- Excluded Crown Corridor
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Protected Area
- Municipality

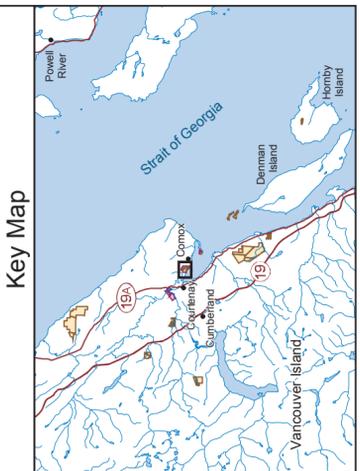
Transportation

- Road (Paved)
- Road (Gravel)
- Railway
- Electrical Transmission Line
- Pipeline

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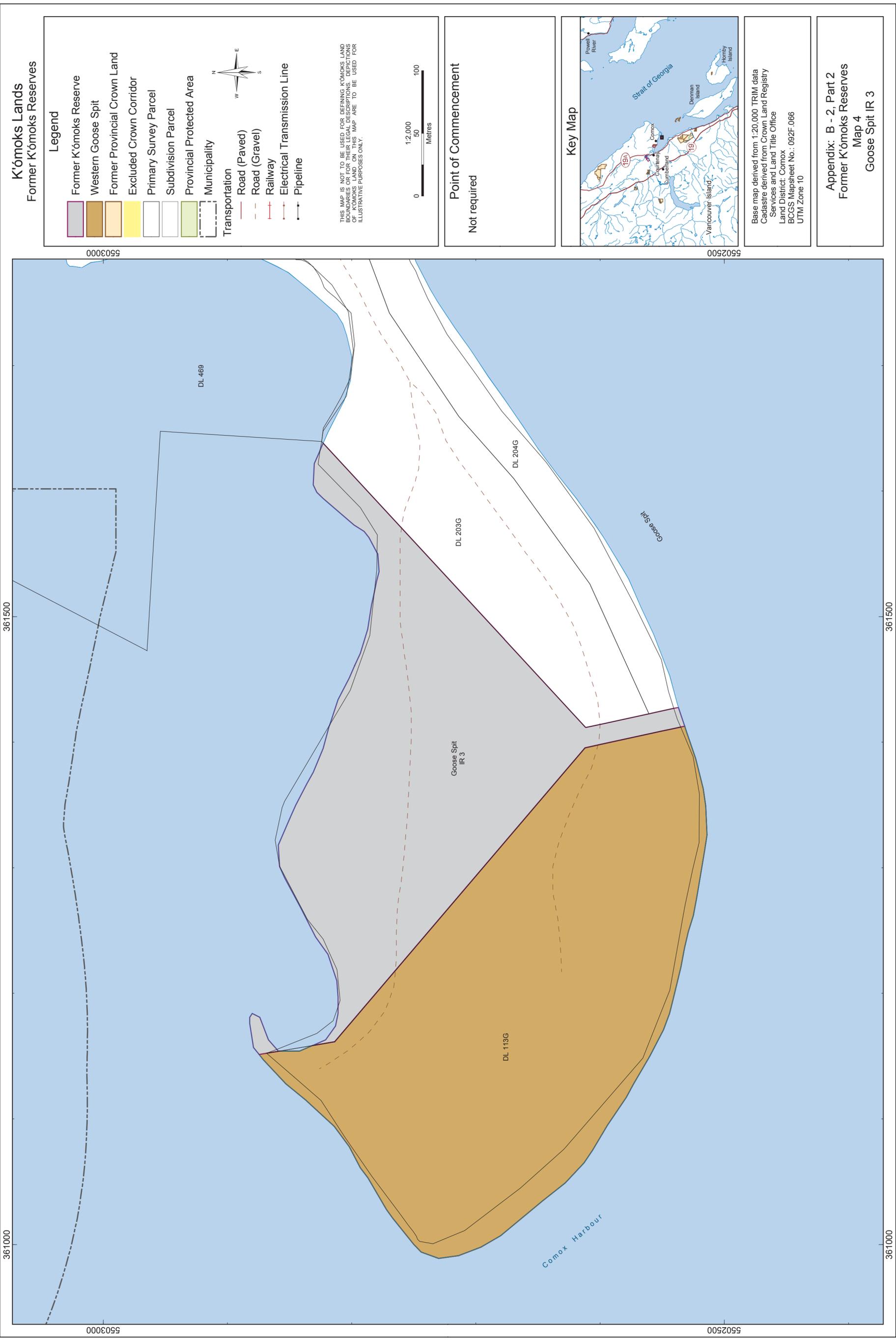
Point of Commencement
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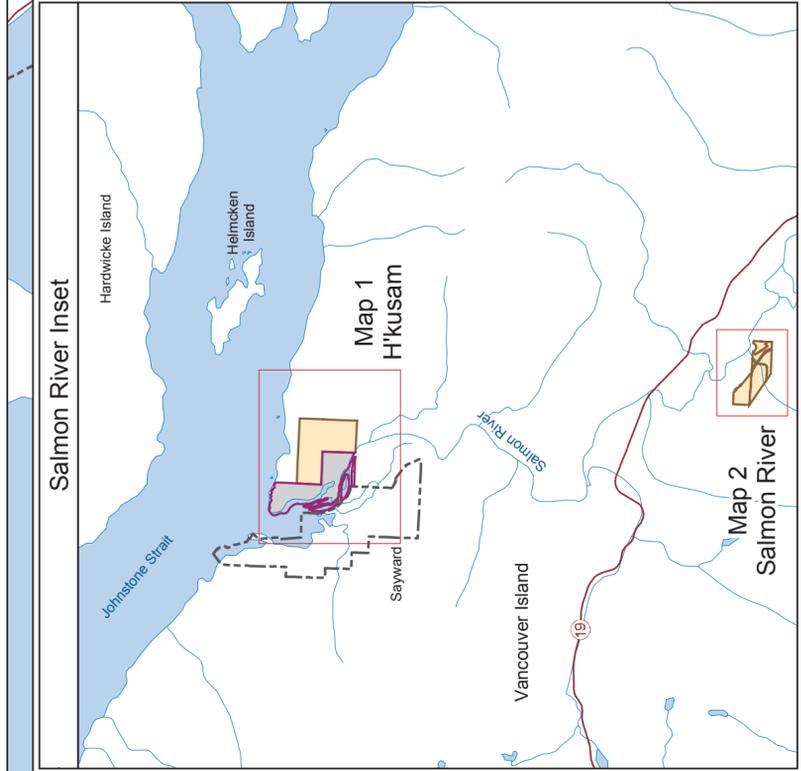
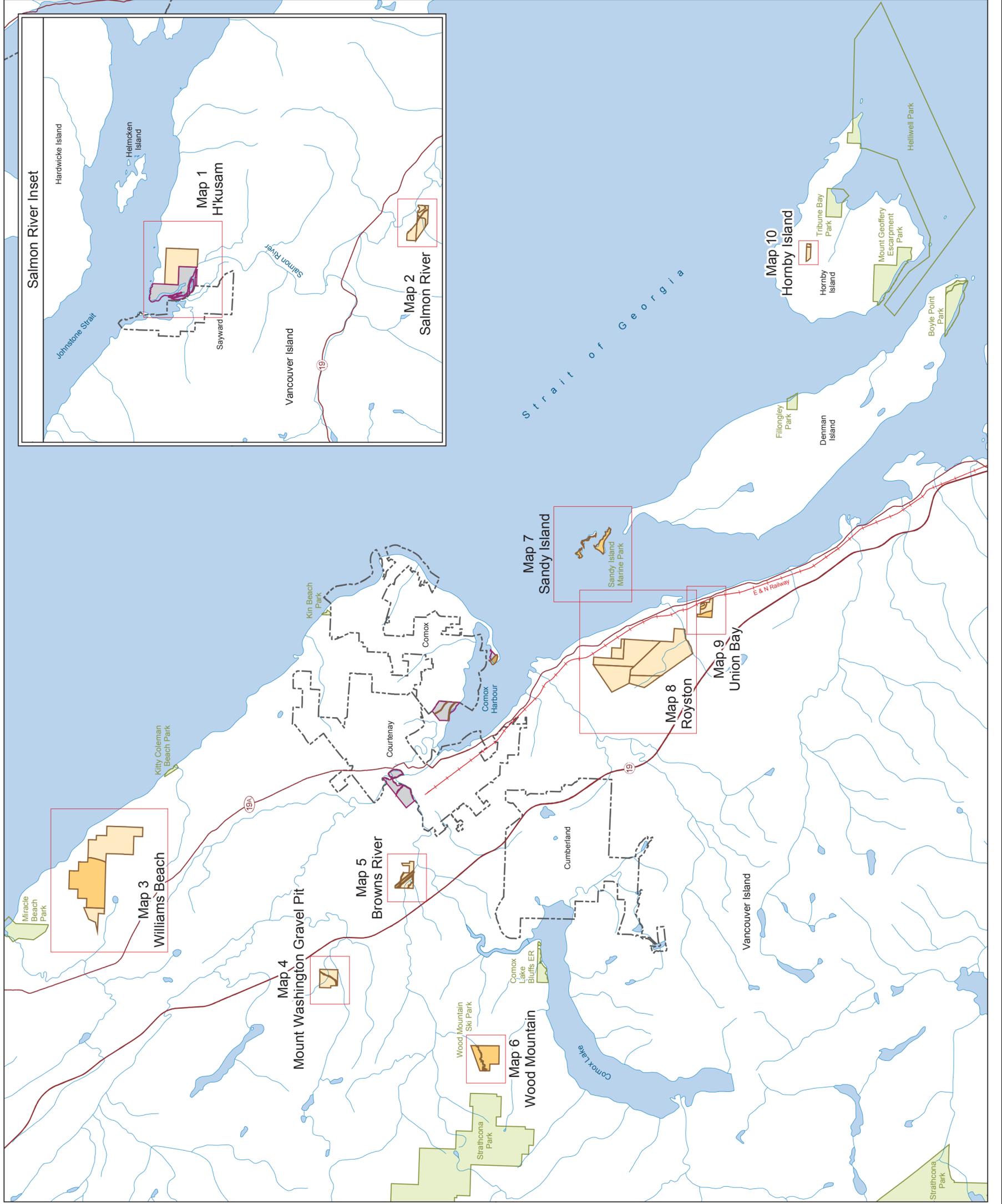
Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry Services and Land Title Office
Land District: Comox
BCGS Mapsheet No.: 092F.066
UTM Zone 10

Appendix: B - 2, Part 2
Former K'ómoks Reserves
Map 3
Comox IR 1

Note: the Parties will update the Appendices before the Effective Date.



Note: the Parties will update the Appendices before the Effective Date.

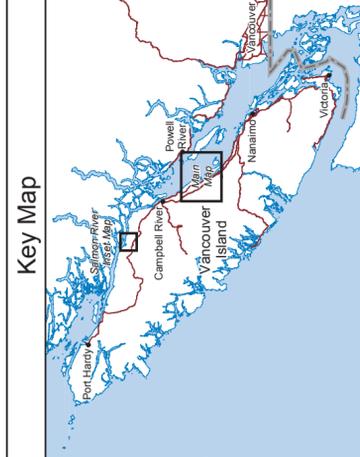
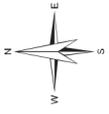


K'ómoks Lands Former Provincial Crown Land

Legend

- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Western Goose Spit
- Provincial Protected Area
- Municipality
- Highway
- Railway

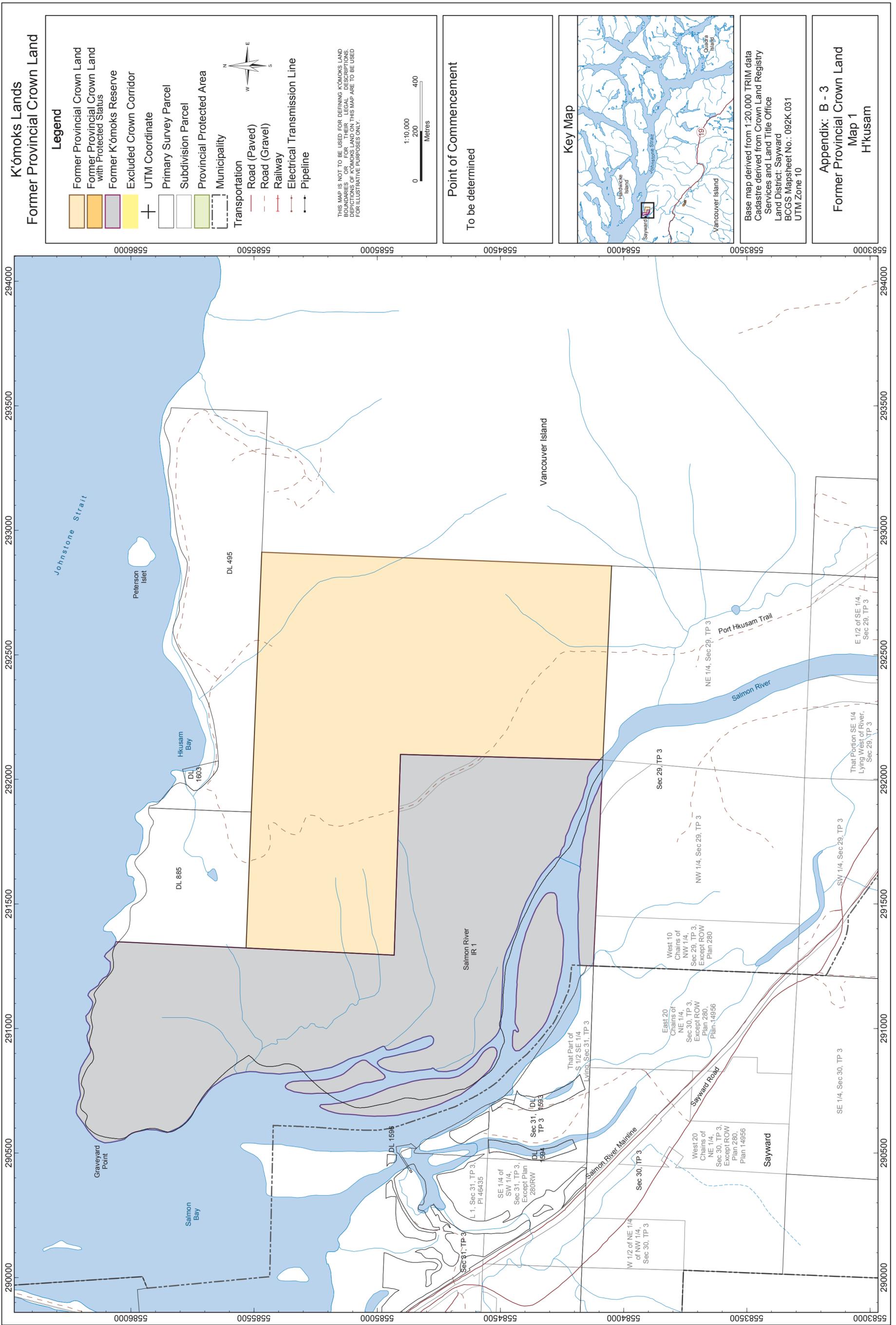
THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



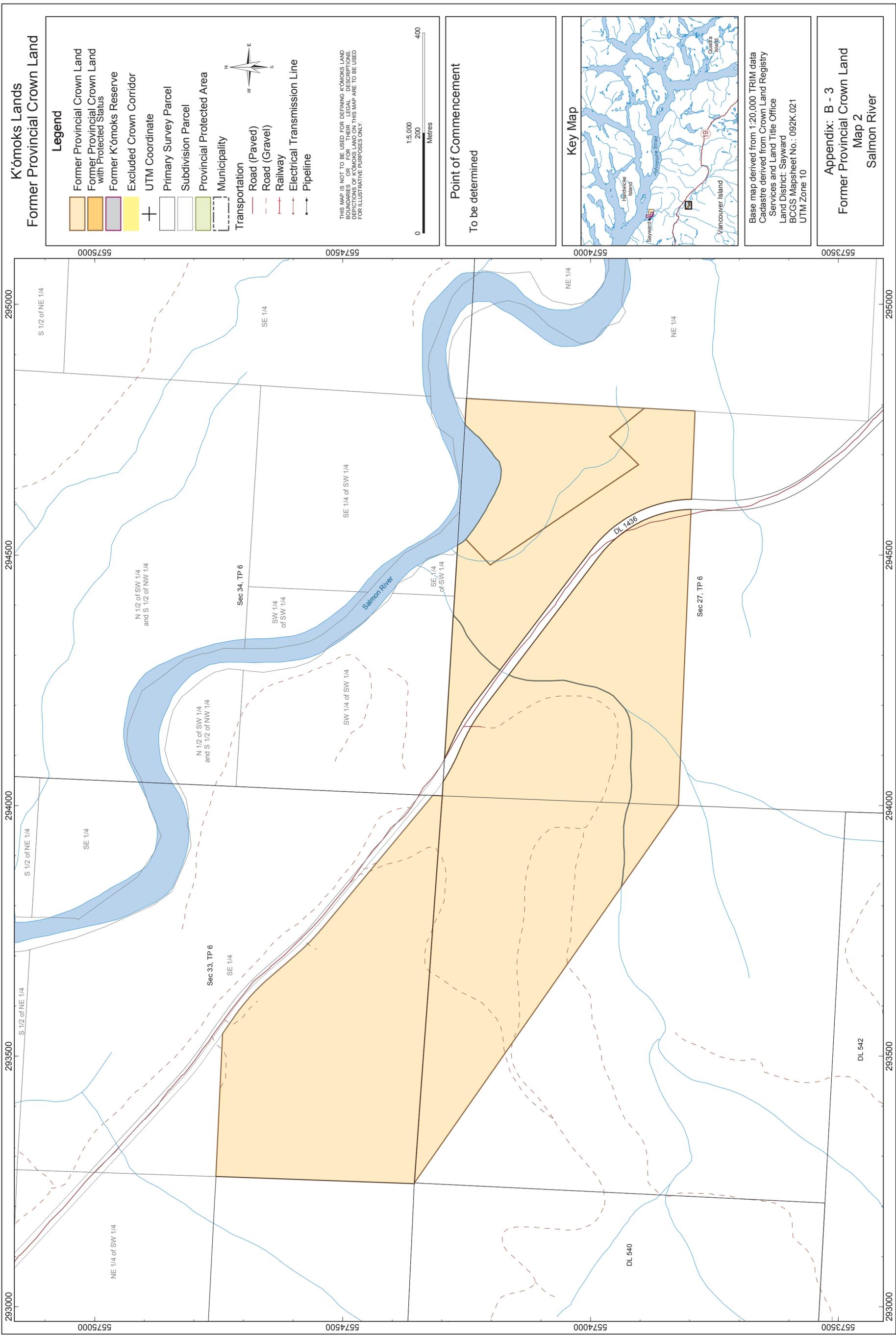
Base map derived from 1:250,000 NTS data
Land Districts: Comox, Nanaimo, Nelson,
and Sayward
UTM Zone 10

Appendix: B - 3
Former Provincial Crown Land
Index

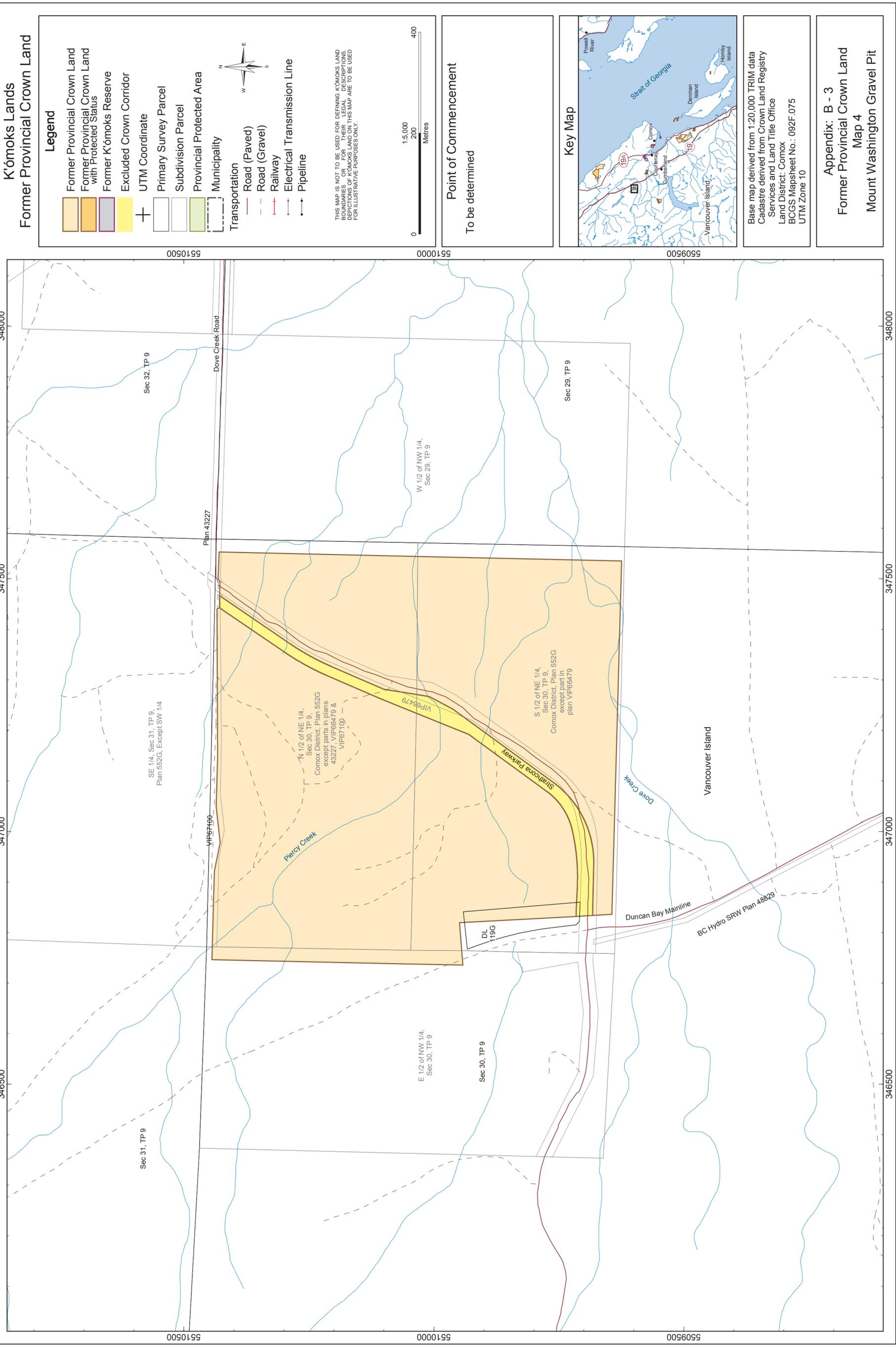
Note: the Parties will update the Appendices before the Effective Date.



Note: the Parties will update the Appendices before the Effective Date.



Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands Former Provincial Crown Land

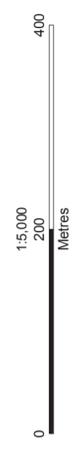
Legend

- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Excluded Crown Corridor
- UTM Coordinate
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Protected Area
- Municipality

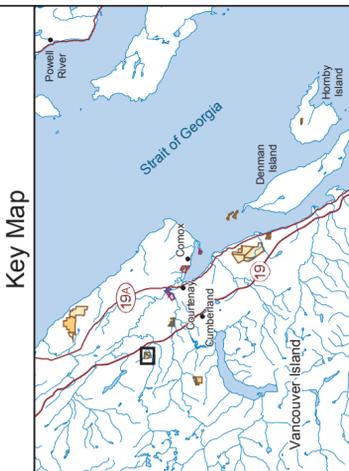
Transportation

- Road (Paved)
- Road (Gravel)
- Railway
- Electrical Transmission Line
- Pipeline

THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



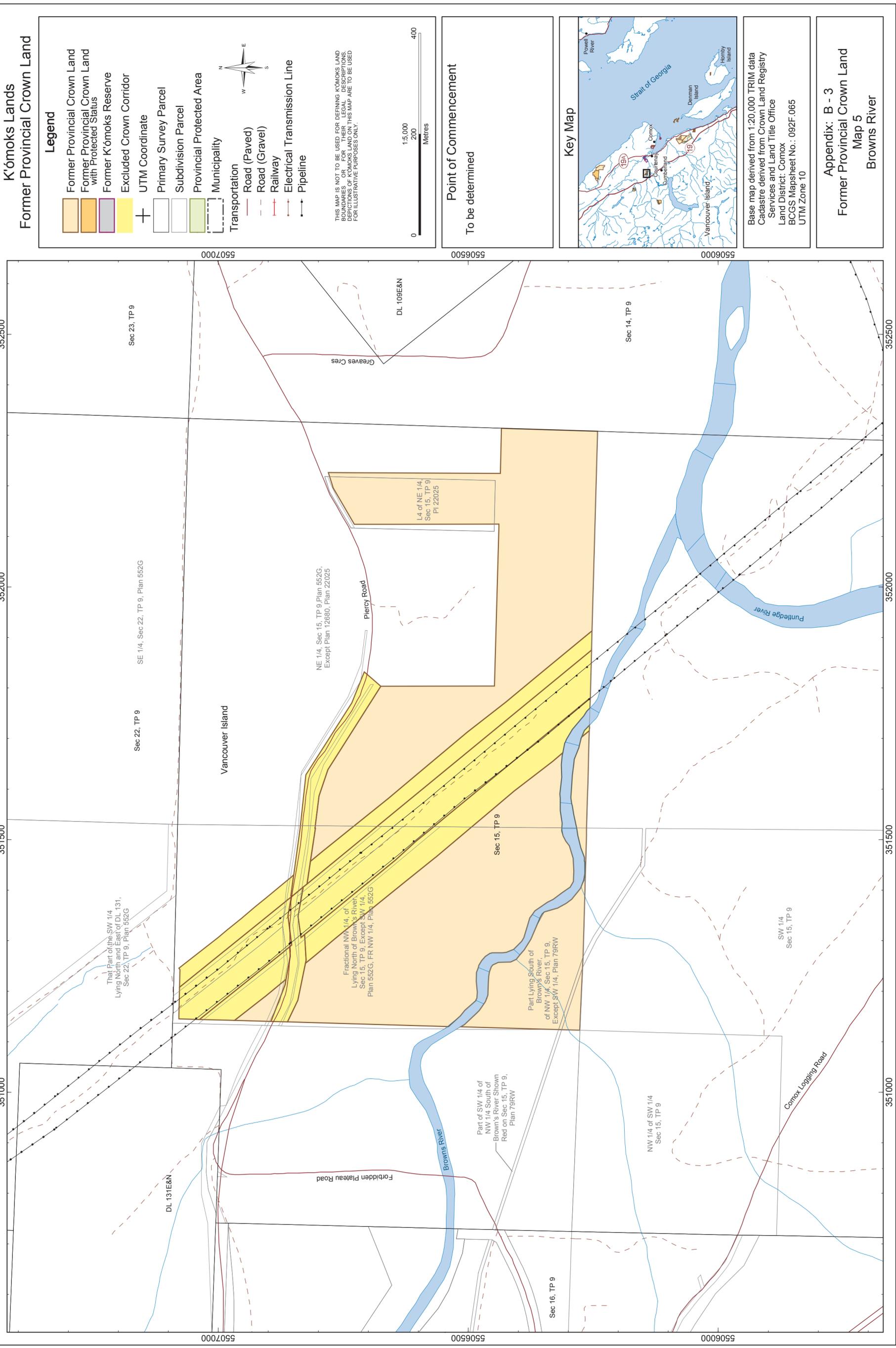
Point of Commencement
To be determined



Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry Services and Land Title Office
Land District: Comox
BCGS Mapsheet No.: 092F.075
UTM Zone 10

Appendix: B - 3
Former Provincial Crown Land
Map 4
Mount Washington Gravel Pit

Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands Former Provincial Crown Land

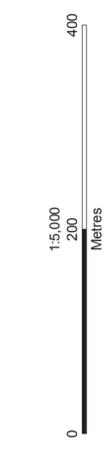
Legend

- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Excluded Crown Corridor
- UTM Coordinate
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Protected Area
- Municipality

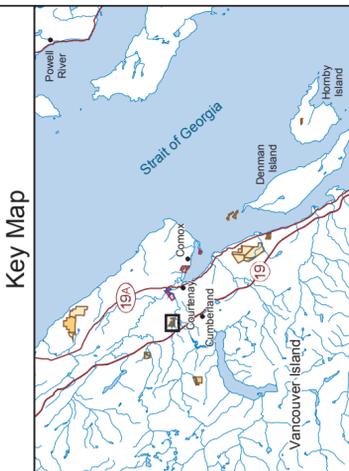
Transportation

- Road (Paved)
- Road (Gravel)
- Railway
- Electrical Transmission Line
- Pipeline

THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



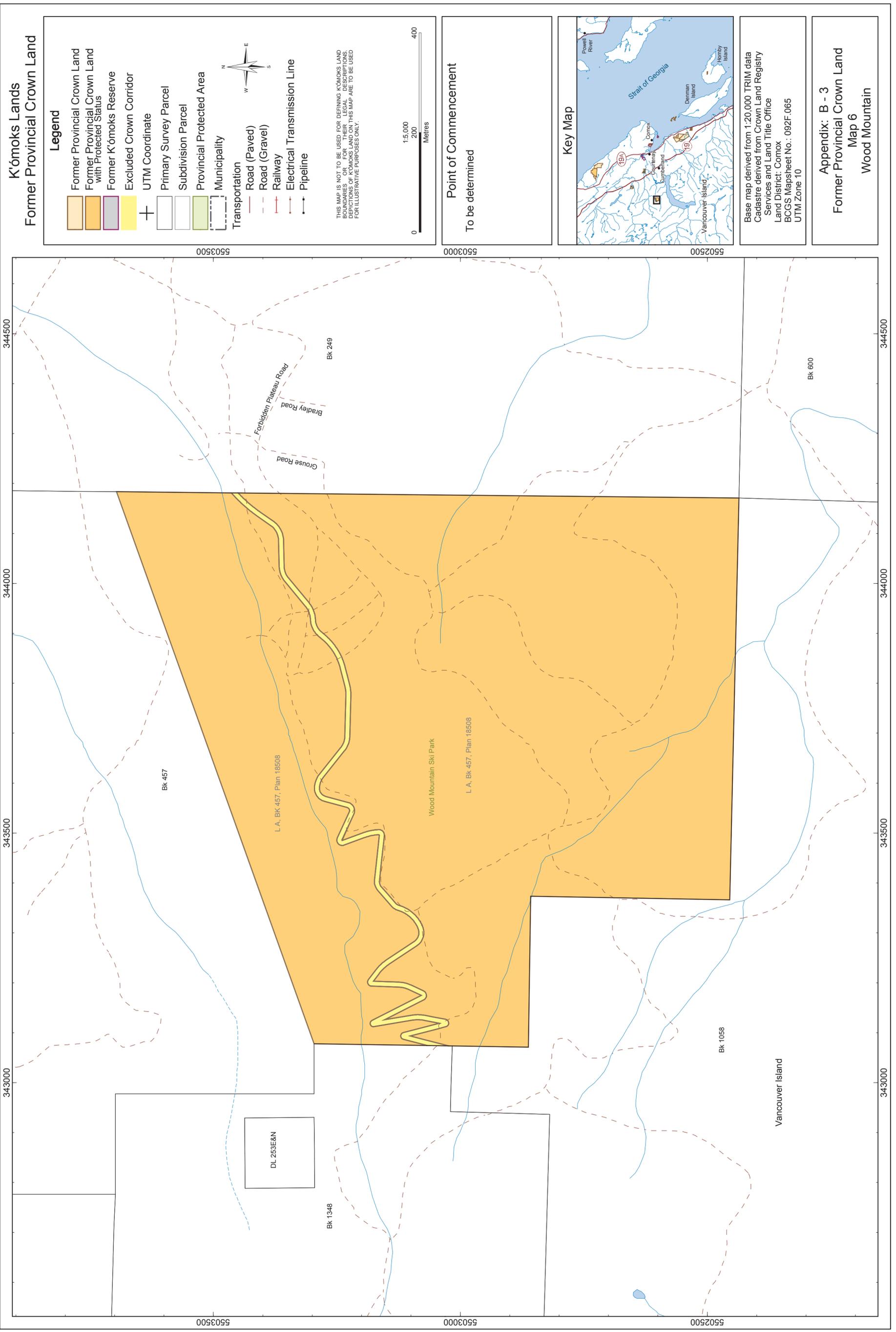
Point of Commencement
To be determined



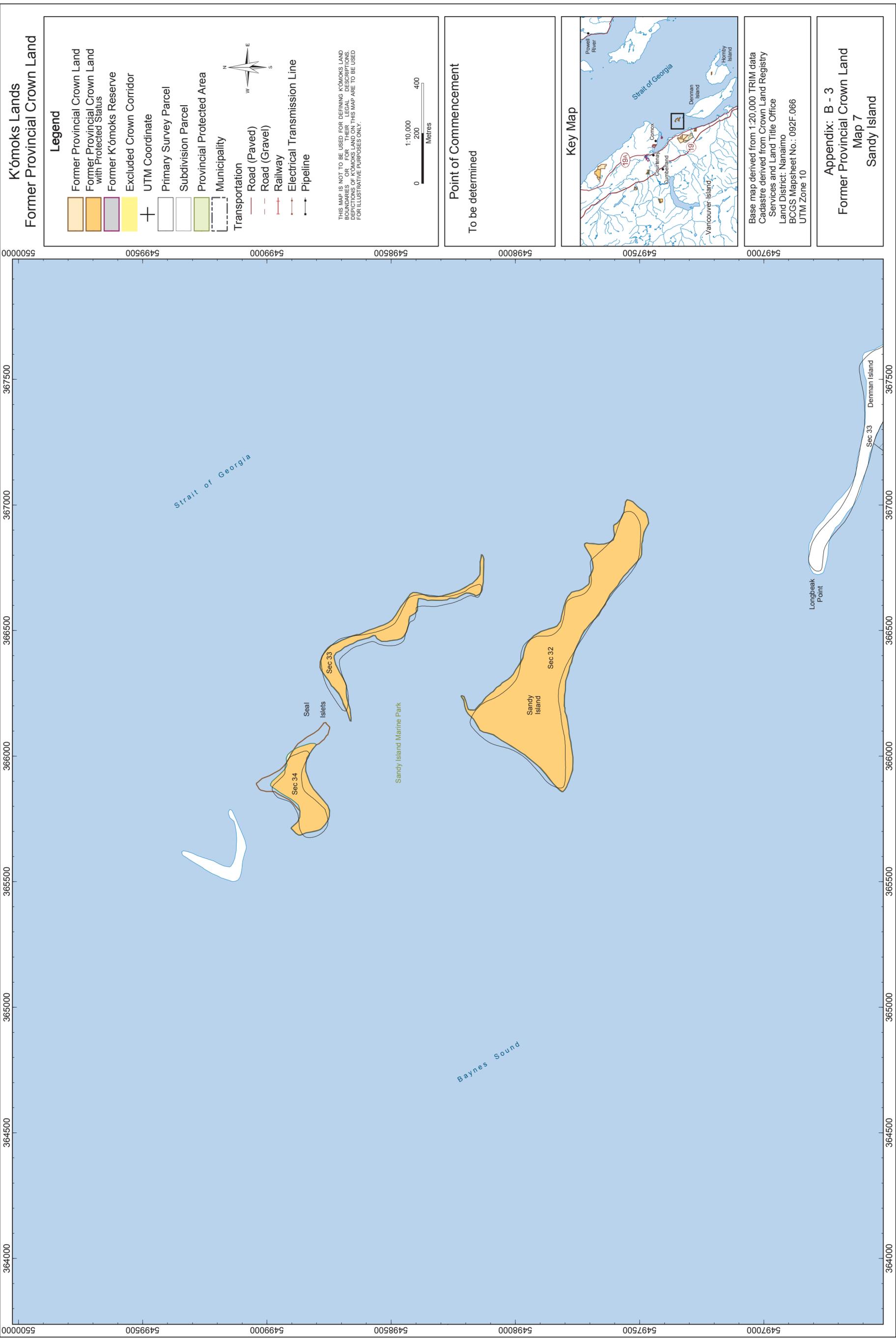
Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry Services and Land Title Office
Land District: Comox
BCGS Mapsheet No.: 092F.065
UTM Zone 10

Appendix: B - 3
Former Provincial Crown Land
Map 5
Browns River

Note: the Parties will update the Appendices before the Effective Date.



Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands
Former Provincial Crown Land

Legend

- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Excluded Crown Corridor
- UTM Coordinate
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Protected Area
- Municipality

Transportation

- Road (Paved)
- Road (Gravel)
- Railway
- Electrical Transmission Line
- Pipeline

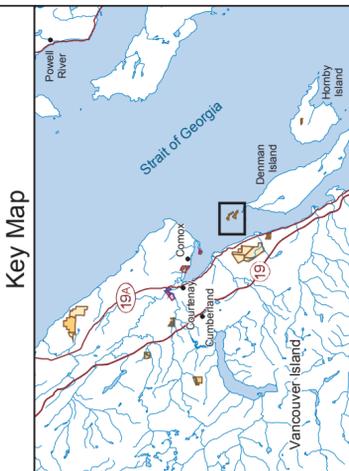
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Point of Commencement

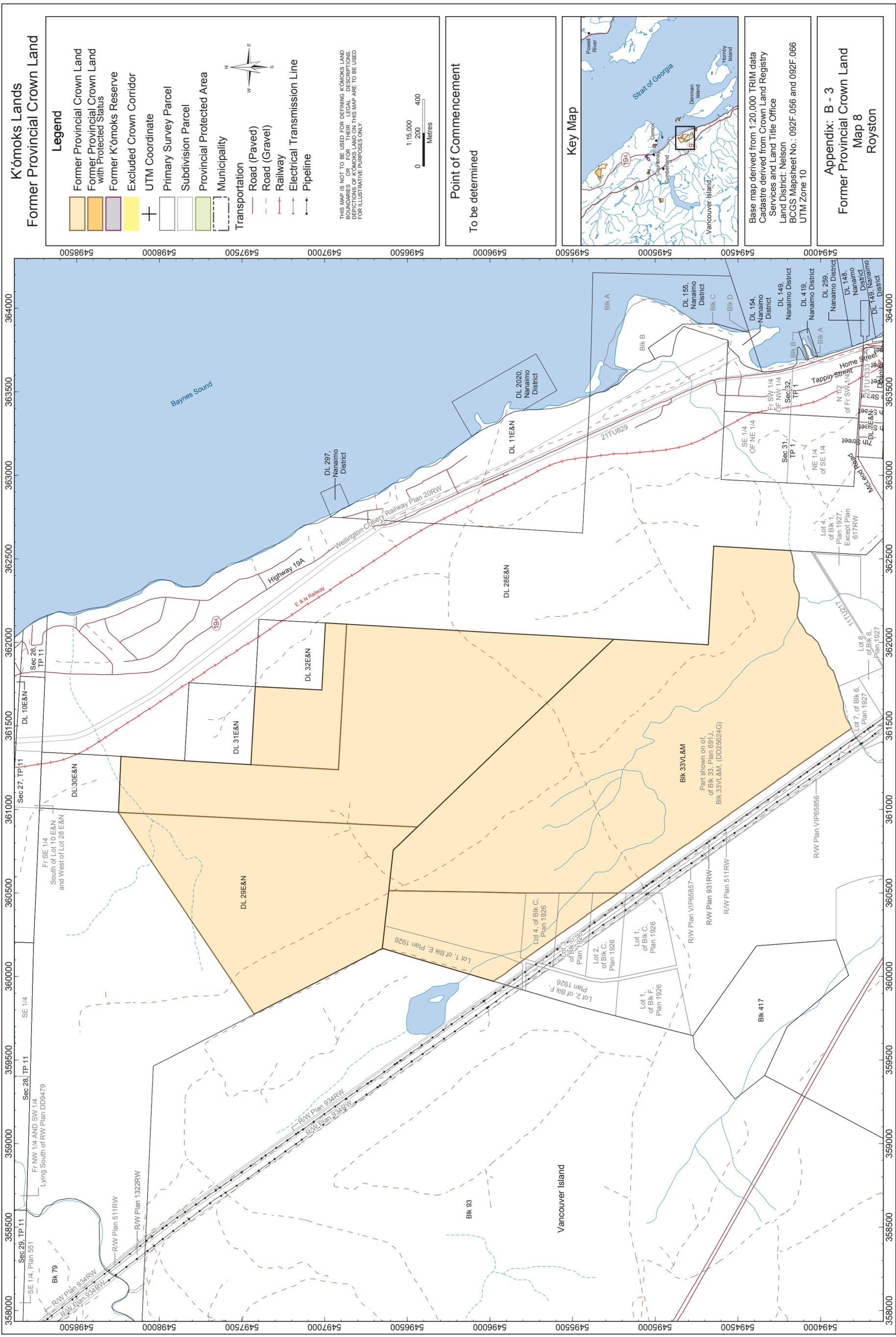
To be determined



Base map derived from 1:20,000 TRIM data
 Cadastre derived from Crown Land Registry Services and Land Title Office
 Land District: Nanaimo
 BCGS Mapsheet No.: 092F.066
 UTM Zone 10

Appendix: B - 3
Former Provincial Crown Land
Map 7
Sandy Island

Note: the Parties will update the Appendices before the Effective Date.

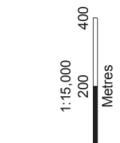


K'ómoks Lands Former Provincial Crown Land

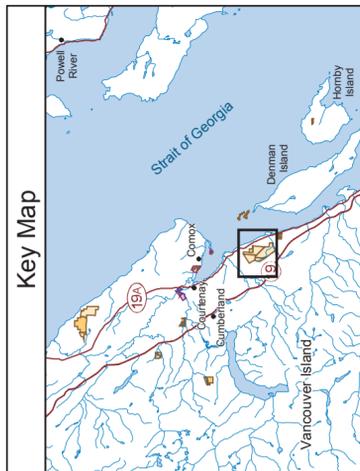
Legend

- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Excluded Crown Corridor
- UTM Coordinate
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Protected Area
- Municipality
- Transportation
- Road (Paved)
- Road (Gravel)
- Railway
- Electrical Transmission Line
- Pipeline

THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



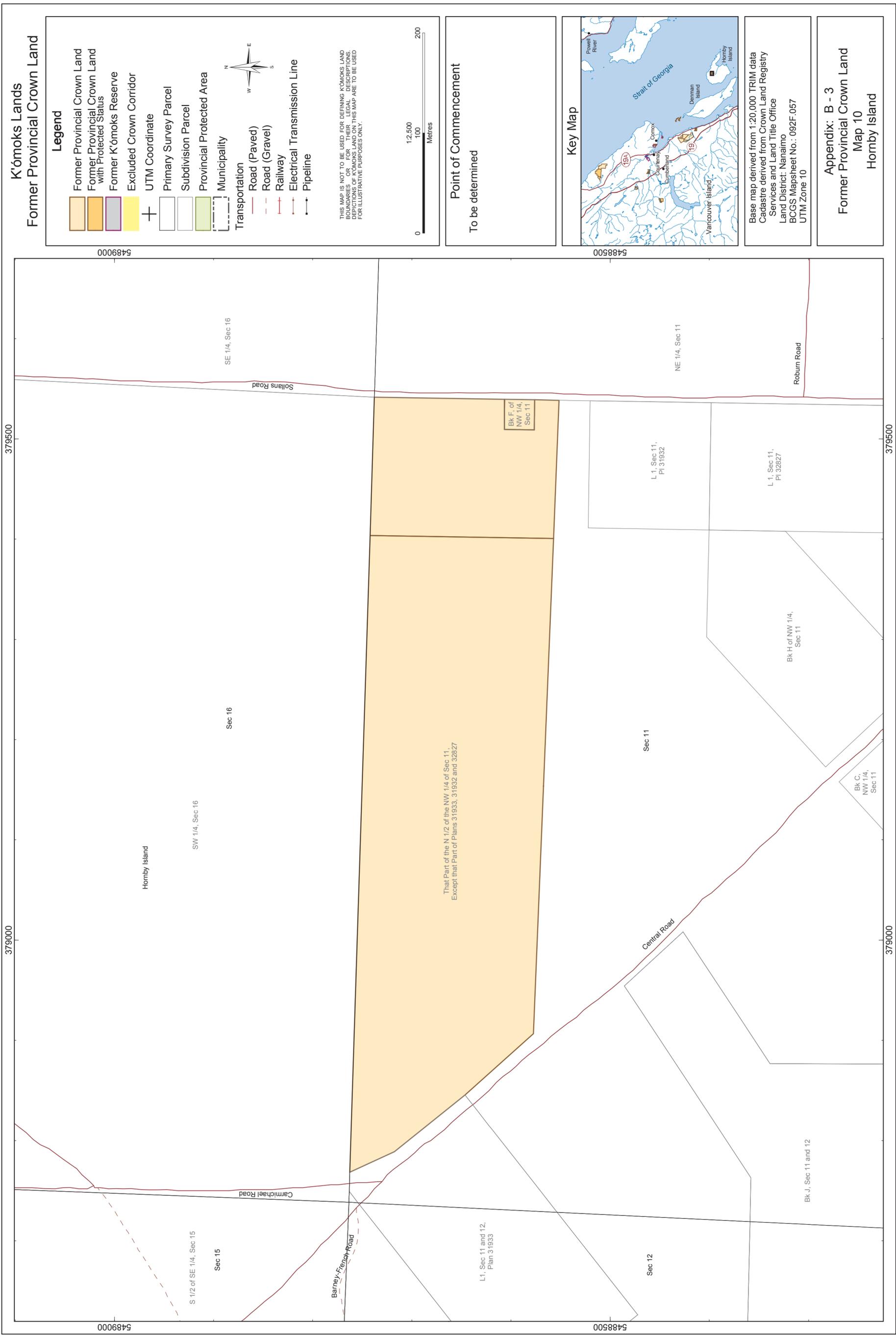
Point of Commencement
To be determined



Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry Services and Land Title Office
Land District: Nelson
BCGS Mapsheet No.: 092F.056 and 092F.066
UTM Zone 10

Appendix: B - 3
Former Provincial Crown Land
Map 8
Royston

Note: the Parties will update the Appendices before the Effective Date.



K'ómoks Lands Former Provincial Crown Land

Legend

- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Excluded Crown Corridor
- UTM Coordinate
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Protected Area
- Municipality

Transportation

- Road (Paved)
- Road (Gravel)
- || Railway
- || Electrical Transmission Line
- Pipeline

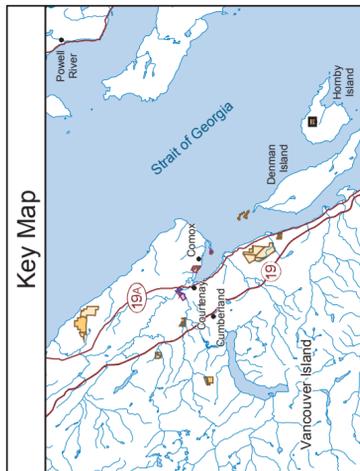
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THIS MAP IS NOT TO BE USED FOR DEFINING K'OMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'OMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.

Point of Commencement

To be determined



Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry Services and Land Title Office
Land District: Nanaimo
BCGS Mapsheet No.: 092F.057
UTM Zone 10

Appendix: B - 3
Former Provincial Crown Land
Map 10
Hornby Island

Appendix B-4
Part 1: Description of Western Goose Spit

Land Description
District Lot 113G, Comox District

Appendix C

Interests on K'ómoks Lands

- Appendix C-1 Interests to Continue in Accordance with Provincial Law
 - Part 1: Water Licences and Permits to Occupy Crown Land Issued under the *Water Act*
 - Part 2 Subsurface Tenure Issued under the *Mineral Tenure Act*
 - Part 3: Trapline Issued under the *Wildlife Act*
 - Part 4: Guide Outfitter Certificates and Licences Issued under the *Wildlife Act*
- Appendix C-2 Interests to be Replaced on the Effective Date
 - Part 1: Public Utility Works and Other Interests on Former K'ómoks Reserves
 - Part 2: Public Utility Works and Other Interests on Former Provincial Crown Land
 - Part 3: Public Utility Works and Other Interests on Former K'ómoks Fee Simple Land
- Appendix C-3 Interests to be Created on the Effective Date
 - Part 1 Existing Tenures Requiring Private Road Easement over K'ómoks Lands
 - Part 2 Fee Simple Estates Requiring Private Road Easement over K'ómoks Lands
- Appendix C-4 Applicable Forms of Document

Appendix C-1
Part 1: Water Licences and Permits to Occupy Crown Land
Issued Under the *Water Act*

This information will be added prior to the Final Agreement.

Appendix C-1

Part 2: Subsurface Tenure Issued Under the *Mineral Tenure Act*

General Location	Interest Holder	Interest	Tenure Number
Salmon River Parcel	Leigh Cement Limited	Mineral Cell Title Submission	503830

Appendix C-1
Part 3: Trapline Issued under the *Wildlife Act*

General Location	Trapline Registration Number
Salmon River Parcel	TR0110T612

Appendix C-1

Part 4: Guide Outfitter Certificates and Licences Issued under the *Wildlife Act*

General Location	Certificate Number And Licence Number
Lands Described in Schedule A of Guide Outfitter Certificate	100572, GONA 0841858
Lands Described in Schedule A of Guide Outfitter Certificate	100674, GONA 0842510

Appendix C-2

Part 1: Public Utility Works and Other Interests on Former K'ómoks Reserves

This information will be added prior to the Final Agreement.

Appendix C-2

Part 2: Public Utility Works and Other Interests on Former Provincial Crown Land

This information will be added prior to the Final Agreement.

Appendix C-2
Part 3: Public Utility Works and Other Interests
on Former K'ómoks Fee Simple Land

This information will be added prior to the Final Agreement.

Appendix C-3

Part 1: Existing Tenures Requiring Private Road Easement over K'ómoks Lands

This information will be added prior to the Final Agreement.

Appendix C-3
Part 2: Fee Simple Estates Requiring Private Road Easement
over K'ómoks Lands

This information will be added prior to the Final Agreement.

Appendix C-4
Applicable Forms of Document

This information will be added prior to the Final Agreement.

Appendix D
Exclusions to K'ómoks Lands

This information will be added prior to the Final Agreement.

Appendix E
Map of Access Corridor at Goose Spit

Appendix F

Expropriation Procedures

- Part 1: Provincial Expropriation Procedures
- Part 2: Federal Expropriation Procedures

Appendix F

Part 1: Provincial Expropriation Procedures

GENERAL

1. Provincial Law applies to the expropriation of K'ómoks Lands by a Provincial Expropriating Authority except to the extent that the Final Agreement modifies its application.
2. A Provincial Expropriating Authority may only expropriate an interest in K'ómoks Lands with the consent and by the order of the Lieutenant Governor in Council.
3. The Lieutenant Governor in Council may issue an order consenting to an expropriation of an interest in K'ómoks Lands only:
 - a. after the conclusion of the procedures described in paragraphs 4 and 5; and
 - b. if the expropriation is justifiable in accordance with paragraph 6.
4. Before the Lieutenant Governor in Council makes a decision under paragraph 3, the Provincial Expropriating Authority will provide to K'ómoks a report which states the reasons for the expropriation and addresses the factors under subparagraphs 1.a and 3.d.
5. If K'ómoks objects to the expropriation of the interest in K'ómoks Lands, the Provincial Expropriating Authority and K'ómoks will, within 60 days of the delivery to K'ómoks of the report, make reasonable efforts to resolve the objection raised by K'ómoks.
6. For the purposes of subparagraph 1.b, an expropriation is justifiable where the Lieutenant Governor in Council is satisfied that, in addition to the applicable requirements under Provincial Law, the following requirements have been met:
 - a. there is no other reasonably feasible alternative to the expropriation, including the use of lands that are not K'ómoks Lands;
 - b. reasonable efforts have been made by the Provincial Expropriating Authority to acquire the interest in K'ómoks Lands through agreement with K'ómoks;
 - c. the Provincial expropriating Authority has confirmed that the proposed expropriation is the smallest interest necessary for the shortest time required;
 - d. information relevant to the expropriation, other than documents that would be protected from disclosure under Provincial Law, has been provided to K'ómoks, including the report referred to in paragraph 4; and
 - e. where K'ómoks has objected to the expropriation, reasonable efforts have been made to resolve the objection.
7. The Lieutenant Governor in Council will not consent to the expropriation before the end of the period provided for in paragraph 5.

8. Notwithstanding paragraphs 3 to 7, the Lieutenant Governor in Council may consent to the expropriation if the Minister or Lieutenant Governor in Council has declared a state of emergency.

COMPENSATION

9. In the event of the Expropriation of an interest in K'ómoks Lands, the Provincial Expropriating Authority will provide compensation in accordance with the Final Agreement.
10. The total value of compensation for an expropriated interest in K'ómoks Lands will be based on the criteria set out in Provincial Law and will take into account the following factors:
 - a. the market value of the land based on its use at the date of expropriation plus reasonable damages;
 - b. the market value of the land based on its highest and best use at the date of expropriation;
 - c. the value of a special economic advantage to the owner arising out of his or her occupation or use of the land; and
 - d. the value of improvements made by an owner occupying a residence located on the land.
11. If the Provincial Expropriating Authority and K'ómoks disagree on the total value of compensation for an expropriated interest held by K'ómoks, a K'ómoks Public Institution, a K'ómoks Member, or a K'ómoks Corporation, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter. A dispute under this section will not delay the expropriation.
12. For the purposes of paragraph 11:
 - a. British Columbia will act on behalf of the Provincial Expropriating Authority on such terms as British Columbia and the Provincial Expropriating Authority agree; and
 - b. K'ómoks will act on behalf of the K'ómoks Public Institution, K'ómoks Member, or K'ómoks Corporation.

EXPROPRIATION OF LESS THAN A FEE SIMPLE ESTATE

13. Where less than a fee simple estate in a parcel of K'ómoks Lands is expropriated by a Provincial Expropriating Authority:
 - a. the parcel of land retains its status as K'ómoks Lands;
 - b. K'ómoks Law applies to the parcel of land except to the extent that the K'ómoks Law is inconsistent with the use of land for which the expropriation took place; and
 - c. K'ómoks may continue to use and occupy the parcel of land, except to the extent that such use or occupation interferes with the use of land for which the expropriation took place.

14. Paragraphs 17 to 24 do not apply to an expropriation by a Provincial Expropriating Authority of less than a fee simple interest in a parcel of K'ómoks Lands.

EXPROPRIATION OF A FEE SIMPLE INTEREST

15. British Columbia and K'ómoks agree that as a general principle where a Provincial Expropriating Authority's objectives may be reasonably met by expropriating a lesser interest, the Provincial Expropriating Authority will not expropriate a fee simple interest in K'ómoks Lands.
16. Where an expropriation is justifiable under paragraph 6 and a fee simple interest in K'ómoks Lands is expropriated by a Provincial Expropriating Authority:
 - a. the expropriation will not include the fee simple estate to Subsurface Resources unless British Columbia and K'ómoks agree otherwise; and
 - b. those lands will no longer be K'ómoks Lands and Appendix B will be amended in accordance with paragraph 9 of the Amendment Chapter.

PROVINCIAL CROWN LAND AS REPLACEMENT LAND

17. If British Columbia expropriates a fee simple interest in K'ómoks Lands held by K'ómoks, British Columbia will make reasonable efforts to identify and offer provincial Crown land of comparable value within the K'ómoks Area to K'ómoks as compensation.
18. If there is no agreement between British Columbia and K'ómoks on the provision of land as compensation under paragraph 17 British Columbia will provide K'ómoks with other compensation according to Provincial Law.
19. If the replacement land provided under paragraph 17 is of less than comparable value, British Columbia will provide additional compensation in accordance with paragraph 10.
20. If K'ómoks accepts provincial Crown land as replacement land:
 - a. British Columbia will transfer the fee simple interest in the replacement lands to K'ómoks; and
 - b. unless otherwise agreed by British Columbia and K'ómoks, the replacement land will include the Subsurface Resources provided that the Subsurface Resources are owned by British Columbia.
21. At the request of K'ómoks, British Columbia will consent to the replacement land being added to K'ómoks Lands, and upon receipt by K'ómoks of the consent of each of Canada and British Columbia, Appendix B will be amended in accordance with paragraph 9 of the Amendment Chapter.
22. Canada will consent to the addition of replacement land, provided under paragraph 21, to K'ómoks Lands subject to the factors set out in paragraphs 58 to 60 of the Lands Chapter being met.

23. Replacement land transferred to K'ómoks in accordance with paragraph 20 continues to be subject to:
- a. any interest existing immediately before the transfer to K'ómoks, unless otherwise agreed by K'ómoks and British Columbia; and
 - b. the administration of any Subsurface Resources and Subsurface Resource tenures continue to be administered by British Columbia in accordance with paragraphs 36 to 38 of the Lands Chapter.

RETURN OF AN EXPROPRIATED INTEREST

24. If an expropriated interest in K'ómoks Lands is no longer required by the Provincial Expropriating Authority:
- a. the interest will be returned, at the request of K'ómoks, to K'ómoks subject to terms to be negotiated at the time of the return of the expropriated interest; and
 - b. upon K'ómoks becoming the owner of the land and at the request of K'ómoks, the parcel of land will be added to K'ómoks Lands and the Parties will amend Appendix B in accordance with paragraph 9 of the Amendment Chapter to reflect the addition and the parcel of land will become K'ómoks Lands when the amendment takes effect.

TOTAL AMOUNT OF LAND SUBJECT TO EXPROPRIATION

25. The total amount of K'ómoks Lands that may be expropriated in fee simple by Provincial Expropriating Authorities will not exceed a cumulative total of 60 hectares of K'ómoks Lands as of the Effective Date.
26. If replacement land is provided under paragraph 20, or a fee simple interest is returned to K'ómoks in accordance with paragraph 24, and such land is added to K'ómoks Lands, the amount of K'ómoks Lands that may be expropriated under paragraph 25 will be increased by the amount of land replaced or returned to K'ómoks.

Appendix F

Part 2: Federal Expropriation Procedures

1. An interest in K'ómoks Lands may be expropriated by a Federal Expropriating Authority in accordance with Federal Law, the Final Agreement, and with the consent of the Governor-in-Council.
2. For greater certainty, except to the extent that the provisions of the Lands Chapter and this Appendix modify the application of Federal Law relating to an expropriation of K'ómoks Lands, all Federal Law relating to expropriation will apply to an expropriation of K'ómoks Lands under the Lands Chapter and this Appendix.
3. The Governor-in-Council may consent to an expropriation of an interest in K'ómoks Lands only if the expropriation is justifiable under paragraph 5, and necessary for a public purpose.
4. For greater certainty, where federal legislation deems an expropriation to be for a public purpose, the expropriation will be deemed to be necessary for a public purpose under the Final Agreement.
5. For the purposes of paragraph 3, an expropriation is justifiable where the Governor-in-Council is satisfied that the following requirements have been met:
 - a. there is no other reasonably feasible alternative land to acquire that is not K'ómoks Lands;
 - b. reasonable efforts have been made by the Federal Expropriating Authority to acquire the interest in K'ómoks Lands through agreement with K'ómoks;
 - c. the most limited interest in K'ómoks Lands necessary is expropriated for the shortest time possible; and
 - d. information relevant to the expropriation, other than documents that would be protected from disclosure under Federal Law, has been provided to K'ómoks.
6. Before the Governor-in-Council issues an order consenting to the expropriation of an interest in K'ómoks Lands, the Federal Expropriating Authority will provide to K'ómoks and the Governor-in-Council, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements under paragraph 5.
7. If K'ómoks objects to a proposed expropriation of an interest in K'ómoks Lands, it may, within 60 days after the report has been provided to K'ómoks under paragraph 6, by providing notice in writing to the Federal Expropriating Authority, refer the matter directly to neutral evaluation under Stage Two of the Dispute Resolution Chapter for a review of the steps taken to satisfy the requirement set out in paragraph 5.
8. The Federal Expropriating Authority will not seek Governor-in-Council consent to the expropriation of an interest in K'ómoks Lands:
 - a. before the expiration of the period referred to in paragraph 7;

- b. if K'ómoks has referred the matter to a neutral evaluator in accordance with paragraph 7, before the neutral evaluator has delivered to K'ómoks and the Federal Expropriating Authority an opinion on the matter, such opinion to be rendered within 60 days of the referral being made; or
 - c. within such additional time as K'ómoks and the Federal Expropriating Authority may agree.
9. Without limiting the generality of the Dispute Resolution Chapter, the opinion of the neutral evaluator under paragraph 8b:
- a. is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and K'ómoks in court or in any other forum;
 - b. will not be admissible in any legal proceedings, unless otherwise required by law; and
 - c. is not binding on the Governor in Council under paragraphs 3 and 5.
10. If a fee simple interest in a parcel of K'ómoks Lands is expropriated by a Federal Expropriating Authority, the Federal Expropriating Authority will make reasonable efforts:
- a. to identify replacement land within the K'ómoks Area, being either federal Crown land or land available on a "willing-seller, willing-buyer" basis, of equivalent or greater size and comparable value; and,
 - b. if acceptable to K'ómoks, to acquire and offer the replacement land to K'ómoks as partial or full compensation for the expropriation.
11. If the Federal Expropriating Authority and K'ómoks are unable to agree on the provision of replacement land as compensation, the Federal Expropriating Authority will provide K'ómoks with other compensation in accordance with the Final Agreement.
12. Subject to paragraph 32, if the replacement land identified by the Federal Expropriating Authority would result in the total size of K'ómoks Lands being less than at the Effective Date, and K'ómoks does not agree that the replacement land is of comparable value to the interest in K'ómoks Lands being expropriated, K'ómoks may refer the matter to be finally determined by arbitration under the Dispute Resolution Chapter.
13. The total value of compensation for an interest in K'ómoks Lands expropriated by a Federal Expropriating Authority under this Appendix will be determined by taking into account the following factors:
- a. the market value of the expropriated interest;
 - b. the replacement value of any improvement to the K'ómoks Lands in which the interest has been expropriated;
 - c. any expenses or losses resulting from the disturbance directly attributable to the expropriation;

- d. any reduction in the value of any interest in K'ómoks Lands that is not expropriated which directly relates to the expropriation;
 - e. any adverse effect on any cultural or other special value to K'ómoks of K'ómoks Lands in which an interest has been expropriated, provided that:
 - i. the cultural or other special value is only applied to an interest in K'ómoks Lands recognized in law and held by K'ómoks; and
 - ii. there is no increase in the total value of compensation on account of any Aboriginal rights, title or interest; and
 - f. the value of any special economic advantage arising out of or incidental to the occupation or use of K'ómoks Lands by the K'ómoks to the extent that the value is not otherwise compensated.
14. Subject to paragraph 32, if the Federal Expropriating Authority and K'ómoks cannot agree on the total value of compensation or on whether the combination of replacement land and other compensation is equal to the total value of compensation, either Canada acting on behalf of the Federal Expropriating Authority or K'ómoks may refer the matter for resolution in accordance with the Dispute Resolution Chapter.
 15. Any claim or encumbrance with respect to the interest expropriated by a Federal Expropriation Authority may only be discharged against the amount of compensation payable under paragraph 13.
 16. Interest on compensation is payable from the date the expropriation takes effect, at the interest rate payable under Federal Law.
 17. If a Federal Expropriating Authority expropriates a fee simple interest in K'ómoks Lands, that land will no longer be K'ómoks Lands, Appendix B will be amended in accordance with the process set out in paragraph 9 of the Amendment Chapter and the parcel of land will cease to be K'ómoks Lands when the amendment takes effect.
 18. If a Federal Expropriating Authority expropriates less than a fee simple interest in a parcel of K'ómoks Lands:
 - a. the parcel of land retains its status as K'ómoks Lands;
 - b. the parcel of land remains subject to K'ómoks Law, except to the extent that K'ómoks Law interferes with the use of the parcel of land for which the expropriation took place; and
 - c. K'ómoks may continue to use and occupy the parcel of land, except to the extent the use or occupation is inconsistent with the expropriation in the view of the Federal Expropriating Authority.
 19. K'ómoks may request that Canada and British Columbia consent to a parcel of replacement land transferred to K'ómoks under paragraph 10 being added to K'ómoks Lands.
 20. Canada and British Columbia will consent to the land referred to in paragraph 19 being added to K'ómoks Lands if:

- a. the replacement land is located within the K'ómoks Area;
 - b. the addition of replacement lands to K'ómoks Lands will not obligate Canada or British Columbia to assume financial or other obligations associated with the replacement land; and
 - c. the replacement land is outside municipal boundaries, or is within municipal boundaries and the municipality consents.
21. In addition to the requirements under paragraph 20, Canada may require that any replacement land will be in an area that is not in an area where another First Nation has a claim of legal interest, an area subject to treaty negotiations or an area subject to a treaty or land claims agreement, unless consent is obtained from the First Nation that has made the claim of legal interest or is party to the treaty negotiation or treaty or land claims agreement.
22. Replacement land that is added to K'ómoks Lands under paragraph 19 will include ownership of the Subsurface Resources if:
- a. the fee simple interest in K'ómoks Lands that was expropriated by the Federal Expropriating Authority included the Subsurface Resources; and
 - b. the Federal Expropriating Authority owns the Subsurface Resources in the replacement land immediately before the transfer of the land to K'ómoks.
23. Where Canada and British Columbia consent under paragraph 20, each of them will provide notice of its consent to the other Parties. Upon receipt by K'ómoks of the notices, Appendix B will be amended in accordance with the process set out in paragraph 9 of the Amendment Chapter and the parcel of land will become K'ómoks Lands when the amendment takes effect.
24. The terms and conditions of the return of an expropriated interest in K'ómoks Lands, including:
- a. requirements relating to financial considerations based on market value principles;
 - b. the condition of the land to be returned;
 - c. the disposition of any improvements; and
 - d. the process for resolving disputes around the implementation of these terms and conditions,

will be negotiated by K'ómoks and the Federal Expropriating Authority at the time of the expropriation.

25. If the terms and conditions of the return of an expropriated interest in K'ómoks Lands cannot be agreed upon by K'ómoks and the Federal Expropriating Authority at the time of the expropriation, the matter will be finally determined by arbitration in accordance with the Dispute Resolution Chapter. For the purposes of this paragraph, Canada will act on behalf of the Federal Expropriating Authority.

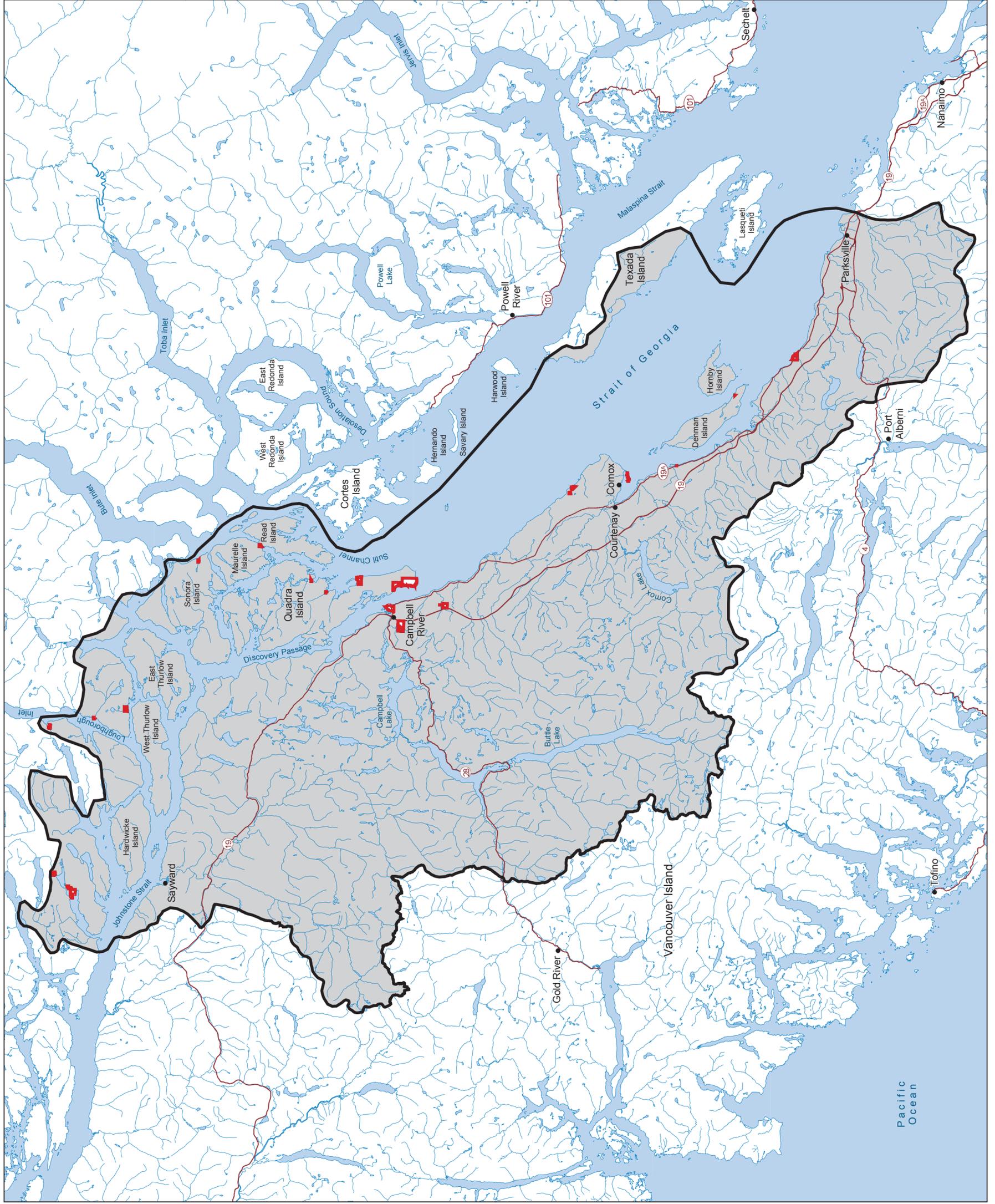
26. If an expropriated interest in a parcel of K'ómoks Lands is no longer required by the Federal Expropriating Authority for the purpose for which it was expropriated, the federal department, agency or person for whom the land was expropriated, or its successors and assigns will ensure that the interest in land is returned to K'ómoks on the terms and conditions of reversion negotiated in accordance with paragraph 24.
27. The return of an interest in K'ómoks Lands under paragraph 26 will not result in Canada or British Columbia assuming financial or other obligations, unless agreed to in writing at the time of the expropriation.
28. Where K'ómoks becomes the registered owner of the fee simple interest in a parcel of land that is returned to K'ómoks under paragraph 26, K'ómoks may add that parcel to K'ómoks Lands upon notice to Canada and British Columbia
29. Upon receipt by Canada and British Columbia of a notice under paragraph 28, the parcel will become K'ómoks Lands and Appendix B will be amended in accordance with the process set out in paragraph 9 of the Amendment Chapter and the parcel of land will become K'ómoks Lands when the amendment takes effect.
30. If a parcel of K'ómoks Lands is no longer K'ómoks Lands under paragraph 17, or where replacement lands are added to K'ómoks Lands under paragraph 20, or where land is returned to K'ómoks under paragraph 26, Appendix B will be amended in accordance with the process set out in paragraph 9 of the Amendment Chapter
31. The federal department or agency or other entity that holds the expropriated interest may decide, without the consent of the Governor-in-Council, that the expropriated interest in land is no longer required and may determine the disposition of any improvements made to the land in a manner consistent with an agreement reached under paragraph 24 or the outcome of arbitration under paragraph 25 .
32. A dispute in relation to:
 - a. the valuation of replacement land under paragraph 11;
 - b. the total value of compensation under paragraph 13; or
 - c. the terms and conditions of the return of land under paragraph 24,will not delay the expropriation.
33. Except as otherwise provided in paragraphs 7, 12, 14 and 25 of this Appendix, no dispute between the Parties respecting the interpretation, application or implementation of paragraphs 77 to 79 of the Lands Chapter or this Appendix will go to dispute resolution under the Dispute Resolution Chapter.
34. Nothing in the Final Agreement will affect or limit the application of the *Emergencies Act* and the *Emergencies Act* will continue to apply in all aspects on K'ómoks Lands.

35. Where the fee simple interest in a parcel of K'ómoks Lands is held by a K'ómoks Member, a K'ómoks Corporation or a K'ómoks Public Institution, any interest in that parcel may be expropriated by a Federal Expropriating Authority in accordance with:

- a. Federal Law;
- b. the consent of the Governor-in-Council; and
- c. paragraphs 3 through 9, 17, 18, 24 through 29, 31 and 32.c of this Appendix,

and for greater certainty, any return of land under paragraphs 26 through 29, and 31 of this Appendix will be to K'ómoks.

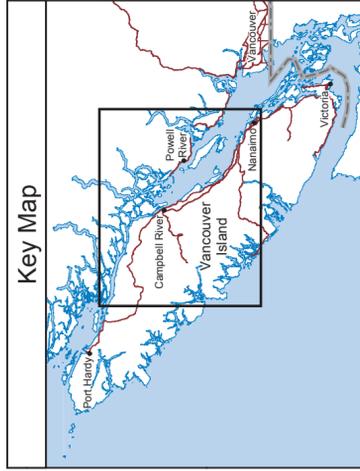
Appendix G
Map of K'ómoks Harvest Area



K'ómoks Harvest Area

Legend

- K'ómoks Harvest Area
- Exclusion to Harvest Area (Indian Reserves and DND Land)
- Highway



Base map derived from 1:250,000 NTS data
 Land Districts: Alberni, Cameron, Clayquot, Comox, Dunsmuir, Nanaimo, Nanoose, Nelson, Newcastle, New Westminster, Nootka, Range 1 Coast, Rupert, Sayward, and Texada Island
 UTM Zone 10

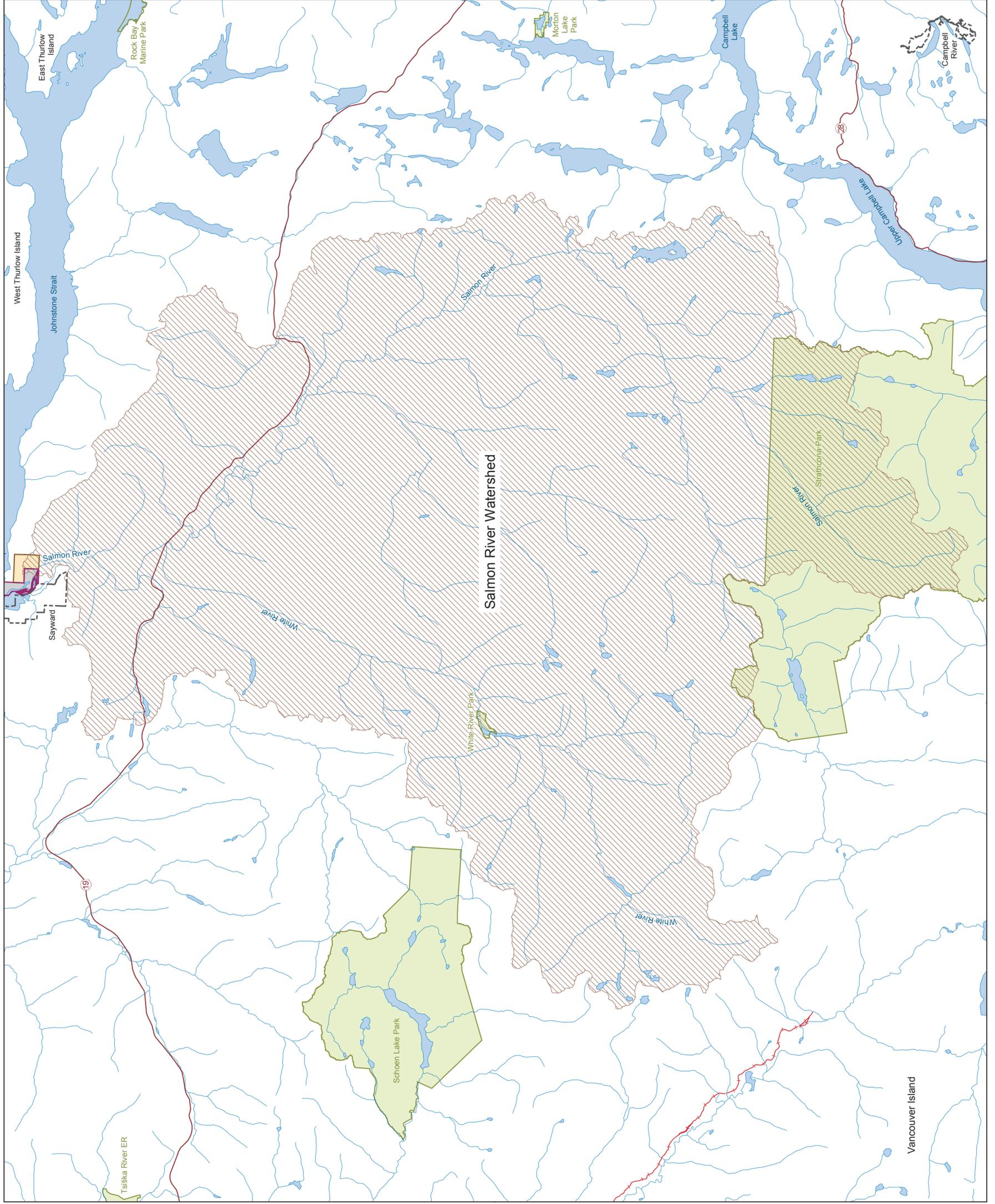
Appendix: G
 K'ómoks Harvest Area

Appendix H
K'ómoks Public Land

Land Parcel	Appendix Map Reference
Williams Beach Forest	B-3 Map 3
Wood Mountain	B-3 Map 6
Sandy Island	B-3 Map 7
District Lot 7 "A"	B-3 Map 9

Appendix I
Maps of Watersheds in the K'ómoks Area

Note: the Parties will update the Appendices before the Effective Date.

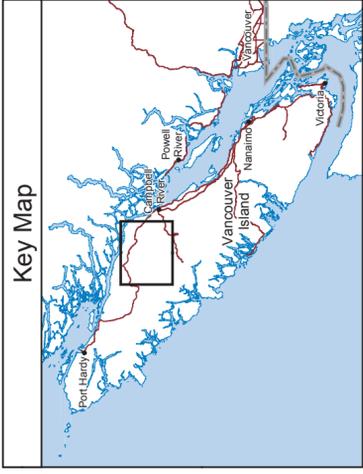


K'ómoks Area Watersheds

Legend

-  Watershed
-  Former Provincial Crown Land
-  Former Provincial Crown Land with Protected Status
-  Former K'ómoks Reserve
-  Provincial Protected Area
-  Municipality
-  Highway
-  Railway

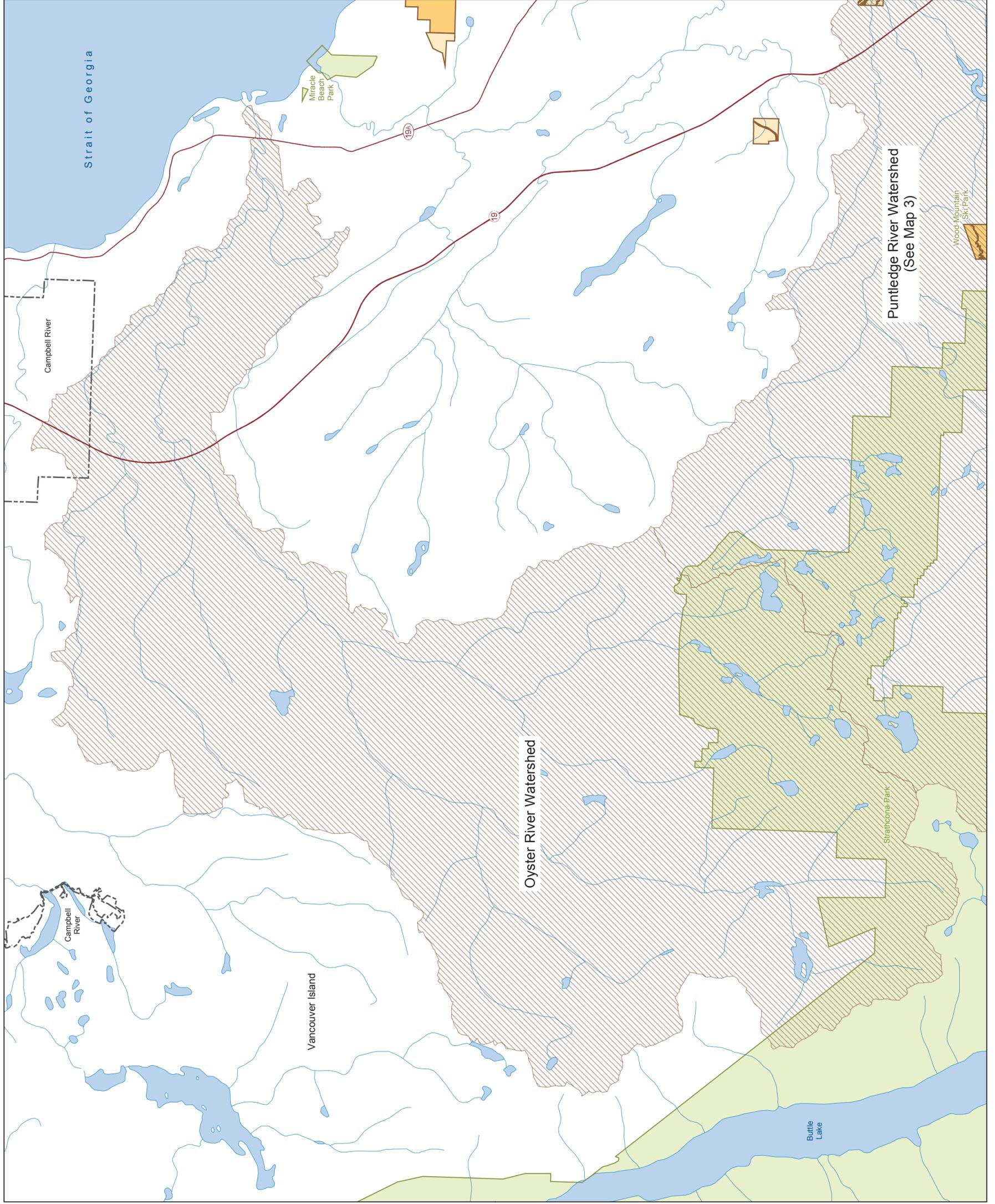
THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



Base map derived from 1:250,000 NTS data
 Land Districts: Comox, Nootka, Rupert,
 and Sayward
 UTM Zone 10

Appendix: I
 Watersheds
 Map 1
 Salmon River Watershed

Note: the Parties will update the Appendices before the Effective Date.

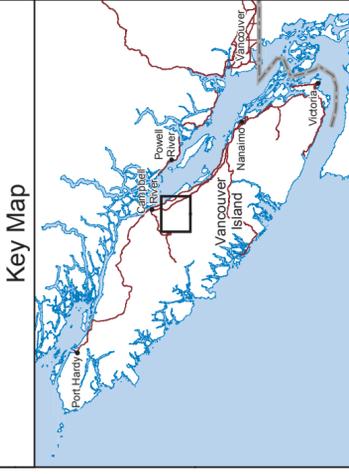


K'ómoks Area Watersheds

Legend

- Watershed
- Former Provincial Crown Land
- Former Provincial Crown Land with Protected Status
- Former K'ómoks Reserve
- Provincial Protected Area
- Municipality
- Highway
- Railway

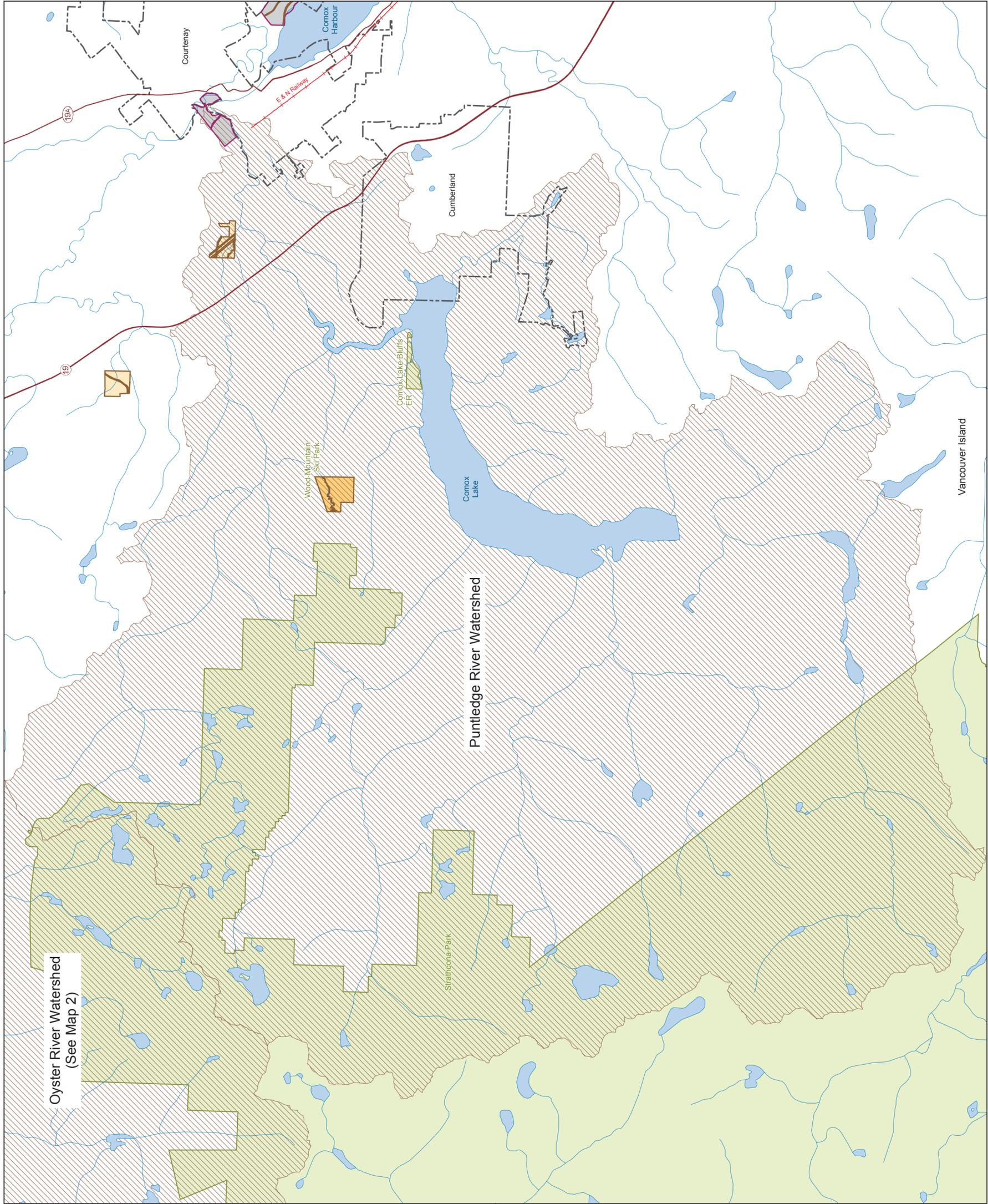
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Base map derived from 1:250,000 NTS data
Land Districts: Comox and Nootka
UTM Zone 10

Appendix: I
Watersheds
Map 2
Oyster River Watershed

Note: the Parties will update the Appendices before the Effective Date.

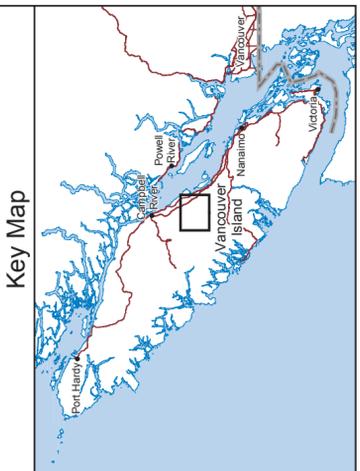


K'ómoks Area Watersheds

Legend

-  Watershed
-  Former Provincial Crown Land
-  Former Provincial Crown Land with Protected Status
-  Former K'ómoks Reserve
-  Provincial Protected Area
-  Municipality
-  Highway
-  Railway

THIS MAP IS NOT TO BE USED FOR DEFINING K'ÓMOKS LAND BOUNDARIES OR FOR THEIR LEGAL DESCRIPTIONS. DEPICTIONS OF K'ÓMOKS LAND ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



Base map derived from 1:250,000 NTS data
 Land Districts: Clayoquot, Comox, Nelson,
 Newcastle, and Nootka
 UTM Zone 10

Appendix: I
 Watersheds
 Map 3
 Puntledge River Watershed

Oyster River Watershed
 (See Map 2)

Appendix J
Map of Courtenay River Estuary

This information will be added prior to the Final Agreement.

Appendix K
K'ómoks Hydro Power Reservations

This information will be added prior to the Final Agreement.

Appendix L
Geographic Features to be Renamed with K'ómoks Names

K'ómoks Name	Former Name	BCGS Map
Jáji7em and Kw'ulh Marine Park	Sandy Island Marine Provincial Park	92F/066

Appendix M

Dispute Resolution Procedures

Appendix M-1	Collaborative Negotiations
Appendix M-2	Mediation
Appendix M-3	Technical Advisory Panel
Appendix M-4	Neutral Evaluation
Appendix M-5	Community Advisory Council
Appendix M-6	Arbitration

Appendix M-1: Collaborative Negotiations

DEFINITIONS

1. In this Appendix:
"Chapter" means the Dispute Resolution Chapter of the Final Agreement;
"party" means a participating Party to collaborative negotiations under this Appendix; and
"section" means a section in this Appendix.

GENERAL

2. Collaborative negotiations commence:
 - a. on the date of delivery of a written notice requiring the commencement of collaborative negotiations; or
 - b. in the case of negotiations in the circumstances described in subparagraph 7.c of the Chapter, on the date of the first negotiation meeting.

NOTICE

3. A notice under paragraph 15 of the Chapter requiring the commencement of collaborative negotiations will include the following:
 - a. the names of the parties directly engaged in the Disagreement;
 - b. a brief summary of the particulars of the Disagreement;
 - c. a description of the efforts made to date to resolve the Disagreement;
 - d. the names of the individuals involved in those efforts; and
 - e. any other information that will help the parties.

REPRESENTATION

4. A party may attend collaborative negotiations with or without legal counsel.
5. At the commencement of the first negotiation meeting, each party will advise the other parties of any limitations on the authority of its representatives.

NEGOTIATION PROCESS

6. The parties will convene their first negotiation meeting in collaborative negotiations, other than those described in subparagraph 7.c of the Chapter, within 21 days after the commencement of the collaborative negotiations.

7. Before the first scheduled negotiation meeting, the parties will discuss and attempt to reach agreement on any procedural issues that will facilitate the collaborative negotiations, including the requirements of paragraph 26 of the Chapter.
8. For purposes of subparagraph 26.a of the Chapter, "timely disclosure" means disclosure made within 15 days after a request for disclosure by a party.
9. The parties will make a serious attempt to resolve the Disagreement by:
 - a. identifying underlying interests;
 - b. isolating points of agreement and disagreement;
 - c. exploring alternative solutions;
 - d. considering compromises or accommodations; and
 - e. taking any other measures that will assist in resolution of the Disagreement.
10. No transcript or recording will be kept of collaborative negotiations, but this does not prevent a person from keeping notes of the negotiations.

CONFIDENTIALITY

11. In order to assist in the resolution of a Disagreement, collaborative negotiations will not be open to the public.
12. The parties, and all persons, will keep confidential:
 - a. all oral and written information disclosed in the collaborative negotiations; and
 - b. the fact that this information has been disclosed.
13. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the collaborative negotiations, any oral or written information disclosed in or arising from the collaborative negotiations, including:
 - a. any documents of other parties produced in the course of the collaborative negotiations that are not otherwise produced or producible in that proceeding;
 - b. any views expressed, or suggestions made, by any party in respect of a possible settlement of the Disagreement;
 - c. any admissions made by any party in the course of the collaborative negotiations, unless otherwise stipulated by the admitting party; and
 - d. the fact that any party has indicated a willingness to make or accept a proposal for settlement.
14. Sections 12 and 13 do not apply:

- a. in any proceeding for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of the collaborative negotiation;
- b. if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
- c. if the oral or written information referred to in these sections is in the public forum.

RIGHT TO WITHDRAW

15. A party may withdraw from collaborative negotiations at any time.

TERMINATION OF COLLABORATIVE NEGOTIATIONS

16. Collaborative negotiations are terminated when any of the following occurs:
- a. the expiration of:
 - i. 30 days; or
 - ii. in the case of collaborative negotiations in the circumstances described in subparagraph 7.c of the Chapter, 120 days after the first scheduled negotiation meeting, or any longer period agreed to by the parties in writing;
 - b. a party directly engaged in the Disagreement withdraws from the collaborative negotiations under section 15;
 - c. the parties agree in writing to terminate the collaborative negotiations; or
 - d. the parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

Appendix M-2: Mediation

DEFINITIONS

1. In this Appendix:

"Chapter" means the Dispute Resolution Chapter of the Final Agreement;

"party" means a participating Party to a mediation under this Appendix; and

"section" means a section in this Appendix.

GENERAL

2. A mediation commences on the date the Parties directly engaged in the Disagreement have agreed in writing to use mediation, or are deemed to have agreed to use mediation, under paragraph 24 of the Chapter.

APPOINTMENT OF MEDIATOR

3. A mediation will be conducted by one mediator jointly appointed by the parties.
4. A mediator will be:
 - a. an experienced and skilled mediator, preferably with unique qualities or specialized knowledge that would be of assistance in the circumstances of the Disagreement; and
 - b. independent and impartial.
5. If the parties fail to agree on a mediator within 15 days after commencement of a mediation, the appointment will be made by the neutral appointing authority on the written request of a party that is copied to the other parties.
6. Subject to any limitations agreed to by the parties, a mediator may employ reasonable and necessary administrative or other support services.

REQUIREMENT TO WITHDRAW

7. At any time a party may give the mediator and the other parties a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the party has justifiable doubts as to the mediator's independence or impartiality.
8. On receipt of a written notice under section 7, the mediator must immediately withdraw from the mediation.
9. A person who is a K'ómoks Member, or related to a K'ómoks Member, must not be required to withdraw under section 7 solely on the grounds of that membership or relationship.

END OF APPOINTMENT

10. A mediator's appointment terminates if:
 - a. the mediator is required to withdraw under section 8;
 - b. the mediator withdraws from office for any reason; or
 - c. the parties agree to the termination.
11. If a mediator's appointment terminates, a replacement mediator will be appointed using the procedure in sections 3 to 5 and the required time period commences from the date of termination of the appointment.

REPRESENTATION

12. A party may attend a mediation with or without legal counsel.
13. If a mediator is a lawyer, the mediator must not act as legal counsel for any party.
14. At the commencement of the first meeting of a mediation, each party will advise the mediator and the other parties of any limitations on the authority of its representatives.

CONDUCT OF MEDIATION

15. The parties will:
 - a. make a serious attempt to resolve the disagreement by:
 - i. identifying underlying interests;
 - ii. isolating points of agreement and disagreement;
 - iii. exploring alternative solutions; and
 - iv. considering compromises or accommodations; and
 - b. cooperate fully with the mediator and give prompt attention to, and respond to, all communications from the mediator.
16. A mediator may conduct a mediation in any manner the mediator considers necessary and appropriate to assist the parties to resolve the Disagreement in a fair, efficient, and cost-effective manner.
17. Within seven days of appointment of a mediator, each party will deliver a brief written summary to the mediator of the relevant facts, the issues in the Disagreement, and its viewpoint in respect of them and the mediator will deliver copies of the summaries to each party at the end of the seven day period.
18. A mediator may conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting the parties.

19. Disclosures made by any party to a mediator in private caucus must not be disclosed by the mediator to any other party without the consent of the disclosing party.
20. No transcript or recording will be kept of a mediation meeting but this does not prevent a person from keeping notes of the negotiations.

CONFIDENTIALITY

21. In order to assist in the resolution of a Disagreement, a mediation will not be open to the public.
22. The parties, and all persons, will keep confidential:
 - a. all oral and written information disclosed in the mediation; and
 - b. the fact that this information has been disclosed.
23. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the mediation, any oral or written information disclosed in or arising from the mediation, including:
 - a. any documents of other parties produced in the course of the mediation that are not otherwise produced or producible in that proceeding;
 - b. any views expressed, or suggestions, or proposals made in respect of a possible settlement of the disagreement;
 - c. any admissions made by any party in the course of the mediation, unless otherwise stipulated by the admitting party;
 - d. any recommendations for settlement made by the mediator; and
 - e. the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement.
24. Sections 22 and 23 do not apply:
 - a. in any proceeding for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of a mediation;
 - b. if the adjudicator in any proceeding determines that the interests of public or the administration of justice outweigh the need for confidentiality; or
 - c. if the oral or written information referred to in those sections is in the public forum.
25. A mediator, or anyone retained or employed by the mediator, is not compellable in any proceeding to give evidence about any oral and written information acquired or opinion formed by that person as a result of the mediation, and all parties will oppose any effort to have that person or that information subpoenaed.

26. A mediator, or anyone retained or employed by the mediator, is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a party to the mediation.

REFERRAL OF ISSUES TO OTHER PROCESSES

27. During a mediation the parties may agree to refer particular issues in the Disagreement to independent fact-finders, expert panels or other processes for opinions or findings that may assist them in the resolution of the Disagreement, and in that event, the parties must specify:
- a. the terms of reference for the process;
 - b. the time within which the process must be concluded; and
 - c. how the costs of the process are to be allocated to the parties.
28. The time specified for concluding a mediation will be extended for 15 days following receipt of the findings or opinions rendered in a process described under section 27.

RIGHT TO WITHDRAW

29. A party may withdraw from a mediation at any time by giving written notice of its intent to the mediator.
30. Before a withdrawal is effective, the withdrawing party will:
- a. speak with the mediator;
 - b. disclose its reasons for withdrawing; and
 - c. give the mediator the opportunity to discuss the consequences of withdrawal.

TERMINATION OF MEDIATION

31. A mediation is terminated when any of the following occurs:
- a. subject to section 28, the expiration of 30 days after the appointment of the mediator, or any longer period agreed by the parties in writing;
 - b. the parties have agreed in writing to terminate the mediation or not to appoint a replacement mediator under section 11;
 - c. a party directly engaged in the Disagreement withdraws from the mediation under section 29; or
 - d. the parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

MEDIATOR RECOMMENDATION

32. If a mediation is terminated without the parties reaching agreement, the parties may agree to request the mediator to give a written non-binding recommendation for settlement, but the mediator may decline the request without reasons.
33. Within 15 days after delivery of a mediator's recommendation under section 32, the parties will meet with the mediator to attempt to resolve the Disagreement.

COSTS

34. A party withdrawing from a mediation under section 29 is not responsible for any costs of the mediation that are incurred after the date that party's withdrawal takes effect.

Appendix M-3: Technical Advisory Panel

DEFINITIONS

1. In this Appendix:
 - "Chapter" means the Dispute Resolution Chapter of the Final Agreement;
 - "member" means a member of the panel;
 - "panel" means a technical advisory panel appointed under this Appendix;
 - "party" means a participating Party to a reference under this Appendix;
 - "reference" means a reference of a Disagreement to the panel; and
 - "section" means a section in this Appendix.

GENERAL

2. A question of law may not be referred to a panel.
3. A reference commences on the date the Parties directly engaged in the Disagreement have agreed in writing to use a technical advisory panel under paragraph 24 of the Chapter.

APPOINTMENT OF PANEL MEMBERS

4. A panel will have three members unless the parties agree on a panel of five members.
5. A member will be skilled and knowledgeable in the technical or scientific subject matter or issues of the Disagreement.
6. If there are two parties and the panel will have:
 - a. three members, each party will appoint one member and the two appointed members will jointly appoint the third member; or
 - b. five members, each party will appoint two members and the four appointed members will jointly appoint the fifth member.
7. If there are three parties and the panel will have:
 - a. three members, each party will appoint one member; or
 - b. five members, each party will appoint one member and the three appointed members will jointly appoint the fourth and fifth members.
8. In the appointment procedures under sections 6 and 7, if:

- a. a party fails to appoint the required number of members within 30 days after commencement of the reference; or
- b. the appointing members fail to appoint the required number of additional members within 15 days after the last appointing member was appointed,

the required appointments will be made by the neutral appointing authority on the written request of a party that is copied to the other parties.

END OF APPOINTMENT

9. The appointment of a member who is jointly appointed by the parties, by the appointing members, or by the neutral appointing authority, terminates if:
 - a. the member withdraws from office for any reason; or
 - b. the parties agree to the termination.
10. The appointment of a member appointed by one party, or by the neutral appointing authority in place of the party, terminates if:
 - a. the member withdraws from office for any reason; or
 - b. the appointing party terminates the appointment.
11. If the appointment of a member jointly appointed by the parties, by the appointing members, or by the neutral appointing authority in place of the parties or members, terminates, a replacement member will be appointed under section 6 or 7, as applicable, within the required time commencing from the termination of the former member's appointment.
12. Subject to section 13, if the appointment of a member appointed by one party or by the neutral appointing authority in place of the party terminates, a replacement member will be appointed under section 6 or 7, as applicable, within the required time commencing from the termination of the former member's appointment.
13. A party may elect not to replace a member it had appointed but the party may not withdraw from the reference except as permitted under sections 31 to 35.

TERMS OF REFERENCE

14. Not more than 15 days after the appointment of the last member of a panel, the parties must provide the panel with written terms of reference that set out at least the following:
 - a. the parties to the Disagreement;
 - b. the subject matter or issues of the Disagreement;
 - c. the kind of assistance that the parties request from the panel, including giving advice, making determinations, finding facts, conducting, evaluating and reporting on studies and making recommendations;

- d. the time period within which the parties request the assistance to be provided;
 - e. the time periods or stages of the reference at the conclusion of which the panel must provide the parties with written interim reports on the panel's progress on the referral and on expenditures under the budget described in section 16 as they relate to that progress;
 - f. the time within which the panel must provide the parties with the budget described in section 16; and
 - g. any limitations on the application of sections 36 to 42 to the reference.
15. The parties may discuss the proposed terms of reference with the panel before they are finally settled.
16. Within the time referred to in section 14.f, the panel will provide the parties with a budget for the costs of conducting the reference, including:
- a. fees to be paid to the members who have been jointly appointed by the parties, or by appointing members;
 - b. costs of required travel, food and accommodation of members who have been jointly appointed by the parties, or by appointing members;
 - c. costs of any required administrative assistance; and
 - d. costs of any studies.
17. The parties will consider the budget submitted by the panel and approve that budget with any amendments agreed by the parties before the panel undertakes any activities under the reference.
18. The parties are not responsible for any costs incurred by the panel that are in excess of those approved under section 17, and the panel is not authorized to incur any costs beyond that amount without obtaining prior written approval from all the parties.
19. The parties may amend the written terms of reference or the budget from time to time as they consider necessary, or on recommendation of the panel.

CONDUCT OF REFERENCE TO PANEL

20. The parties will:
- a. cooperate fully with the panel;
 - b. comply with any requests made by the panel as permitted or required under this Appendix; and
 - c. give prompt attention to and respond to all communications from the panel.
21. Subject to any limitations or requirements in the terms of reference given and the limits of the budget approved under sections 17 to 19, the panel may conduct its reference using any procedure it considers necessary or appropriate, including holding a hearing.

22. If a hearing is held, the hearing must be conducted as efficiently as possible and in the manner the panel specifies, after consultation with the parties.
23. If a hearing is held, the panel must give the parties reasonable written notice of the hearing date, which notice must, in any event, be not less than seven days.
24. No transcript or recording will be kept of a hearing, but this does not prevent a person attending the hearing from keeping notes of the hearing.
25. The legal rules of evidence do not apply to a hearing before the panel.
26. The panel will give the parties the interim and final written reports specified in its terms of reference within the required times.
27. A report of the panel is not binding on the parties.

PANEL BUSINESS

28. A panel will appoint one of its members to act as chair of the panel.
29. The chair of a panel is responsible for all communications between the panel, the parties and any other person to whom the panel wishes to communicate, but this does not preclude a member from communicating informally with a party.
30. A panel will make every reasonable effort to conduct its business, and fulfill its obligations under its terms of reference, by consensus, but:
 - a. if consensus is not possible, by actions approved by a majority of its members; or
 - b. if a majority is not possible, by actions approved by the chair of the panel.

RIGHT TO WITHDRAW

31. If one of two parties to a reference, or two of three parties to a reference, are not satisfied with the progress of the reference:
 - a. after receipt of an interim report; or
 - b. as a result of the panel's failure to submit an interim report within the required time,the dissatisfied party or parties, as the case may be, may give written notice to the panel and the other party that the party or parties are withdrawing from the reference and that the reference is terminated.
32. If one of three parties to a reference is not satisfied with the progress of the reference:
 - a. after receipt of an interim report; or
 - b. as a result of the panel's failure to submit an interim report within the required time,

the dissatisfied party may give written notice to the panel and the other parties that it is withdrawing from the reference.

33. Two parties who receive a notice under section 32 will advise the panel in writing that they have agreed:
 - a. to terminate the reference; or
 - b. to continue the reference.
34. If no party gives a notice under sections 31 or 32 within 10 days after:
 - a. receipt of an interim report; or
 - b. the time required to submit an interim report,

all parties will be deemed to be satisfied with the progress of the reference until submission of the next required interim report.

35. No party may withdraw from a reference except as permitted under sections 31 to 34.

CONFIDENTIALITY

36. The parties may, by agreement recorded in the terms of reference of the panel in section 14, limit the application of all or any part of sections 37 to 42 in a reference.
37. In order to assist in the resolution of the Disagreement, a reference will not be open to the public.
38. The parties, and all persons, will keep confidential:
 - a. all oral and written information disclosed in the reference; and
 - b. the fact that this information has been disclosed.
39. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the reference, any oral or written information disclosed in or arising from the reference, including:
 - a. any documents of other parties produced in the course of the reference that are not otherwise produced or producible in that proceeding;
 - b. any views expressed, or suggestions made, in respect of a possible settlement of the Disagreement;
 - c. any admissions made by any party in the course of the reference, unless otherwise stipulated by the admitting party;
 - d. the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement; and
 - e. any reports of the panel.

40. Sections 38 and 39 do not apply:
- a. in any proceeding for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of the reference;
 - b. if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
 - c. if the oral or written information referred to in those sections is in the public forum.
41. A member, or anyone retained or employed by the member, is not compellable in any proceeding to give evidence about any oral or written information acquired or opinion formed by that person as a result of the reference, and all parties will oppose any effort to have that person or that information subpoenaed.
42. A member, or anyone retained or employed by the member, is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a party to the reference.

ATTEMPT TO RESOLVE AFTER REPORT

43. Within 21 days after receipt of the final written report of a panel, the parties will meet and make an effort to resolve the Disagreement taking into account the report of the panel or any other considerations.
44. If the parties and the panel agree, the members of a panel may attend the meeting under section 43, and provide any necessary assistance to the parties.

TERMINATION OF REFERENCE TO PANEL

45. A reference is terminated when any of the following occurs:
- a. the reference has been terminated as permitted under section 31 or 33;
 - b. the expiration of 30 days after receipt of the final report of the panel, or any longer period agreed by the parties in writing; or
 - c. the parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

COSTS

46. A party is not responsible for sharing any costs of the reference that were incurred after the date that party notified the other parties, under section 32, of its withdrawal from the reference.

Appendix M-4: Neutral Evaluation

DEFINITION

1. In this Appendix:
"Chapter" means the Dispute Resolution Chapter of the Final Agreement;
"party" means a participating Party to a neutral evaluation under this Appendix; and
"section" means a section in this Appendix.

GENERAL

2. A neutral evaluation commences on the date that the Parties directly engaged in the Disagreement have agreed in writing to use neutral evaluation under paragraph 24 of the Chapter.

APPOINTMENT OF NEUTRAL EVALUATOR

3. A neutral evaluation will be conducted by one person jointly appointed by the parties.
4. A neutral evaluator will be:
 - a. experienced or skilled in the subject matter or issues of the Disagreement; and
 - b. independent and impartial.
5. If the parties fail to agree on a neutral evaluator within 21 days after commencement of a neutral evaluation, the appointment will be made by the neutral appointing authority on the written request of a party that is copied to the other parties.
6. Subject to any limitations agreed to by the parties, a neutral evaluator may employ reasonable and necessary administrative or other support services.

REQUIREMENT TO WITHDRAW

7. At any time a party may give a neutral evaluator and the other parties a written notice, with or without reasons, requiring the neutral evaluator to withdraw from the neutral evaluation on the grounds that the party has justifiable doubts as to the neutral evaluator's independence or impartiality.
8. On receipt of a written notice under section 7, the neutral evaluator must immediately withdraw from the neutral evaluation.
9. A person who is a K'ómoks Member, or related to a K'ómoks Member, must not be required to withdraw under section 7 solely on the grounds of that membership or relationship.

END OF APPOINTMENT

10. A neutral evaluator's appointment terminates if:

- a. the neutral evaluator is required to withdraw under section 8;
 - b. the neutral evaluator withdraws from office for any reason; or
 - c. the parties agree to the termination.
11. Unless the parties agree otherwise, if a neutral evaluator's appointment terminates, a replacement will be appointed under section 5 within the required time commencing from the date of the termination of the appointment.

COMMUNICATIONS

12. Except with respect to administrative details or a meeting under section 32, the parties will not communicate with the neutral evaluator:
- a. orally except in the presence of all parties; or
 - b. in writing without immediately sending a copy of that communication to all parties.
13. Section 12 also applies to any communication by a neutral evaluator to the parties.

CONDUCT OF NEUTRAL EVALUATION

14. The parties will:
- a. cooperate fully with the neutral evaluator;
 - b. comply with any requests made by the neutral evaluator as permitted or required under this Appendix; and
 - c. give prompt attention to and respond to all communications from the neutral evaluator.
15. A neutral evaluation will be conducted only on the basis of documents submitted by the parties under section 20 unless the parties agree to, or the neutral evaluator requires, additional submissions or other forms of evidence.
16. If a hearing is held, the hearing must be conducted as efficiently as possible and in the manner the neutral evaluator specifies, after consultation with the parties.
17. If a hearing is held, the neutral evaluator must give the parties reasonable written notice of the hearing date, which notice must, in any event, be not less than seven days.
18. No transcript or recording will be kept of a hearing, but this does not prevent a person attending the hearing from keeping notes of the hearing.
19. The legal rules of evidence do not apply to a neutral evaluation.
20. Within 15 days after the appointment of a neutral evaluator, each party must deliver to the other parties and to the neutral evaluator a written submission respecting the Disagreement, including

facts upon which the parties agree or disagree, and copies of any documents, affidavits and exhibits on which the party relies.

21. Within 21 days after the appointment of a neutral evaluator, a party may submit a reply to the submission of any other party and, in that event, will provide copies of the reply to the party and the neutral evaluator.
22. Where the matter referred to the neutral evaluator is an objection to a proposed expropriation of an interest in K'ómoks Lands under Section 7 of Appendix F, Part 2, the following time limits apply to the neutral evaluation process set out in this Appendix, unless the Parties agree otherwise in writing:
 - a. under section 20, written submissions must be delivered within 28 days after the commencement of a neutral evaluation;
 - b. under section 21, replies must be delivered within 35 days after the commencement of a neutral evaluation;
 - c. under section 16, if a hearing is held it must be held within 45 days after the commencement of a neutral evaluation; and
 - d. under section 30, the neutral evaluator will deliver a written opinion within 60 days after the commencement of a neutral evaluation.

CONFIDENTIALITY

23. In order to assist in the resolution of the Disagreement, a neutral evaluation will not be open to the public.
24. The parties, and all persons, will keep confidential:
 - a. all oral and written information disclosed in the neutral evaluation; and
 - b. the fact that this information has been disclosed.
25. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the neutral evaluation, any oral or written information disclosed in or arising from the neutral evaluation, including:
 - a. any documents of other parties produced in the course of the neutral evaluation which are not otherwise produced or producible in that proceeding;
 - b. any views expressed, or suggestions made, in respect of a possible settlement of the Disagreement;
 - c. any admissions made by any party in the course of the neutral evaluation, unless otherwise stipulated by the admitting party;
 - d. the fact that any party has indicated a willingness to make or accept a proposal for settlement; and

- e. subject to section 29, the opinion of the neutral evaluator.
26. Sections 24 and 25 do not apply:
- a. in any proceedings for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of a neutral evaluation;
 - b. if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
 - c. if the oral or written information is in the public forum.
27. A neutral evaluator, or anyone retained or employed by the neutral evaluator, is not compellable in any proceedings to give evidence about any oral and written information acquired or opinion formed by that person as a result of a neutral evaluation under this Appendix, and all parties will oppose any effort to have that person or that information subpoenaed.
28. A neutral evaluator and anyone retained or employed by the neutral evaluator is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a party to the neutral evaluation.
29. Despite sections 24 to 27, after an arbitral tribunal has delivered its final arbitral award, or a court has referred its decision, in respect of a Disagreement, a party, for the purpose only of making a submission on the allocation of costs of that arbitral or judicial proceeding, may give to the arbitral tribunal or the court a copy of:
- a. the neutral evaluator's opinion respecting that agreement; or
 - b. the neutral evaluator's notice of termination under section 7.

NON-BINDING OPINION

30. Within 21 days after the later of:
- a. delivery of the last submission required or permitted in a neutral evaluation under this Appendix; or
 - b. completion of a hearing,

the neutral evaluator will deliver to the parties a written opinion with reasons in respect of the probable disposition of the Disagreement should it be submitted to arbitral or judicial proceedings, as the case may be, under the Chapter.

31. An opinion under section 30 is not binding on the parties.

ATTEMPT TO RESOLVE AFTER OPINION

32. Within 21 days after delivery of an opinion under section 30, the parties will meet and make an effort to resolve the Disagreement, taking into account the opinion of the neutral evaluator or any other considerations.

33. If the parties and the neutral evaluator agree, the neutral evaluator may attend a meeting under section 32, and provide any necessary assistance to the parties.

FAILURE TO COMPLY

34. If a party fails to participate in the neutral evaluation as contemplated in sections 14 to 22, the neutral evaluator may:
- a. provide an opinion based solely upon the information and submissions they have obtained; or
 - b. give a written notice of termination of the neutral evaluation,
- and, in either event, the neutral evaluator must record that party's failure.

TERMINATION OF NEUTRAL EVALUATION

35. A neutral evaluation is terminated when any of the following occurs:
- a. the neutral evaluator gives a notice of termination under section 34.b;
 - b. the expiration of 30 days after receipt of an opinion under section 30 or 34, as the case may be, or any longer period agreed by the parties;
 - c. all the parties directly engaged in the Disagreement agree in writing to terminate the neutral evaluation; or
 - d. all the parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

COSTS

36. A party that has failed to participate in a neutral evaluation as contemplated in sections 14 to 22 is responsible for its share of the costs of the neutral evaluation, despite its failure to participate.

Appendix M-5: Community Advisory Council

DEFINITIONS

1. In this Appendix:
 - "Chapter" means the Dispute Resolution Chapter of the Final Agreement;
 - "council" means the community advisory council appointed under this Appendix;
 - "community advisor" means a member of the council;
 - "party" means a participating Party to the reference under this Appendix;
 - "reference" means a reference of a Disagreement to the council; and
 - "section" means a section in this Appendix.

GENERAL

2. A reference commences on the date the Parties directly engaged in the Disagreement have agreed in writing to use a community advisory council under paragraph 24 of the Chapter.

APPOINTMENT OF COMMUNITY ADVISORY COUNCIL

3. Within 30 days after a reference has commenced, each party will appoint at least one, but not more than three, community advisors to the council.
4. Preferably, the community advisors will be individuals who:
 - a. are recognized in their respective communities as wise, tolerant, personable and articulate, and who:
 - i. are often sought out for counsel or advice; or
 - ii. have a record of distinguished public service; and
 - b. are available to devote the time and energy as required to provide the assistance described in this Appendix.

END OF APPOINTMENT

5. Unless an community advisor:
 - a. has requested to be relieved of their appointment due to a conflict of interest or otherwise; or
 - b. is not able to fulfill their duties, due to incapacity or otherwise,

the community advisor's appointment to the council may not be terminated until termination of the reference in which the community advisor is involved.

6. If a community advisor's appointment is terminated in the circumstances described in section 5.a or 5.b and that community advisor was the only community advisor of the council appointed by a party to the reference, that party must replace the community advisor within seven days.
7. If a community advisor's appointment is terminated in the circumstances described in section 5.a or 5.b and that community advisor was not the only community advisor of the council appointed by a party to the reference, that party may replace the community advisor but the replacement must be made within seven days.

CONDUCT OF REFERENCE

8. In a reference, the parties will cooperate fully with the council, and give prompt attention to, and respond to, all communications from the council.
9. Notwithstanding section 8, a party is not required to disclose to the council or provide it with any information that the party would not be required to disclose in any arbitral or judicial proceedings in respect of the Disagreement.
10. The council is expected to conduct itself informally in order that the parties may take full advantage of the council's good offices to resolve the Disagreement.
11. The council may establish its own process to suit the particular circumstances of a reference including meeting with the parties together or separately, conducting informal interviews or inquiries and facilitating settlement negotiations.
12. The council will give the parties its final advice or recommendations on a Disagreement referred to it within 120 days after the commencement of the reference.
13. The council may, at its option, provide its advice to the parties:
 - a. orally on the same occasion; or
 - b. in writing.
14. The council may, by unanimous decision, extend the time for giving advice or recommendations under section 12, on one occasion only, to a maximum of 60 additional days.
15. The advice or recommendations of the council are not binding on the parties.
16. Subject to any limitations agreed to by the parties, the council may employ reasonable and necessary administrative or other support services.

RIGHT TO WITHDRAW

17. A party may not withdraw from a reference until its conclusion unless all the parties agree in writing.

CONFIDENTIALITY

18. In order to assist in the resolution of the Disagreement, a reference will not be open to the public.
19. The parties, and all persons, will keep confidential:
 - a. all oral and written information disclosed in the reference; and
 - b. the fact that this information has been disclosed.
20. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the reference, any oral or written information disclosed in or arising from the reference, including:
 - a. any documents of other parties produced in the course of the reference that are not otherwise produced or producible in that proceeding;
 - b. any views expressed, or suggestions made, in respect of a possible settlement of the Disagreement;
 - c. any admissions made by any party in the course of the reference, unless otherwise stipulated by the admitting party;
 - d. any advice or recommendations made by a community advisor or the council; and
 - e. the fact that any party has indicated a willingness to make or accept any advice or recommendation for settlement.
21. Sections 19 and 20 do not apply:
 - a. in any proceedings for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of the reference;
 - b. if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
 - c. if the oral or written information referred to in those sections is in the public forum.
22. A community advisor, or anyone retained or employed by the council, is not compellable in any proceeding to give evidence about any oral and written information acquired or opinion formed by that person as a result of the reference and all parties will oppose any effort to have that person or that information subpoenaed.
23. A community advisor, or anyone retained or employed by the council, is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a party to the reference.

DECISION-MAKING

24. The council must make its best efforts to reach consensus among the community advisors before taking any action or giving any advice under the reference.

25. The council may not take any action under section 12 unless at least one community advisor appointed by each party expressly agrees with the action taken.

TERMINATION OF REFERENCE

26. A reference is terminated when any of the following occurs:
- a. the council gives the parties its advice under section 12;
 - b. the expiration of the applicable time period in section 12 or 14; or
 - c. the parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

Appendix M-6: Arbitration

DEFINITIONS

1. In this Appendix:

"applicant" means:

- i) in an arbitration commenced under paragraph 28 of the Chapter, the party that delivered the notice of arbitration; and
- ii) in an arbitration commenced under paragraph 29 of the Chapter, the party that the parties have agreed will be the applicant in the agreement to arbitrate;

"arbitral award" means any decision of the arbitral tribunal on the substance of the disagreement submitted to it, and includes:

- i) an interim arbitral award, including an interim award made for the preservation of property; and
- ii) an award of interest or costs;

"arbitral tribunal" means a single arbitrator or a panel of arbitrators appointed under this Appendix;

"arbitration agreement" includes:

- i) the requirement to refer to arbitration disagreements described in paragraph 28 of the Chapter; and
- ii) an agreement to arbitrate a Disagreement as described in paragraph 29 of the Chapter;

"Chapter" means the Dispute Resolution Chapter of the Final Agreement;

"party" means a participating Party to arbitration under this Appendix;

"respondent" means a party other than the applicant;

"section" means a section of this Appendix; and

"Supreme Court" means the Supreme Court of British Columbia.

GENERAL

- 2. A reference in this Appendix, other than in section 87 or 117.a, to a claim, applies to a counterclaim, and a reference in this Appendix to a defence, applies to a defence to a counterclaim.
- 3. Despite paragraph 4 of the Chapter, the parties may not vary section 53 or 97.

COMMUNICATIONS

4. Except in respect of administrative details, the parties will not communicate with the arbitral tribunal:
 - a. orally, except in the presence of all other parties; or
 - b. in writing, without immediately sending a copy of that communication to all other parties.
5. Section 4 also applies to any communication by the arbitral tribunal to the parties.

WAIVER OF RIGHT TO OBJECT

6. A party that knows that:
 - a. any provision of this Appendix; or
 - b. any requirement under the Agreement or arbitration agreement,has not been complied with, and yet proceeds with the arbitration without stating its objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, will be deemed to have waived its right to object.
7. In section 6.a "any provision of this Appendix" means any provision of this Appendix in respect of which the parties may otherwise agree.

EXTENT OF JUDICIAL INTERVENTION

8. In matters governed by this Appendix:
 - a. no court shall intervene except as provided in this Appendix; and
 - b. no arbitral proceedings of an arbitral tribunal, or an order, ruling or arbitral award made by an arbitral tribunal shall be questioned, reviewed or restrained by a proceeding under any legislation or other law that permits judicial review except to the extent provided in this Appendix.

CONSTRUCTION OF APPENDIX

9. In construing a provision of this Appendix, a court or arbitral tribunal may refer to the documents of the United Nations Commission on International Trade Law and its working group respecting the preparation of the UNCITRAL Model Arbitration Law and must give those documents the weight that is appropriate in the circumstances.

STAY OF LEGAL PROCEEDINGS

10. If a Party commences legal proceedings in a court against another Party in respect of a matter required or agreed to be submitted to arbitration, a Party to the legal proceedings may, before or after entering an appearance, and before delivery of any pleadings or taking any other step in the proceedings, apply to that court to stay the proceedings.

11. In an application under section 10, the court must make an order staying the legal proceedings unless it determines that:
 - a. the arbitration agreement is null and void, inoperative or incapable of being performed; or
 - b. the legal proceedings are permitted under the Chapter.
12. An arbitration may be commenced or continued, and an arbitral award made, even if an application has been brought under section 10, and the issue is pending before the court.

INTERIM MEASURES BY COURT

13. It is not incompatible with an arbitration agreement for a Party to request from a court, before or during arbitral proceedings, an interim measure of protection as provided in paragraph 14 of the Chapter, and for a court to grant that measure.

COMMENCEMENT OF ARBITRAL PROCEEDINGS

14. The arbitral proceedings in respect of a Disagreement:
 - a. required to be arbitrated as set out in paragraph 28 of the Chapter, commences on delivery of the notice of arbitration to the Parties; or
 - b. agreed to be arbitrated as set out in paragraph 29 of the Chapter, commences on the date of the arbitration agreement.

NOTICE OF ARBITRATION

15. A notice of arbitration under paragraph 28 of the Chapter must be in writing and contain the following information:
 - a. a statement of the subject matter or issues of the Disagreement;
 - b. a requirement that the Disagreement be referred to arbitration;
 - c. the remedy sought;
 - d. the suggested number of arbitrators; and
 - e. any preferred qualifications of the arbitrators.
16. A notice of arbitration under section 15 may contain the names of any proposed arbitrators, including the information specified in section 17.

ARBITRATORS

17. In an arbitration:
 - a. required to be arbitrated as set out in paragraph 28 of the Chapter, there will be three arbitrators; and

- b. agreed to be arbitrated as set out in paragraph 29 of the Chapter, there will be one arbitrator.
18. A person eligible for appointment as:
- a. a single arbitrator or as chair of an arbitral tribunal will be an experienced arbitrator or arbitration counsel or have had training in arbitral procedure; and
 - b. a single arbitrator or member of an arbitral panel:
 - i. will be independent and impartial; and
 - ii. preferably, will have knowledge of, or experience in, the subject matter or issues of the Disagreement.

APPOINTMENT OF ARBITRATORS

19. A party proposing the name of an arbitrator to another party under section 20 will also submit a copy of that person's resume and the statement that person is required to make under section 26.
20. In an arbitration with a single arbitrator, if the parties fail to agree on the arbitrator within 30 days after the commencement of the arbitration, the appointment will be made by the neutral appointing authority, on the written request of a party that is copied to the other parties.
21. In an arbitration with three arbitrators and two parties:
- a. each party will appoint one arbitrator, and the two appointed arbitrators will jointly appoint the third arbitrator; and
 - b. the three arbitrators will select a chair from among themselves.
22. In the appointment procedure under section 21, if:
- a. a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party;
 - b. the two appointed arbitrators fail to agree on the third arbitrator within 30 days after the last of them was appointed; or
 - c. the three arbitrators fail to select a chair within 15 days after the last of them was appointed,
- the applicable appointment will be made by the neutral appointing authority, on the written request of a party that is copied to the other parties.
23. In an arbitration with three arbitrators and three parties:
- a. the three parties will jointly appoint the three arbitrators; and
 - b. the three arbitrators will select a chair from among themselves.

24. In the appointment procedure under section 23, if:
- a. the three parties fail to agree on the three arbitrators within 60 days after the commencement of the arbitration; or
 - b. the three arbitrators fail to select a chair within 15 days after the last of them was appointed,
- the applicable appointments will be made by the neutral appointing authority, on the written request of a party copied to the other parties.
25. The neutral appointing authority, in appointing an arbitrator or chair, must have due regard to:
- a. any qualifications set out in section 18 or as otherwise agreed in writing by the parties; and
 - b. other considerations as are likely to secure the appointment of an independent and impartial arbitrator or chair.

GROUNDINGS FOR CHALLENGE

26. When a person is approached in connection with possible appointment as an arbitrator, that person must provide a written statement:
- a. disclosing any circumstances likely to give rise to justifiable doubts as to their independence or impartiality; or
 - b. advising that the person is not aware of any circumstances of that nature and committing to disclose them if they arise or become known at a later date.
27. An arbitrator, from the time of appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in section 26 unless the parties have already been informed of them.
28. An arbitrator may be challenged only if:
- a. circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality; or
 - b. the arbitrator does not possess the qualifications set out in this Appendix or as otherwise agreed in writing by the parties.
29. A party may only challenge an arbitrator appointed by that party, or in whose appointment that party has participated, for reasons of which that party becomes aware after the appointment has been made.
30. A person who is a K'ómoks Member, or related to a K'ómoks Member, may not be challenged under section 28 solely on the grounds of that membership or relationship.

CHALLENGE PROCEDURE

31. A party who intends to challenge an arbitrator will send to the arbitral tribunal a written statement of the reasons for the challenge within 15 days after becoming aware of the constitution of the arbitral tribunal, or after becoming aware of any circumstances referred to in section 28.
32. Unless the arbitrator challenged under section 31 withdraws from office, or the other parties agree to the challenge, the arbitral tribunal must decide on the challenge.
33. If a challenge under any procedure agreed upon by the parties or under the procedure under section 31 is not successful, the challenging party, within 30 days after having received notice of the decision rejecting the challenge, may request the neutral appointing authority to decide on the challenge.
34. The decision of the neutral appointing authority under section 33 is final and is not subject to appeal.
35. While a request under section 33 is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award unless:
 - a. the costs occasioned by proceeding before the decision of the neutral appointing authority is made would unduly prejudice the parties; or
 - b. the parties agree otherwise.

FAILURE OR IMPOSSIBILITY TO ACT

36. The mandate of an arbitrator terminates if the arbitrator becomes unable at law, or as a practical matter, to perform the arbitrator's functions, or for other reasons fails to act without undue delay.
37. If a controversy remains concerning any of the grounds referred to in section 36, a party may request the neutral appointing authority to decide on the termination of the mandate.

TERMINATION OF MANDATE AND SUBSTITUTION OF ARBITRATOR

38. In addition to the circumstances referred to under sections 31 to 33, and 36, the mandate of an arbitrator terminates:
 - a. if the arbitrator withdraws from office for any reason; or
 - b. by, or pursuant to, agreement of the parties.
39. If the mandate of an arbitrator terminates, a replacement arbitrator must be appointed under sections 19 to 25, as applicable.
40. If a single or chairing arbitrator is replaced, any hearings previously held must be repeated.
41. If an arbitrator other than a single or chairing arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

42. An order or ruling of the arbitral tribunal made before the replacement of an arbitrator under section 39 is not invalid solely because there has been a change in the composition of the tribunal.

COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

43. An arbitral tribunal may rule on its own jurisdiction.
44. A plea that an arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence; but a party is not precluded from raising that plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator.
45. A plea that an arbitral tribunal is exceeding the scope of its authority must be made as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
46. An arbitral tribunal may, in either of the cases referred to in section 44 or 45, admit a later plea if it considers the delay justified.
47. An arbitral tribunal may rule on a plea referred to in section 44 or 45 either as a preliminary question or in the arbitral award.
48. If an arbitral tribunal rules as a preliminary question that it has jurisdiction, any party, within 15 days after having received notice of that ruling, may request the Supreme Court to decide the matter.
49. A decision of the Supreme Court under section 48 is final and is not subject to appeal.
50. While a request under section 48 is pending, an arbitral tribunal may continue the arbitral proceedings and make an arbitral award unless:
- a. the costs occasioned by proceeding before the decision of the Supreme Court is made would unduly prejudice the parties; or
 - b. the parties agree otherwise.

INTERIM MEASURES ORDERED BY ARBITRAL TRIBUNAL

51. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the Disagreement.
52. The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under section 51.

EQUAL TREATMENT OF PARTIES

53. The parties must be treated with equality and each party must be given a full opportunity to present its case.

DETERMINATION OF RULES OF PROCEDURE

54. Subject to this Appendix, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
55. Failing any agreement under section 54, the arbitral tribunal, subject to this Appendix, may conduct the arbitration in the manner it considers appropriate.
56. The arbitral tribunal is not required to apply the legal rules of evidence, and may determine the admissibility, relevance, materiality and weight of any evidence.
57. The arbitral tribunal must make all reasonable efforts to conduct the arbitral proceedings in the most efficient, expeditious and cost effective manner as is appropriate in all the circumstances of the case.
58. The arbitral tribunal may extend or abridge a period of time:
 - a. set in this Appendix, except the period specified in section 107; or
 - b. established by the tribunal.

PRE-HEARING MEETING

59. Within 10 days after the chair of the arbitral tribunal is selected, the tribunal must convene a pre-hearing meeting of the parties to reach agreement and to make any necessary orders on:
 - a. any procedural issues arising under this Appendix;
 - b. the procedure to be followed in the arbitration;
 - c. the time periods for taking steps in the arbitration;
 - d. the scheduling of hearings or meetings, if any;
 - e. any preliminary applications or objections; and
 - f. any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.
60. The arbitral tribunal must prepare and distribute promptly to the parties a written record of all the business transacted, and decisions and orders made, at the pre-hearing meeting.
61. The pre-hearing meeting may be conducted by conference call.

PLACE OF ARBITRATION

62. The arbitration will take place in the Province of British Columbia.
63. Despite section 62, an arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other personal property, or for viewing physical locations.

LANGUAGE

64. If the arbitral tribunal determines that it was necessary or reasonable for a party to incur the costs of translation of documents and oral presentations in the circumstances of a particular disagreement, the arbitral tribunal, on application of a party, may order that any of the costs of that translation be deemed to be costs of the arbitration under paragraph 44 of the Chapter.

STATEMENTS OF CLAIM AND DEFENCE

65. Within 21 days after the arbitral tribunal is constituted, the applicant will deliver a written statement to all the Parties stating the facts supporting its claim or position, the points at issue and the relief or remedy sought.
66. Within 15 days after receipt of the applicant's statement, each respondent will deliver a written statement to all the Parties stating its defence or position in respect of those particulars.
67. Each party must attach to its statement a list of documents:
- a. upon which the party intends to rely; and
 - b. which describes each document by kind, date, author, addressee and subject matter.
68. The parties may amend or supplement their statements, including the list of documents, and deliver counter-claims and defences to counter-claims during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment, supplement or additional pleadings having regard to:
- a. the delay in making it; and
 - b. any prejudice suffered by the other parties.
69. The parties will deliver copies of all amended, supplemented or new documents delivered under section 68 to all the Parties.

DISCLOSURE

70. The arbitral tribunal may order a party to produce, within a specified time, any documents that:
- a. have not been listed under section 67;
 - b. the party has in its care, custody or control; and
 - c. the arbitral tribunal considers to be relevant.
71. Each party will allow the other party the necessary access at reasonable times to inspect and take copies of all documents that the former party has listed under section 67, or that the arbitral tribunal has ordered to be produced under section 70.
72. The parties will prepare and send to the arbitral tribunal an agreed statement of facts within the time specified by the arbitral tribunal.

73. Not later than 21 days before a hearing commences, each party will give the other party:
- a. the name and address of any witness and a written summary of the witness's evidence; and
 - b. in the case of an expert witness, a written statement or report prepared by the expert witness.
74. Not later than 15 days before a hearing commences, each party will give to the other party and the arbitral tribunal an assembly of all documents to be introduced at the hearing.

HEARINGS AND WRITTEN PROCEEDINGS

75. The arbitral tribunal must decide whether to hold hearings for the presentation of evidence or for oral argument, or whether the proceedings will be conducted on the basis of documents and other materials.
76. Unless the parties have agreed that no hearings will be held, the arbitral tribunal must hold hearings at an appropriate stage of the proceedings, if so requested by a party.
77. The arbitral tribunal must give the parties sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property or viewing any physical location.
78. All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party will be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision must be communicated to the parties.
79. Unless ordered by the arbitral tribunal, all hearings and meetings in arbitral proceedings, other than meetings of the arbitral tribunal, are open to the public.
80. The arbitral tribunal must schedule hearings to be held on consecutive days until completion.
81. All oral evidence must be taken in the presence of the arbitral tribunal and all the parties unless a party is absent by default or has waived the right to be present.
82. The arbitral tribunal may order any individual to be examined by the arbitral tribunal under oath or on affirmation in relation to the Disagreement and to produce before the arbitral tribunal all relevant documents within the individual's care, custody or control.
83. The document assemblies delivered under section 74 will be deemed to have been entered into evidence at the hearing without further proof and without being read out at the hearing, but a party may challenge the admissibility of any document so introduced.
84. If the arbitral tribunal considers it just and reasonable to do so, the arbitral tribunal may permit a document that was not previously listed under section 67, or produced as required under section 70 or 74, to be introduced at the hearing, but the arbitral tribunal may take that failure into account when fixing the costs to be awarded in the arbitration.

85. If the arbitral tribunal permits the evidence of a witness to be presented as a written statement, the other party may require that witness to be made available for cross examination at the hearing.
86. The arbitral tribunal may order a witness to appear and give evidence, and, in that event, the parties may cross examine that witness and call evidence in rebuttal.

DEFAULT OF A PARTY

87. If, without showing sufficient cause, the applicant fails to communicate its statement of claim in accordance with section 65, the arbitral tribunal may terminate the proceedings.
88. If, without showing sufficient cause, a respondent fails to communicate its statement of defence in accordance with section 66, the arbitral tribunal must continue the proceedings without treating that failure in itself as an admission of the applicant's allegations.
89. If, without showing sufficient cause, a party fails to appear at the hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.
90. Before terminating the proceedings under section 87, the arbitral tribunal must give all respondents written notice providing an opportunity to file a statement of claim in respect of the Disagreement within a specified period of time.

EXPERT APPOINTED BY ARBITRAL TRIBUNAL

91. After consulting the parties, the arbitral tribunal may:
 - a. appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
 - b. for that purpose, require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other personal property or land for inspection or viewing.
92. The arbitral tribunal must give a copy of the expert's report to the parties who must have an opportunity to reply to it.
93. If a party so requests, or if the arbitral tribunal considers it necessary, the expert must, after delivery of a written or oral report, participate in a hearing where the parties must have the opportunity to cross examine the expert and to call any evidence in rebuttal.
94. The expert must, on the request of a party:
 - a. make available to that party for examination all documents, goods or other property in the expert's possession, and provided to the expert in order to prepare a report; and
 - b. provide that party with a list of all documents, goods or other personal property or land not in the expert's possession but which were provided to or given access to the expert, and a description of the location of those documents, goods or other personal property or land.

LAW APPLICABLE TO SUBSTANCE OF DISPUTE

95. An arbitral tribunal must decide the Disagreement in accordance with the law.
96. If the parties have expressly authorized it to do so, an arbitral tribunal may decide the Disagreement based upon equitable considerations.
97. In all cases, an arbitral tribunal must make its decisions in accordance with the spirit and intent of the Final Agreement.
98. Before a final arbitral award is made, an arbitral tribunal or a party, with the agreement of the other parties, may refer a question of law to the Supreme Court for a ruling.
99. A party may appeal a decision in the Supreme Court under section 98 to the British Columbia Court of Appeal with leave of the British Columbia Court of Appeal.
100. If the British Columbia Court of Appeal:
 - a. refuses to grant leave to a party to appeal a ruling of the Supreme Court under section 98;
or
 - b. hears an appeal from a ruling of the Supreme Court under section 98,the decision of the British Columbia Court of Appeal may not be appealed to the Supreme Court of Canada.
101. While a request under section 98 is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award unless:
 - a. the costs occasioned by proceeding before the ruling of the Supreme Court is made would unduly prejudice the parties; or
 - b. the parties agree otherwise.

DECISION MAKING BY PANEL OF ARBITRATORS

102. In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.
103. If there is no majority decision on a matter to be decided, the decision of the chair of the tribunal is the decision of the tribunal.
104. Notwithstanding section 102, if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the chair of the tribunal.

SETTLEMENT

105. If, during arbitral proceedings, the parties settle the Disagreement, the arbitral tribunal must terminate the proceedings and, if requested by the parties, must record the settlement in the form of an arbitral award on agreed terms.

106. An arbitral award on agreed terms:
- a. must be made in accordance with sections 108 to 110;
 - b. must state that it is an arbitral award; and
 - c. has the same status and effect as any other arbitral award on the substance of the Disagreement.

FORM AND CONTENT OF ARBITRAL AWARD

107. An arbitral tribunal must make its final award as soon as possible and, in any event, not later than 60 days after:
- a. the hearings have been closed; or
 - b. the final submission has been made,
- whichever is the later date.
108. An arbitral award must be made in writing, and be signed by the members of the arbitral tribunal.
109. An arbitral award must state the reasons upon which it is based, unless:
- a. the parties have agreed that no reasons are to be given; or
 - b. the award is an arbitral award on agreed terms under section 105 and 106.
110. A signed copy of an arbitral award must be delivered to all the Parties by the arbitral tribunal.
111. At any time during the arbitral proceedings, an arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
112. An arbitral tribunal may award interest.
113. The costs of an arbitration are in the discretion of the arbitral tribunal which, in making an order for costs, may:
- a. include as costs:
 - i. the fees and expenses of the arbitrators and expert witnesses;
 - ii. legal fees and expenses of the parties;
 - iii. any administration fees of a neutral appointing authority; or
 - iv. any other expenses incurred in connection with the arbitral proceedings; and
 - b. specify:

- i. the party entitled to costs;
- ii. the party who will pay the costs;
- iii. subject to section 114, the amount of costs or method of determining that amount; and
- iv. the manner in which the costs will be paid.

114. For purposes of section 113, an arbitral tribunal may award up to 50% of the reasonable and necessary legal fees and expenses that were actually incurred by a party, and if the legal services were provided by an employee or employees of that party, the arbitral tribunal may fix an amount or determine an hourly rate to be used in the calculation of the cost of those employee legal fees.

TERMINATION OF PROCEEDINGS

115. An arbitral tribunal must close any hearings if:

- a. the parties advise they have no further evidence to give or submissions to make; or
- b. the tribunal considers further hearings to be unnecessary or inappropriate.

116. A final arbitral award, or an order of the arbitral tribunal under section 117, terminates arbitral proceedings.

117. An arbitral tribunal must issue an order for the termination of the arbitral proceedings if:

- a. the applicant withdraws its claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest in obtaining a final settlement of the Disagreement;
- b. the parties agree on the termination of the proceedings; or
- c. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

118. Subject to sections 119 to 124 and section 128, the mandate of an arbitral tribunal terminates with the termination of the arbitral proceedings.

CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

119. Within 30 days after receipt of an arbitral award:

- a. a party may request the arbitral tribunal to correct in the tribunal award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and
- b. a party may, if agreed by all the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

120. If an arbitral tribunal considers a request made under section 119 to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request and the interpretation will form part of the arbitral award.
121. An arbitral tribunal, on its own initiative, may correct any error of the type referred to in subsection 119.a within 30 days after the date of the arbitral award.
122. A party may request, within 30 days after receipt of an arbitral award, the arbitral tribunal to make an additional arbitral award respecting claims presented in the arbitral proceedings but omitted from the arbitral award.
123. If the arbitral tribunal considers a request made under section 122 to be justified, it must make an additional arbitral award within 60 days.
124. Sections 108 to 110, and sections 112 to 114 apply to a correction or interpretation of an arbitral award made under section 120 or 121, or to an additional arbitral award made under section 123.

APPLICATION FOR SETTING ASIDE ARBITRAL AWARD

125. Subject to sections 130 and 132, an arbitral award may be set aside by the Supreme Court, and no other court, only if a party making the application establishes that:
 - a. the party making the application:
 - i. was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings; or
 - ii. was otherwise unable to present its case or respond to the other party's case;
 - b. the arbitral award:
 - i. deals with a Disagreement not contemplated by or not falling within the terms of the submission to arbitration; or
 - ii. contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award that contains decisions on matters not submitted to arbitration may be set aside;
 - c. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Appendix from which the parties cannot derogate, or, failing any agreement, was not in accordance with this Appendix;
 - d. the arbitral tribunal or a member of it has committed a corrupt or fraudulent act; or
 - e. the award was obtained by fraud.
126. An application for setting aside may not be made more than three months:
 - a. after the date on which the party making that application received the arbitral award; or

- b. if a request had been made under section 119 or 122, after the date on which that request was disposed of by the arbitral tribunal.
127. An application to set aside an award on the ground that the arbitral tribunal or a member of it has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced:
- a. within the period referred to in section 126; or
 - b. within 30 days after the applicant discovers or ought to have discovered the fraud or corrupt or fraudulent act,
- whichever is the longer period.
128. When asked to set aside an arbitral award, the Supreme Court may, where it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award for a period of time determined by it in order to give the arbitral tribunal an opportunity:
- a. to resume the arbitral proceedings; or
 - b. to take any other action that, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside the arbitral award.
129. A Party that was not a participating Party in an arbitration must be given notice of an application under section 125, and is entitled to be a party to, and make representation on, the application.

APPEAL ON QUESTION OF LAW

130. A party may appeal an arbitral award to the Supreme Court, with leave, on a question of law, which the Supreme Court must grant only if it is satisfied that:
- a. the importance of the result of the arbitration to the parties justifies the intervention of the court, and the determination of the point of law may prevent a miscarriage of justice; or
 - b. the point of law is of general or public importance.
131. An application for leave may not be made more than three months:
- a. after the date on which the party making the application received the arbitral award; or
 - b. if a request had been made under section 119 or 122, after the date on which that request was disposed of by the arbitral tribunal.
132. The Supreme Court may confirm, vary or set aside the arbitral award or may remit the award to the arbitral tribunal with directions, including the court's opinion on the question of law.
133. When asked to set aside an arbitral award the Supreme Court may, where it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award for a period of time determined by it in order to give the arbitral tribunal an opportunity:

- a. to resume the arbitral proceedings; or
 - b. to take any other action that, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside the arbitral award.
134. A Party that was not a participating Party in an arbitration must be given notice of an application under section 130 and is entitled to be a party to, and make representation on, the application.
135. A party may appeal a decision of the Supreme Court under section 132 to the British Columbia Court of Appeal with leave of the British Columbia Court of Appeal.
136. If the British Columbia Court of Appeal:
- a. refuses to grant leave to a party to appeal a ruling of the Supreme Court under section 132; or
 - b. hears an appeal from a ruling of the Supreme Court under section 132,
- the decision of the British Columbia Court of Appeal may not be appealed to the Supreme Court of Canada.
137. No application may be made under section 130 in respect of:
- a. an arbitral award based upon equitable considerations as permitted in section 96; or
 - b. an arbitral award made in an arbitration commenced under paragraph 29 of the Chapter.
138. No application for leave may be brought under section 130 in respect of a ruling made by the Supreme Court under section 98 if the time for appealing that ruling has already expired.

RECOGNITION AND ENFORCEMENT

139. An arbitral award must be recognized as binding and, upon application to the Supreme Court, must be enforced subject to paragraphs 177 and 178 of the Self-Government Chapter.
140. Unless the Supreme Court orders otherwise, the party relying on an arbitral award or applying for its enforcement must supply the duly authenticated original arbitral award or a duly certified copy of it.

GROUND FOR REFUSING ENFORCEMENT

141. Subject to sections 129 and 134, a Party that was not a participating Party in an arbitration must not bring an application under section 125 or 130 to set the award aside but may resist enforcement of the award against it by bringing an application under section 142.
142. On the application of a Party that was not a participating Party in an arbitration, the Supreme Court may make an order refusing to enforce against that Party an arbitral award made under this Appendix if that Party establishes that:
- a. it was not given copies of:

- i. the notice of arbitration or agreement to arbitrate; or
 - ii. the pleadings or all amendments and supplements to the pleadings;
- b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 32 of the Chapter;
- c. the arbitral award
 - i. deals with a Disagreement not contemplated by or not falling within the terms of the submission to arbitration; or
 - ii. contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitral award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- d. the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court;
- e. the arbitral tribunal or a member of it has committed a corrupt or fraudulent act; or
- f. the award was obtained by fraud.

K'ómoks
Agreement-in-Principle
March 24, 2012