

MEMORANDUM OF AGREEMENT

BETWEEN:

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

(“the Province”)

AND:

THE SNUNEYMUXW FIRST NATION, as represented by Chief and Council

(“Snuneymuxw First Nation”)

(Collectively, the “Parties”)

BACKGROUND:

- A. The Province supports the shellfish industry, and the Snuneymuxw First Nation is interested in pursuing shellfish harvesting activities around Gabriola Island.
- B. The Parties wish to enter into a Memorandum of Agreement as an economic measure to assist in addressing Snuneymuxw First Nation’s current and future interest in shellfish harvesting by withdrawing certain lands from disposition under section 16 of the *Land Act* so that those lands are available for wild harvesting.

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

Sites Withdrawn from *Land Act* Disposition

- 1. Within six months of signing this Agreement, the Province will withdraw the following lands from disposition under section 16 of the *Land Act* for the purpose of designating the lands for shellfish harvesting:
 - a. Inter-tidal site on the south side of Gabriola Island of no more than 1.2 hectares (Site 1 on the map attached as Schedule A to this Agreement);
 - b. Inter-tidal site known as Gabriola Bar on the south side of Gabriola Island of no more than 32.7 hectares (Site 2 on the map attached as Schedule A to this Agreement);
 - c. Inter-tidal site on the southern end of Mudge Island of no more than 3.0 hectares (Site 3 on the map attached as Schedule A to this Agreement);
 - d. Inter-tidal site in Degnen Bay of no more than 4.4 hectares (Site 4 on the map attached as Schedule A to this Agreement);
 - e. Inter-tidal site near the mouth of Degnen Bay of no more than 1.8 hectares (Site 5 on the map attached as Schedule A to this Agreement);

- f. Inter-tidal site between Gabriola Island and Lily Island of no more than 2.0 hectares (Site 6 on the map attached as Schedule A to this Agreement); and
- g. Inter-tidal site on the north-west side of Newcastle Island of no more than 4.6 hectares (Site 7 on the map attached as Schedule A to this Agreement).

Management of the Designated Lands

- 2. British Columbia will continue to manage and use lands defined in section 1 at its discretion during the term of this Agreement.

Status of the Property

- 3. Nothing in this Agreement is intended to have or is to be interpreted as having the effect of establishing the lands withdrawn under section 1 as a "reserve" under the *Indian Act*, or as "lands reserved for Indians" under Section 91(24) of the *Constitution Act, 1867*.

Interpretation

- 4. Nothing in this Agreement is intended to create or is to be interpreted as having the effect of creating a trust in favour of the Snuneymuxw First Nation, nor does this Agreement have the effect of creating fiduciary duties between the Parties with respect to the use, management or disposition of lands defined in section 1.
- 5. Nothing in this Agreement is intended or is to be interpreted as creating, granting, authorizing or recognizing any rights to or occupation or use of lands withdrawn under section 1.
- 6. This Agreement and all related documents are without prejudice to:
 - a. the positions that may be taken in Snuneymuxw First Nation treaty negotiations; and
 - b. the legal positions that have been or may be taken by either of the Parties in the courts or any other forum, including any positions with respect to any aboriginal or treaty rights.
- 7. This Agreement, and all statements made or documents prepared by any of the Parties for the purpose of entering into and implementing this Agreement, will not be construed as an admission of liability or fact in court proceedings or any other forum.

Nature of Agreement

- 8. This Agreement will not constitute or be deemed to constitute the creation, recognition, affirmation, denial or amendment of any rights or obligations, including any rights protected under s. 35(1) of the *Constitution Act, 1982*.
- 9. The Province will not rely on this Agreement in court to allege or assert that, by signing this Agreement, the Snuneymuxw First Nation has agreed to extinguish, adversely affect, suspend or forego the exercise of any aboriginal or Douglas Treaty rights.

Term of Agreement

10. The term of this Agreement is from the date it is signed by both Parties until the earlier of:
- a. a breach of a term of this Agreement by either Party;
 - b. commencement of litigation by Snuneymuxw First Nation involving the assertion of aboriginal rights or title to lands defined under section 1; or
 - c. twenty (20) years after the date this Agreement is signed by both Parties.

Notices

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

to the Province:

Land and Water British Columbia Inc.
501-345 Wallace St
Nanaimo BC V9R 5B6

to Snuneymuxw First Nation:

Snuneymuxw First Nation
668 Centre Street
Nanaimo BC V9R 4Z4

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

12. To expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party, but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 11.

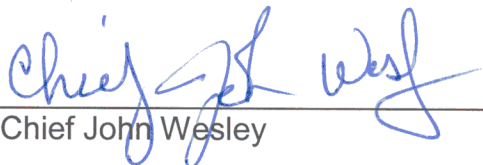
Amendment

13. Amendments to this Agreement must be in writing and signed by an authorized representative of the Snuneymuxw First Nation and the Province.

SIGNED BY THE PARTIES ON THE DATES SET OUT BELOW.


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

March 11, 2002
Date


Chief John Wesley

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

March 11, 2002
Date


The Honourable Stanley B. Hagen

