

**GWA'SALA-'NAKWAXDA'XW NATION
2018 INDIGENOUS ATMOSPHERIC BENEFIT AGREEMENT**

THIS AGREEMENT made the _____ day of _____, 201__

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented jointly by the Minister of Indigenous Relations and Reconciliation, and the Minister of Forests, Lands, Natural Resource Operations and Rural Development

("British Columbia")

AND

GWA'SALA-'NAKWAXDA'XW NATION, as represented by Chief and Council

("Gwa'sala-'Nakwaxda'xw")

Collectively all the "Parties"

WHEREAS:

- A. On February 7, 2006, several First Nations located within the Great Bear Rainforest, specifically the north central-mid coast, and the Province of British Columbia announced the Central and North Coast Land Use Vision which included a commitment to fully implement Ecosystem Based Management ("EBM") by March 31, 2009;
- B. In December 2006, leadership of several First Nations passed a resolution to explore and work to realize revenues and other benefits related to the increased carbon sequestration that would occur as a result of EBM implementation;
- C. By 2008, several First Nations and British Columbia had entered into Land and Resource Protocols and/or Strategic Land Use Planning Agreements which established further commitments to develop and implement EBM in the Project Area;
- D. To implement EBM in the Central and North Coast Region and pursuant to discussions between the several First Nations, by March 27, 2009 British Columbia had established:
 - a) Order in Council No. 2/2009, the *Central and North Coast Biodiversity, Mining and Tourism Area Order*, pursuant to the *Environment and Land Use Act*;
 - b) the Protected Areas in the North and Central Coast pursuant to the *Protected*

Areas of British Columbia Act, and

- c) land use objectives for the North and Central Coast that define objectives, strategies and practices for the management of forest resources in accordance with EBM pursuant to Section 93.4 of the *Land Act and the Land Use Objectives Regulation*;
- E. The aforementioned actions are intended to increase the amount of carbon sequestration and reduce the amount of carbon emissions that occurs on forested land in the Great Bear Project Area and that such increases and reductions will result in greenhouse gas reductions that are capable of being validated and verified as offset units;
- F. On March 23rd, 2012, the Mamalilikulla_Qwe'Qwa'sot'em, Tlowitsis, Da'anaxda'xw Awaetlala, Gwa'sala-'Nakwaxda'xw, K'omoks First Nations and British Columbia announced and British Columbia entered into an Atmospheric Benefit Sharing Agreement;
- G. On January 27, 2016 the Nanwakolas Council Society received written notice from Gwa'sala-'Nakwaxda'xw, supported by Band Council Resolution, indicating their wish to withdraw from the Nanwakolas Council and the Nanwakolas Reconciliation Protocol;
- H. As a result of withdrawing from the Reconciliation Protocol, Gwa'sala-'Nakwaxda'xw Nations' allocation of carbon offset units have been withdrawn from the Nanwakolas Atmospheric Benefit Sharing Agreement under Section 6 of that Agreement, as of December 31, 2015 and since then have been retained by British Columbia;
- I. On March 9, 2017, the Parties entered into a Great Bear Rainforest Agreement in which Gwa'sala-'Nakwaxda'xw agreed not to challenge or impede, directly or indirectly or otherwise, the development and bringing into effect of the GBR Forest Management Regime which Regime includes EBM measures; and
- J. On March 9, 2017, the Parties entered into a Cultural Revitalization and Capacity Building Agreement which included the commitment to negotiate an Atmospheric Benefit Sharing Agreement.

Now therefore in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

1.0 DEFINITIONS

In this Agreement:

“Agreement” means this Agreement between the Gwa'sala-'Nakwaxda'xw and British Columbia and all Appendices to this Agreement;

“Consultation Engagement Framework Agreement” means the Agreement signed by the Parties on December 18, 2017;

“Director” means the employee appointed by the *Public Service Act* who is designated as the director for the purposes of the *Greenhouse Gas Industrial Reporting and Control Act*;

“Event of Default” means a default by Gwa’sala-’Nakwaxda’xw of any of its obligations under sections 1 or 3 of the Great Bear Rainforest Agreement;

“Great Bear Project Area” means the Central and South Coast shown as the Project Area on the map attached as Appendix 1;

“Great Bear Project Offset” means an Offset Unit derived from the atmospheric benefits that is:

- a) validated and verified in accordance with the Atmospheric Program Registration Agreement between British Columbia and the Great Bear Carbon Credit Limited Partnership, dated February 21, 2017, or
- b) validated and verified in accordance with the Atmospheric Program Registration Agreement between British Columbia and the Nanwakolas Offset Limited Partnership, dated February 21, 2017

and approved by the Director for issuance and credit for that Vintage Year;

“Gwa’sala-’Nakwaxda’xw Offset” means the Great Bear Project Offsets transferred to Gwa’sala-’Nakwaxda’xw in accordance with section 3.2 and 3.3 of this Agreement;

“Great Bear Rainforest Agreement” means Agreement between the Gwa’sala-’Nakwaxda’xw and the Ministry of Forests, Lands and Natural Resource Operations, dated March 9, 2017;

“Intentional Reversal” means a Reversal caused by activities undertaken or authorized by British Columbia, or undertaken pursuant to a disposition of an interest in the land by British Columbia;

“Non-Intentional Reversal” means a Reversal caused by factors not within the direct control of British Columbia, including trespass or natural causes such as fire, wind, disease or drought;

“Provincial Buffer Pool” means a pool that British Columbia may use at its discretion that consists of a portion of atmospheric benefits or Offset Units, other than atmospheric benefits or Offset Units distributed under an atmospheric benefits sharing agreement, and may also include:

- a) enhancements of carbon gas removal and reduction of greenhouse gas emissions, associated with other projects, and

- b) Offset Units derived from enhancements or reductions referred to in a subsection (a);

“Offset Units” has the meaning prescribed to it under the *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

“Registry Administrator” means the registry administrator referred to in a section 6 of the *Greenhouse Gas Emission Control Regulations*, BC Reg 250/2015, and appointed under section 15 of the *Greenhouse Gas Industrial Reporting and Control Act*;

“Reversal” means emissions to the atmosphere of carbon previously sequestered where the emission reverses the reductions in the atmospheric carbon that has been:

- a) quantified in accordance with the project plans validated in accordance with the Emission Offsets Regulation, BC Reg. 393/2008, or any regulations or laws that replace the Emission Offsets Regulation, and
- b) that may be or was previously recognized as a Great Bear Project Offset, including a Gwa’sala-’Nakwaxda’xw Offset;

“Term” means the period of time this Agreement is in effect in accordance with section 6.1; and

“Vintage Year” means the calendar year to which the verification statement applies and the claimed Offset Units are established.

2.0 PURPOSE OF AGREEMENT

- 2.1 This Agreement defines the amended understanding between the Parties regarding the sharing of Great Bear Project Offsets as outlined in the Cultural Revitalization and Capacity Building Agreement between the Parties dated March 9, 2017.
- 2.2 Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that no provision of this Agreement shall prejudice, limit, or derogate from any Aboriginal title, treaty or other Aboriginal rights. Further, nothing in this Agreement is intended to create or modify any Aboriginal title, treaty or other Aboriginal rights.

3.0 ATMOSPHERIC BENEFITS

- 3.1 British Columbia will transfer to Gwa’sala-’Nakwaxda’xw ownership and the right to sell the Gwa’sala-’Nakwaxda’xw Offsets in accordance with the terms of this Agreement.
- 3.2 British Columbia will transfer, from the BC carbon registry to Gwa’sala-’Nakwaxda’xw, a percentage of Great Bear Project Offsets as follows:
 - a) 3.77% of the Great Bear Project Offsets calculated for the Central-Mid Coast of

the Great Bear Project Area for each Vintage Year, commencing with the 2016 Vintage Year; and

- b) 8.93% of the Great Bear Project Offsets calculated for the South Central Coast of the Great Bear Project Area for each Vintage Year, commencing with the 2016 Vintage Year.

3.3 British Columbia will make the transfers described in section 3 as follows:

- a) for the 2016 and 2017 Vintage Years, after they become available;
- b) for each subsequent Vintage Year, by March 31 of the calendar year following that Vintage Year, or, if the Great Bear Project Offsets are not available by such date, after they become available.

3.4 The Parties agree that the costs allocated to the registration and issuance of the Gwa'sala-'Nakwaxda'xw Offsets will be borne by Gwa'sala-'Nakwaxda'xw.

3.5 British Columbia will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in, nor will it assist or support a third party in any such claim to any Gwa'sala-'Nakwaxda'xw Offset.

3.6 The Gwa'sala-'Nakwaxda'xw will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in atmospheric benefits or Great Bear Project Offsets other than Gwa'sala-'Nakwaxda'xw Offsets.

3.7 The Gwa'sala-'Nakwaxda'xw will not assist or support any claim to be made by another party in respect of any right, title or interest in atmospheric benefits or Great Bear Project Offsets other than:

- a) a claim by British Columbia; or
- b) a claim by a party that has entered into an Indigenous atmospheric benefits sharing agreement, offset agreement or a program registration agreement with British Columbia.

3.8 For greater certainty, the Parties agree that British Columbia may claim, cause a claim to be made, or assist or support a third party in any such claim in respect of any right, title or interest in atmospheric benefits or Great Bear Project Offsets other than Gwa'sala-'Nakwaxda'xw Offsets.

4.0 CARBON OFFSET PROJECT DEVELOPMENT, OPERATION AND INFORMATION

4.1 The Parties acknowledge atmospheric benefits, before or after validation, verification or registration, are vulnerable to Reversals, and nothing in this Agreement makes either Party liable to any other person for any loss or damages arising from the impact of a Non-Intentional Reversal on Gwa'sala-'Nakwaxda'xw Offsets.

- 4.2 Gwa'sala-'Nakwaxda'xw will mitigate the impact of:
- a) any Non-Intentional Reversal; and
 - b) any Intentional Reversal resulting from a Crown decision undertaken at the request of Gwa'sala-'Nakwaxda'xw
- through the release of an appropriate amount of Gwa'sala-'Nakwaxda'xw Offsets.
- 4.3 British Columbia will manage a Provincial Buffer Pool to be used at its discretion to mitigate the impact to the atmosphere of Intentional Reversals in the Great Bear Project Area and Reversals associated with the other projects which have contributed to the Provincial Buffer Pool.
- 4.4 British Columbia will mitigate the impact to the atmosphere of Intentional Reversals in the Great Bear Project Area, other than Intentional Reversals that are a result of a Crown decision undertaken at the request of Gwa'sala-'Nakwaxda'xw by:
- a) not using atmospheric benefits, reductions and enhancements in the Provincial Buffer Pool to produce emission offsets; or
 - b) retiring emission offsets in the Provincial Buffer Pool; or
 - c) holding the emission offsets in the Provincial Buffer Pool and retiring them in proportion to that Intentional Reversal; or
 - d) through other reasonable means that BC considers suitable.
- 4.5 If the Gwa'sala-'Nakwaxda'xw Offsets held in reserve for mitigation of Project Reversals are insufficient to address the impact of the Non-Intentional Reversal or the Intentional Reversals that are a result of a Crown decision undertaken at the request of Gwa'sala-'Nakwaxda'xw the Parties will meet to discuss the options available.
- 4.6 This Agreement does not change or affect the positions the Parties have, or may have, regarding their jurisdictions, responsibilities or decision-making authority, nor is it to be interpreted in a manner that would unlawfully interfere with that decision making authority.
- 4.7 Except with respect to representations, commitments, covenants or obligations made by British Columbia under this Agreement, Gwa'sala-'Nakwaxda'xw shall indemnify and save harmless British Columbia and its servants, employees, agents, contractors and licensees from any and all liabilities, damages, costs (including legal fees on a solicitor and own client basis), claims, suits or actions arising from:
- a) any use made by Gwa'sala-'Nakwaxda'xw of the Gwa'sala-'Nakwaxda'xw Offsets, including the sale, trade, registration or other dealing with the Gwa'sala-'Nakwaxda'xw Offsets in any way, with any person, or

- b) any reduction in the marketability or value of Gwa'sala-'Nakwaxda'xw Offsets caused by releases to the atmosphere or carbon dioxide or other greenhouse gases from the Project Area unless such impacts are directly caused through actions or authorizations by British Columbia.
- 4.8 The Parties agree that nothing in this Agreement makes either Party liable for any damages, loss, or costs incurred as a result of the release of atmospheric carbon from the Great Bear Project Area.
- 5.0 COMMUNICATIONS AND INFORMATION EXCHANGE**
- 5.1 Gwa'sala-'Nakwaxda'xw and British Columbia will provide to each other notice of intention to make written public communications relating to this Agreement and provide the other party with an opportunity to review and comment on the communications.
- 5.2 Prior to the effective date of this Agreement, Gwa'sala-'Nakwaxda'xw will prepare a Statement of Human Well Being Priorities (Appendix 2) that identifies the outcomes that Gwa'sala-'Nakwaxda'xw will seek to achieve with no less than 60% of the funds from the sale of Gwa'sala-'Nakwaxda'xw Offsets through the end of calendar year 2022.
- 5.3 On or before June 15, 2021, and every 5 years thereafter, Gwa'sala-'Nakwaxda'xw or its agent will prepare a further Statement of Human Well Being Priorities that identifies the outcomes that Gwa'sala-'Nakwaxda'xw will seek to achieve with no less than 60% of the funds from the sale of Gwa'sala-'Nakwaxda'xw Offsets over the next five-year period.
- 5.4 The Statement of Human Well Being Priorities, as referenced in Appendix 2, and the reports referred to in 5.2 and 5.3 will be made publicly available by Gwa'sala-'Nakwaxda'xw in a manner that can reasonably be expected to bring the Statement of Human Well Being Priorities and reports to the attention of its members and the Government of British Columbia.
- 5.5 If Gwa'sala-'Nakwaxda'xw is concerned that British Columbia is exercising its duties under appropriate statute or regulation in a manner that increases the likelihood of a Reversal then, upon request by If Gwa'sala-'Nakwaxda'xw, the Parties will meet to discuss these concerns.

6.0 TERM, TERMINATION OR WITHDRAWAL

- 6.1 This Agreement is in effect from the date British Columbia and Gwa'sala-'Nakwaxda'xw have signed and continues until March 31, 2040 unless terminated under sections 6.2 to 6.4.
- 6.2 British Columbia may terminate this Agreement if Gwa'sala-'Nakwaxda'xw ceases to be a party to the Consultation Engagement Framework Agreement or the Great Bear Rainforest Agreement.

- 6.3 British Columbia must provide Gwa'sala-'Nakwaxda'xw 90 days written notice of intention to terminate under subsection 6.2.
- 6.4 Gwa'sala-'Nakwaxda'xw may withdraw from this Agreement by providing 90 days written notice of intention to withdraw.
- 6.5 The Parties will meet as soon as practicable after a notice of intention to terminate or withdraw has been provided by a Party in accordance with sections 6.3 or 6.4 to discuss and attempt to resolve the matter.
- 6.6 Any termination or withdrawal is effective December 31 of the year in which the notice in section 6.3 or 6.4 is received.
- 6.7 Subject to 6.2, the termination of this Agreement or a withdrawal by Gwa'sala-'Nakwaxda'xw does not affect Gwa'sala-'Nakwaxda'xw ownership and right to sell Gwa'sala-'Nakwaxda'xw Offsets for the calendar years prior to the termination date.
- 6.8 If a future sales commitment is affected by a termination under 6.2 or withdrawal under 6.4, the termination or withdrawal, as the case may be, may be extended up to 5 years with agreement of British Columbia

7.0 REVIEW AND AMENDMENT

- 7.1 This Agreement may be amended from time to time with the written consent of all the Parties to the Agreement at the time of the amendment.
- 7.2 At British Columbia's request, Gwa'sala-'Nakwaxda'xw will provide in a timely manner:
- a) a summary of the annual total tonnes of Gwa'sala-'Nakwaxda'xw Offsets sold and gross revenues received for the previous calendar year by Gwa'sala-'Nakwaxda'xw from the sales of Gwa'sala-'Nakwaxda'xw Offsets, to be provided to British Columbia on a confidential basis;
 - b) a financial statement confirming the use of proceeds from the sale of Gwa'sala-'Nakwaxda'xw Offsets are consistent with the goals and intended outcomes identified in the statement of the Human Well Being Priorities that is attested to by a designated representative of Gwa'sala-'Nakwaxda'xw; and
 - c) a copy of any sales agreement that may be impacted by a termination under section 6.2 or 6.3 or withdrawal under section 6.4.
- 7.3 This Agreement is not a treaty or a lands claims agreement, and does not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

8.0 REDUCTION FOR DEFAULT

- 8.1 Notwithstanding any other provision in this Agreement, on the occurrence of an Event of Default, or at any time thereafter, British Columbia may by written notice delivered to Gwa'sala-'Nakwaxda'xw require that the Event of Default be remedied within a reasonable time period as identified in the notice ("**Default Notice**").
- 8.2 If British Columbia provides a Default Notice to Gwa'sala-'Nakwaxda'xw, the Parties will meet to discuss the matter and how the Event of Default may be remedied.
- 8.3 If an Event of Default is not remedied following a meeting in accordance with section 8.2 and within the time period identified in a Default Notice, British Columbia may by a further written notice to Gwa'sala-'Nakwaxda'xw reduce the Gwa'sala-'Nakwaxda'xw Offsets to be provided under section 3.2 to 60% of the annually calculated previous calendar year ("**Reduction Notice**") unless the Parties agree otherwise.
- 8.4 Until the Event of Default is remedied or the Parties otherwise agree, a reduction applies to each distribution occurring on April 1 subsequent to the date of the Reduction Notice provided under section 8.3, but does not affect Gwa'sala-'Nakwaxda'xw ownership and right to sell Gwa'sala-'Nakwaxda'xw Offsets distributed prior to the date of the Reduction Notice.
- 8.5 No failure or delay on the part of British Columbia to exercise its rights in relation to an Event of Default will constitute a waiver by British Columbia of such rights.

9.0 FURTHER ASSURANCES

- 9.1 The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.
- 9.2 The Parties are committed to resolving any disputes that may arise in the implementation of this Agreement and may utilize dispute resolution mechanisms as agreed to by the Parties including meditation.

10.0 APPROPRIATION

- 10.1 Notwithstanding any other provision of this Agreement, any distribution under section 3.2 is subject to:
- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when any such distribution is required, to make that distribution; and
 - b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such distribution.

11.0 INTERPRETATION

11.1 In this Agreement:

- a) headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- b) a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and
- c) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

12.0 GOVERNING LAW

- 12.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

13.0 ENUREMENT

- 13.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.

14.0 NO ASSIGNMENT

- 14.1 This Agreement may not be assigned, either in whole or in part, by any Party.

15.0 NOTICES

- 15.1 A notice, document, request, approval, authorization, consent or other communication (each a “communication”) required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways:
- a) delivered personally or by courier;
 - b) transmitted by facsimile transmission; or
 - c) mailed by post in Canada in any form which requires a receipt.

15.2 A communication will be considered to have been given or made, and received:

- a) if delivered personally or by courier, at 9:00 a.m. on the business day after the day on which it was received by the addressee or a responsible representative of the addressee;
- b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at 9:00 a.m. on the next business day after the day on which it was transmitted; or
- c) if mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

15.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: British Columbia

Attention:	Minister of Indigenous Relations and Reconciliation
Personal or courier delivery:	Parliament Buildings Victoria, British Columbia
Facsimile transmission:	(250) 387-5594
Postal deliver:	PO Box 9468 STN PROV GOVT Victoria, British Columbia V8W 9E2

For: Gwa'sala-'Nakwaxda'xw Nations

Attention:	Chief and Council
Facsimile transmission:	(250) 949-7402
Postal delivery:	154 Tsulquate Reserve / Box 998 Port Hardy, British Columbia V0N 2P0

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16.0 EXECUTION IN COUNTERPARTS

16.1 This Agreement may be executed in counterparts and by facsimile. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document.

THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED as of the day and year first above written

EXECUTED in the presence of

) **HER MAJESTY THE QUEEN**
) **IN RIGHT OF THE PROVINCE**
) **OF BRITISH COLUMBIA**
) as represented by the Minister of
) Indigenous Relations and Reconciliation
)
)
)
)

As to the signature of the
Honourable Scott Fraser, Minister of
Indigenous Relations and Reconciliation

Honourable Scott Fraser, Minister of
Indigenous Relations and Reconciliation

EXECUTED in the presence of

) **HER MAJESTY THE QUEEN**
) **IN RIGHT OF THE PROVINCE**
) **OF BRITISH COLUMBIA**
) as represented by the Minister of
) Minister of Forests, Lands, Natural
) Resource Operations and Rural Development
)
)
)
)

As to the signature of the
Honourable Doug Donaldson,
Minister Forests, Lands, Natural
Resource Operations and Rural
Development

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

ON BEHALF OF Gwa'sala-'Nakwaxda'xw Nation, as represented by:

Chief Paddy Walkus

Witness as to the signature

Councillor

Witness as to the signature

Councillor

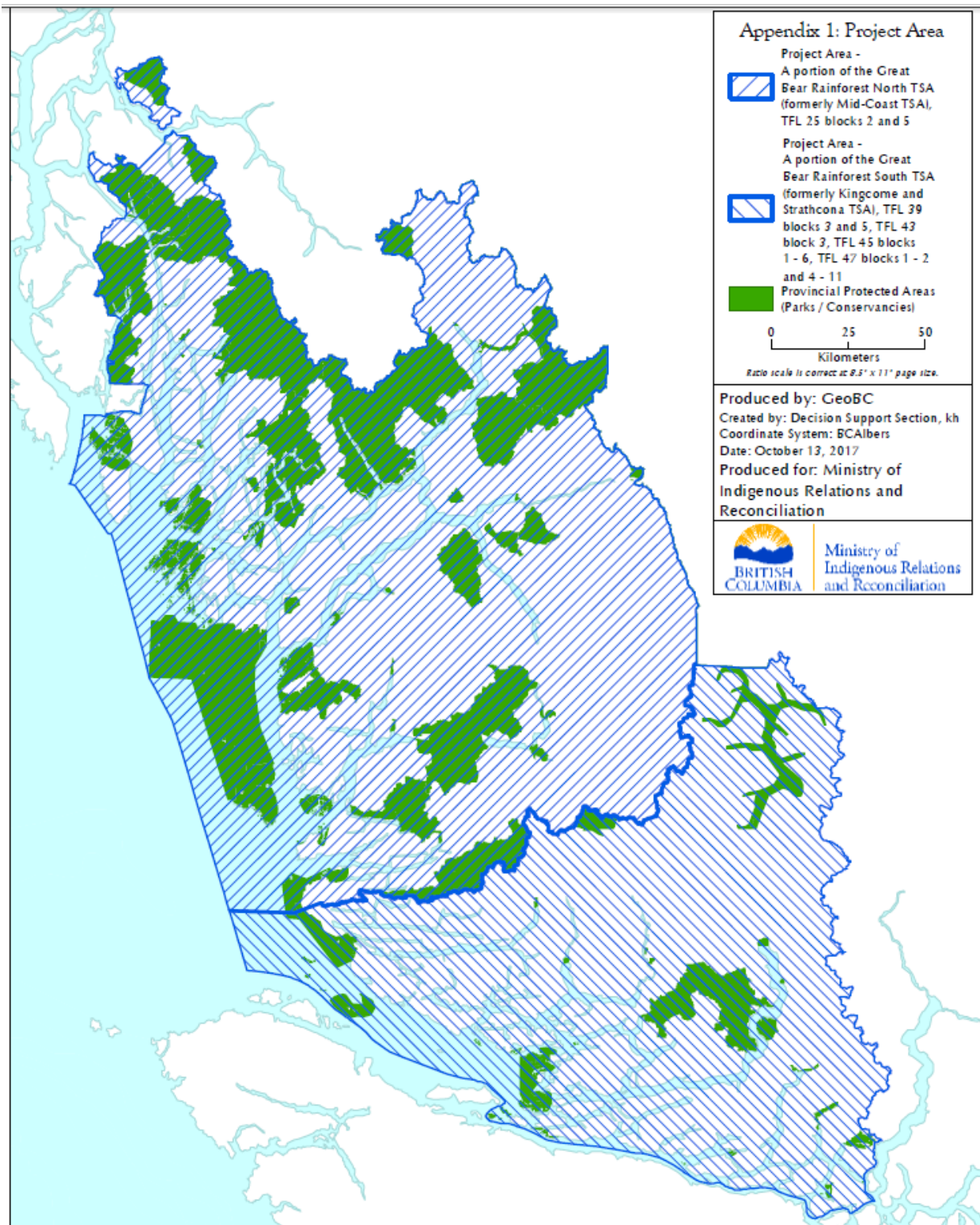
Witness as to the signature

Councillor

Witness as to the signature

Councillor

Witness as to the signature



APPENDIX 2:
Statement of Human Well Being Priorities

- Outcomes specific to the Human Well Being portion of EBM to be achieved by Gwa'sala-Nakwaxda'xw from 2017 through 2022

Human Well Being Outcomes	Measurement Criteria
Construction of new housing for Members.	<ul style="list-style-type: none"> • Increased GNN housing stock and new acquisitions.
Improved health and well-being	<ul style="list-style-type: none"> • Provision of health and wellness programs to Members.
Expansion of tourism business to include bear-viewing operations.	<ul style="list-style-type: none"> • Purchase or development of bear-viewing and wilderness tour business.
Expansion of GNN participation in local fisheries-related businesses, including processing.	<ul style="list-style-type: none"> • Development of processing facility.
Obtain increased forest volumes in traditional territory.	<ul style="list-style-type: none"> • Negotiation and signing of further agreements with Crown or purchase of volume.
Increased employment of members in local tourism services and resources industry.	<ul style="list-style-type: none"> • 5% growth in Member employment in those areas. • Provision of annual training sessions and job fair.
Develop and provide cultural training programs in accordance with the Truth and Reconciliation Commission Calls to Action to government and industry sectors.	<ul style="list-style-type: none"> • Develop and deliver cultural training sessions and marketing to others.
Protected Area Management Planning and Development	<ul style="list-style-type: none"> • Review and revisions to existing Management Plans • Increase economic opportunities in Parks and Conservancies