

**Huu-ay-aht First Nation**  
**Commercial Recreation Opportunities**  
**Memorandum of Understanding**

December 9, 2006



## Commercial Recreation Opportunities Memorandum of Understanding

THIS UNDERSTANDING (the "Understanding") made the 11<sup>th</sup> day of December, 2006.

### **BETWEEN:**

**Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Tourism, Sport and the Arts**

(the "Province")

### **AND:**

**Huu-ay-aht First Nation**

("Huu-ay-aht")

(collectively the "Parties")

### **WHEREAS:**

- A. Huu-ay-aht has initialled the Final Agreement with the Province and Canada under the British Columbia treaty process.
- B. The Parties wish to enter into an Understanding to address Huu-ay-aht's interest in participating in economic opportunities related to commercial recreation and intend to continue this Understanding after the Final Agreement is in effect.
- C. Ministry of Tourism, Sport and the Arts has a strong interest in facilitating the creation of commercial recreation development opportunities on provincial Crown land, including Aboriginal tourism.

**THE PARTIES HAVE THE FOLLOWING UNDERSTANDING:**



## Definitions

### 1. In this Understanding:

- a. **“Designated Site”** means those sites on provincial Crown land designated under paragraph 4 and identified in Schedule B of this Understanding;
- b. **“Intensive Use Site”** is a specific parcel or tract of land integral to the commercial recreation operation as staging areas or for dispersed commercial recreation operations conducted within an extensive tenure;
- c. **“Cultural Heritage Resources”** means sacred, spiritual, archaeological and traditional use sites, resources and materials;
- d. **“Effective Date”** means the date upon which the Final Agreement takes effect;
- e. **“Extensive Use”** is the generalized use of Crown land by an operator, usually in a dispersed manner such as would be undertaken when using large areas of land for hiking, trail riding, nature viewing, rafting, skiing etc.;
- f. **“Final Agreement”** means the Maa-nulth First Nations Final Agreement that has been initialled on behalf of the Maa-nulth First Nations, Her Majesty in Right of British Columbia and Her Majesty in Right of Canada, and after the Effective Date, the Maa-nulth First Nations Final Agreement that has been initialled on behalf of the Maa-nulth First Nations, Her Majesty in Right of British Columbia and Her Majesty in Right of Canada, and includes any amendments made to the Maa-nulth First Nations Final Agreement from time to time in accordance with its provisions;
- g. **“Huu-ay-aht Area”** means the area of land identified for Huu-ay-aht on the applicable map attached as Schedule A.
- h. **“Minister”** means the Minister responsible for the Ministry of Tourism, Sport and the Arts or his/her delegate; and
- i. **“Section 35 Rights”** refers to, prior to the Effective Date, Aboriginal rights or title of Huu-ay-aht that may exist within the Huu-ay-aht Area. On the Effective Date, these rights will refer only to the treaty rights of Huu-ay-aht as set out in the Final Agreement, which are applicable within the Huu-ay-aht Area.

## General

- 2. The Parties acknowledge that this Understanding fulfills any commitment the Province may have to provide Huu-ay-aht with access to commercial recreation tenure opportunities as contemplated under the Final Agreement.
- 3. In addition, this Understanding provides the following:



- a. an opportunity for Huu-ay-aht to build capacity in order to successfully operate a commercial recreation business by setting aside up to 12 hectares of Crown land with commercial recreation business potential;
- b. stimulation of the local tourism sector to deliver lasting regional socioeconomic benefits by providing new business opportunities, creating more jobs and expanding Aboriginal tourism in British Columbia; and
- c. a positive step forward in the new relationship between the Province and Huu-ay-aht.

#### Designated Sites

- 4. Concurrently with the execution and delivery of this Understanding, the Minister will apply to the Ministry of Agriculture and Lands for the Crown lands, within the Huu-ay-aht First Nation Area identified in Schedule B, to be withdrawn from disposition for the purpose of future Aboriginal tourism activities pursuant to section 17 of the *Land Act*, on the following terms and conditions:
  - a. the land shall be used for Intensive Use commercial recreation;
  - b. commercial recreation activities shall be carried out only pursuant to a disposition under the *Land Act*;
  - c. applications for commercial recreation tenures will be accepted only from Huu-ay-aht or from business partnerships or joint ventures where Huu-ay-aht is the majority shareholder or owner; and
  - d. applications from Huu-ay-aht will be adjudicated, and the form of any tenure issued will be pursuant to the generally applicable adjudication policy and provincial law as of the date of application including any legal requirements respecting consultation with other area Aboriginal groups who assert overlapping claims to the proposed commercial recreation tenure area.
- 5. This Understanding does not address Extensive Use sites.
- 6. For greater clarity, during the term of this Understanding, Huu-ay-aht:
  - a. will not be required to pay any fee or rent related to the designation of a Designated Site under paragraph 4; and
  - b. will be required to pay, in accordance with provincial law and land disposition policy, any applicable fee or rent related to any commercial recreation tenure that may subsequently be applied for or issued in relation to a Designated Site.
- 7. Huu-ay-aht has up to fifteen (15) years from the date of this Understanding to make application to the Province for a commercial recreation tenure on one or more of the Designated Sites.



8. The Province may amend or cancel a Designated Site from Schedule B of this Understanding for the purposes of regional infrastructure. Prior to amending or canceling a Designated Site from this Understanding, the Province will make reasonable attempts to secure and designate a comparable replacement site on provincial Crown land, pursuant to paragraph 9 and in consultation with Huu-ay-aht.
9. The criteria the Minister may use to recommend a comparable replacement site under paragraph 8 include, but are not limited to, the following:
  - a. encumbrances or constraints on the land such as existing land tenures and tenure applications;
  - b. a preliminary site plan and summary of replacement lands that Huu-ay-aht has prepared, which reasonably justifies the amount of hectares being proposed as required for a commercial recreation Intensive Use Site;
  - c. degree of impact on public access to Crown lands for recreation purposes, particularly public access to foreshore areas; and
  - d. presence of Huu-ay-aht Cultural Heritage Resources within the proposed area, as identified by Huu-ay-aht.
10. The issuance, management and administration of any commercial recreation tenure issued by the Province will be in accordance with provincial law, policies and procedures.
11. The site plans and summaries prepared by Huu-ay-aht for the proposed Designated Sites do not prevent Huu-ay-aht from submitting to the Province an application for tenure over an area larger than the Designated Site identified in Schedule B.
12. Nothing in this Understanding precludes Huu-ay-aht from applying to the Province for other commercial recreation tenures outside the Designated Sites in accordance with provincial laws and policies.

#### Management of Designated Sites

13. The Province will continue to manage and use the Designated Sites at its sole discretion during the term of this Understanding.
14. The Province will periodically provide written notification to Huu-ay-aht about the management and use of the Designated Sites pursuant to the *Land Act*.

#### Consultation and Accommodation

15. Huu-ay-aht agrees to participate in consultation processes with the Province in relation to any commercial recreation development activity proposed within the Huu-ay-aht Area.



16. The Province acknowledges that it has a duty to consult, and, where appropriate, to accommodate Huu-ay-aht's concerns related to Section 35 Rights where those Section 35 Rights may be adversely affected by proposed commercial recreation development activities within the Huu-ay-aht Area.
17. In reviewing and responding to a commercial recreation tenure application or renewal notice from the Province that is within the Huu-ay-aht Area and outside Designated Sites, Huu-ay-aht will, within 60 days of receipt of the referral, provide the Province with all reasonably available information about any Huu-ay-aht Cultural Heritage Resources, as well as any concerns related to its Section 35 Rights within the referral area.
18. The inclusion of the words "In Confidence", "Confidential" or similar words on or in respect of information provided by a Party during a consultation process will constitute advice to the other Party receiving the information that it is to be kept confidential. Information received will be managed in accordance with the *Freedom of Information and Protection of Privacy Act*.
19. The Province and Huu-ay-aht will work cooperatively to seek to address any significant issues arising from any existing or proposed commercial recreation development that may adversely impact Section 35 Rights within the Huu-ay-aht Area.

#### Regional Advisory Process

20. Huu-ay-aht may participate in any regional advisory process established by the Province to provide advice on matters pertaining to commercial or public recreation activities within the Huu-ay-aht Area.

#### Dispute Resolution

21. Upon becoming aware of any potential dispute related to the interpretation of this Understanding, a Party will:
  - a. immediately notify the other Party when it has a concern or disagrees with the other Party regarding the interpretation of the Understanding; and
  - b. use best efforts to resolve all disputes in accordance with this Understanding.
22. The Parties:
  - a. may appoint a mutually acceptable mediator to make non-binding recommendations to help resolve any disputes which may arise regarding the interpretation of this Understanding;
  - b. will each bear the costs of their own participation in any mediated process; and



- c. will, unless otherwise agreed, equally share the costs of any mutually acceptable mediator they appoint.

#### Nature of Understanding

23. This Understanding is not intended to:

- a. be a legally binding contract;
- b. be a part of the Final Agreement;
- c. be a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act*;
- d. create, amend, define, affirm, recognize, abrogate or derogate from any Section 35 Rights;
- e. be interpreted or implemented in a manner that fetters the discretion of the statutory decision-makers;
- f. limit the position either Party may take in any legal or administrative proceeding, except in any proceeding related to the commitment of the Province in the Final Agreement to designate land for the purpose of providing Huu-ay-aht with the opportunity to apply for a commercial recreation tenure; and
- g. constitute any admission of fact or liability.

#### Term of Understanding

24. Whereas Huu-ay-aht has initialed the Final Agreement, the term of this Understanding is from the date it is signed by both Parties until the earlier of:

- a. a breach of a term of this Understanding by any Party;
- b. one month from the date of notice to terminate the Understanding is given by any Party; and
- c. all or part of this Understanding is replaced by another agreement signed by the Parties that expressly supersedes and replaces all or part of this Understanding.

25. The Parties will review the terms of this Understanding on the 10<sup>th</sup> anniversary of the current Understanding.

26. If there is an inconsistency or conflict between the terms of this Understanding and any other agreement contemplated in paragraph 24(c), the agreement contemplated in paragraph 24(c) will prevail.



## Notices

27. Where in this Understanding any notice or other communication is required to be given by any of the Parties, it will be made in writing and will be effectively given by any of the following methods:

- a. delivery to the address of the Party set out in paragraph 28, on the date of delivery;
- b. pre-paid registered mail to the address of the Party mentioned in this Understanding, on the date the registered mail is delivered;
- c. facsimile to the facsimile number of the Party mentioned in this Understanding, on the date of the facsimile is sent; and
- d. electronic methods of communication, once these are developed and implemented with agreement of the Parties.

28. The address for each Party to this Understanding is, as follows:

To: Adventure Tourism Manager, Nanaimo  
Ministry of Tourism, Sport and the Arts  
First Floor, 2080 Labieux Road  
Nanaimo BC V9T 6J9

Fax: (250) 751-7224

To: Chief Councillor  
Huu-ay-aht First Nation  
Box 70  
Bamfield, British Columbia, V0R 1B0

Fax: (250) 728-1222



### Amendment

29. This Understanding may be amended by mutual agreement of the Parties.
30. On the Effective Date and in accordance with the Indian Act Transition Chapter of the Final Agreement, the rights and obligations of Huu-ay-aht in this Understanding will vest in the corresponding legal entity of the Final Agreement, which is the Huu-ay-aht First Nations.
31. On the Effective Date, this Understanding will be deemed to have been signed by the Final Agreement legal entities.
32. Other amendments to this Understanding not described in paragraphs 30 and 31, must be in writing and signed by an authorized representative of Huu-ay-aht and the Province.

### Interpretation

33. In this Understanding:
  - a. headings are for convenience only, do not form part of this Understanding and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Understanding;
  - 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.




## Execution


34. This Understanding may be entered into by each Party signing a separate copy of this Understanding including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

**IN WITNESS WHERE OF** the Parties have executed this Understanding on the date set out above.

EXECUTED in the presence of

) HER MAJESTY THE QUEEN  
) IN RIGHT OF THE PROVINCE  
) OF BRITISH COLUMBIA  
) as represented by the Minister of  
) Tourism, Sport and the Arts

  
As to the authorized signatory for the  
Minister of Tourism, Sport and the Arts

)  
)  
)  
)   
) Per: duly authorized signatory

EXECUTED in the presence of

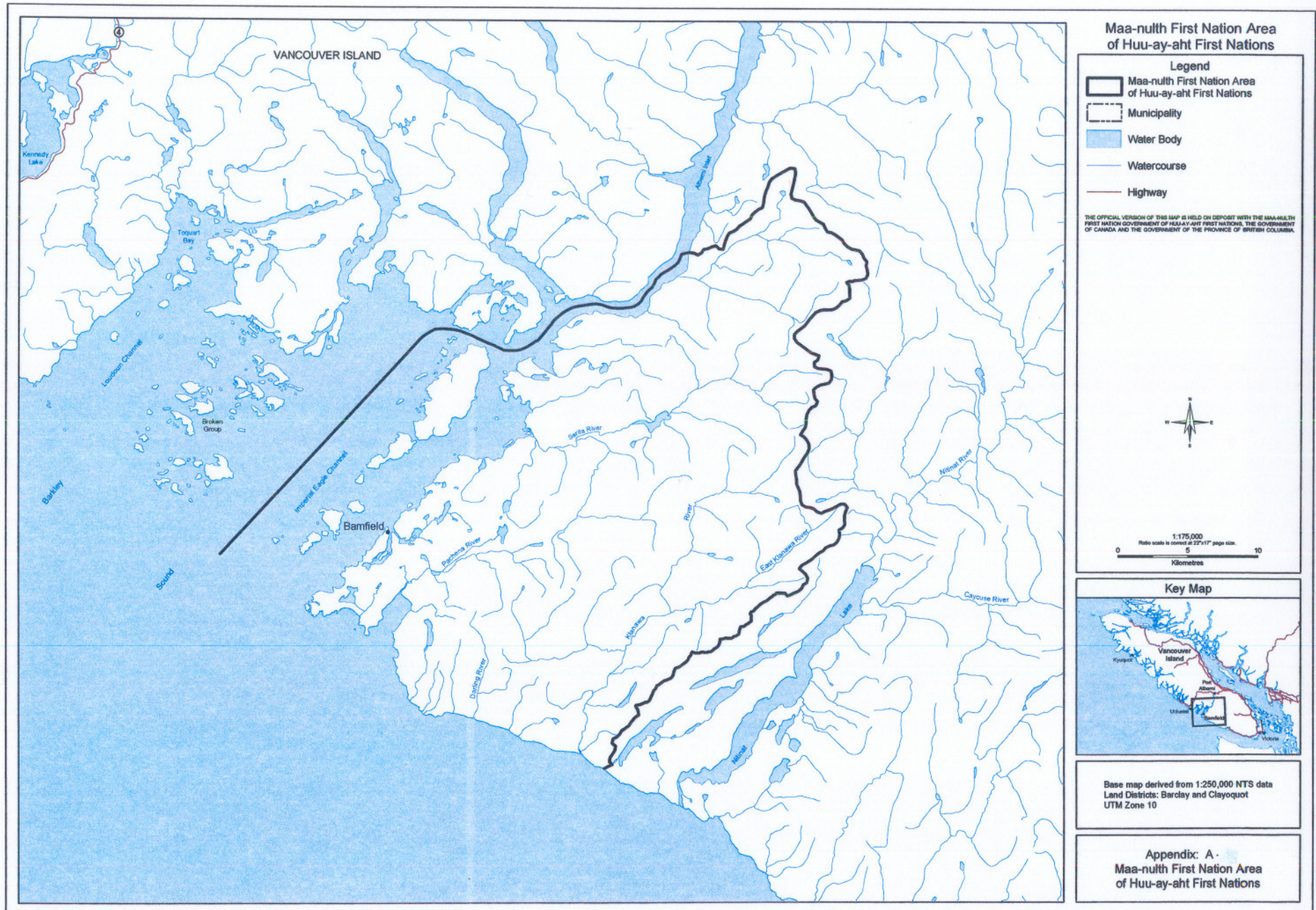
) HUU-AY-AHT FIRST NATION  
) as represented by

As to the signature of

)  
)  
)  
)  
)  
) Per: duly authorized signatory



# Schedule A: Map of the Huu-ay-aht First Nation Area





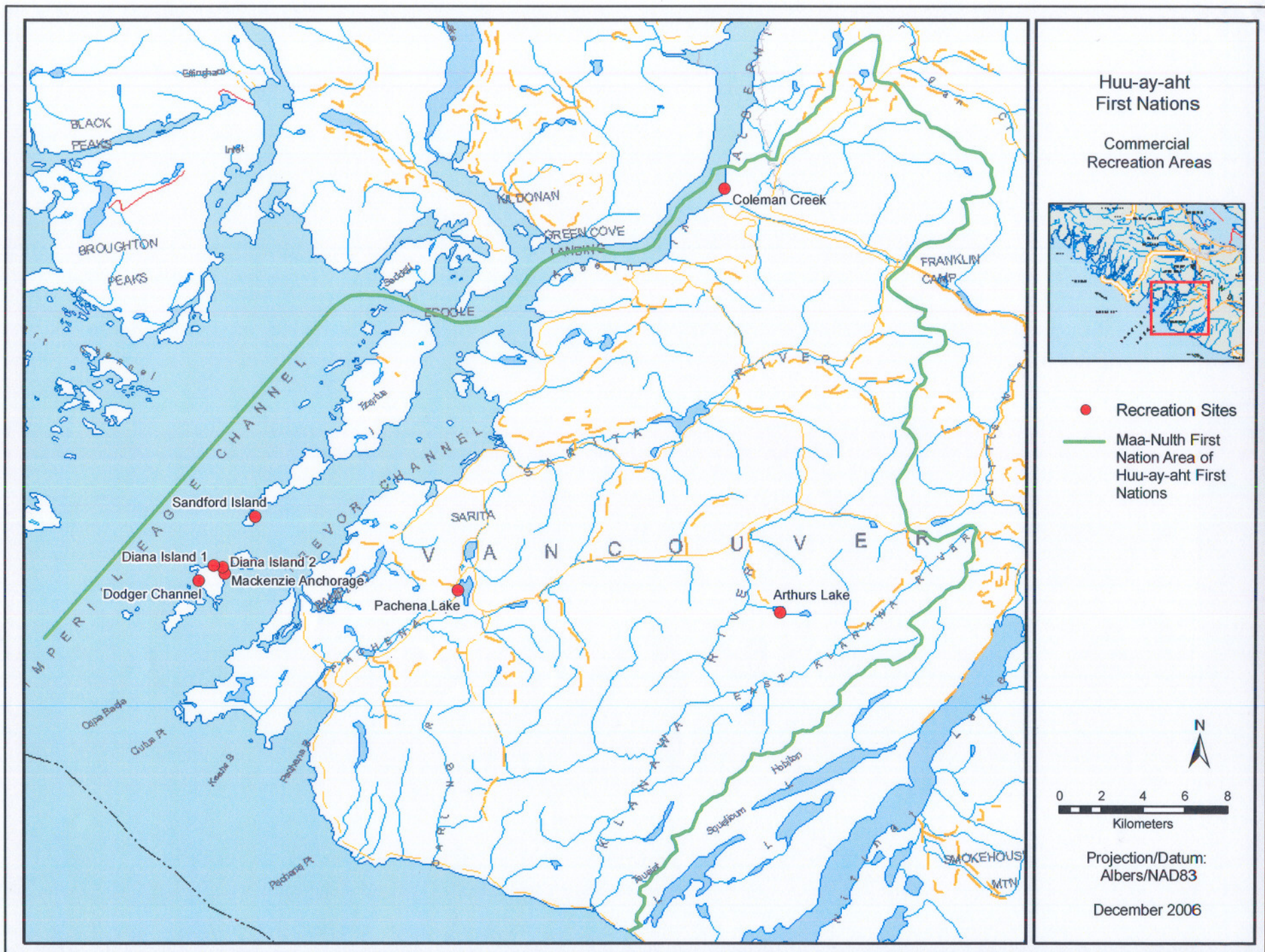
## **Schedule B: "Designated Sites"**

The following sites have been designated for future commercial recreation opportunities for the Huu-ay-aht First Nations

Site 1	Arthurs Lake	- 1.194 hectares
Site 2	Pachena Lake	- 1.410 hectares
Site 3	MacKenzie Anchorage	- 0.934 hectares
Site 4	Dodger Channel	- 2.929 hectares
Site 5	Diana Island # 2	- 1.970 hectares
Site 6	Diana Island # 1	- 1.407 hectares
Site 7	Sandford Island	- 0.970 hectares
Site 8	Coleman Creek	- 0.764 hectares

(see attached maps)

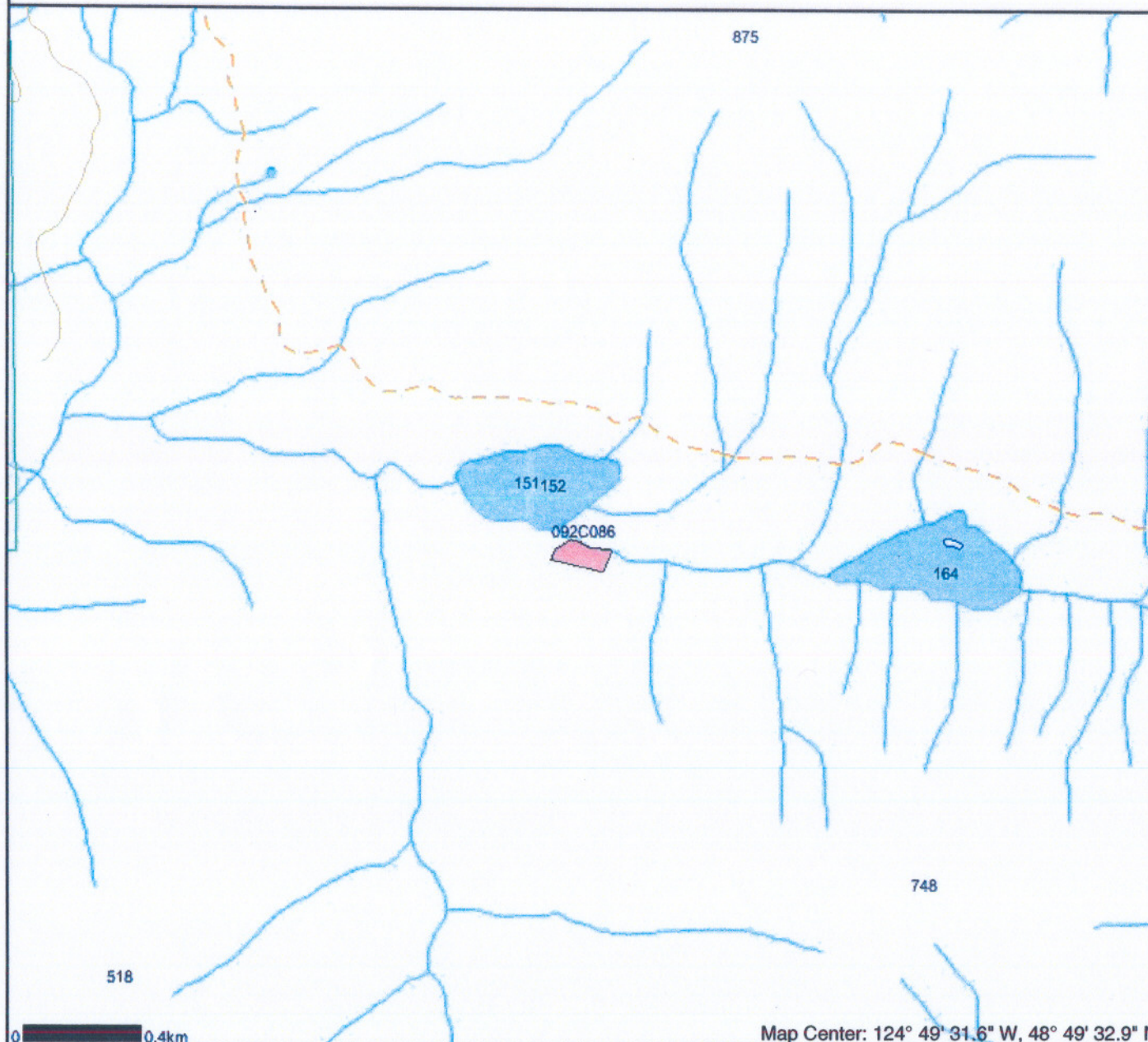






# 1412895 Site 1 - Arthurs Lake

## Legend



- Survey Parcels**
- Primary
  - Indian Reserves Primary
  - Mineral Claim
  - Timber Licence
  - Subdivision
  - Indian Reserves Subdivision
  - Right of Way
  - Unknown
  - BCGS Grid
- Annotation (1:20K)**
- Transportation - Points (TRIM)**
- Helipad
- Transportation - Lines (TRIM)**
- Airfield
  - Airport
  - Airstrip
  - Airport Abandoned
  - Ferry Route
  - Road (Gravel Undivided) - 1 Lane
  - Road (Gravel Undivided) - 2 Lanes
  - Road (Gravel Undivided) - U/C - 1 Lane
  - Road (Gravel Undivided) - U/C - 2 Lanes
  - Road (Paved Divided) - Not Elevated - 1 Lane Each Way
  - Road (Paved Divided) - Not Elevated - 2 Lanes Each Way
  - Road (Paved Divided) - U/C - Not Elevated - 2 Lanes Each Way
  - Road (Paved Undivided) - Not Elevated - 1 Lane
  - Road (Paved Undivided) - Not Elevated - 2 Lanes
  - Road (Paved Undivided) - Not Elevated - 4 Lanes
  - Road (Paved Undivided) - U/C - Not Elevated - 4 Lanes
  - Road (Unimproved)
  - Cut (Roadway)
  - Embankment/Fill (Roadway)
  - Trail
  - Bridge - Foot
  - Bridge - Trestle
  - Tunnel
  - Bridge
  - Rail Line (Double Track)
  - Rail Line (Multiple Track)
  - Rail Line (Single Track)
  - Rail Line - Abandoned Track
  - Spur
- Transportation - Airfield (EBM)**
- Air Facility
  - Airport
  - Airstrip
  - Abandoned Airfield
  - Helipad
- Water - Points (TRIM)**
- Rapids

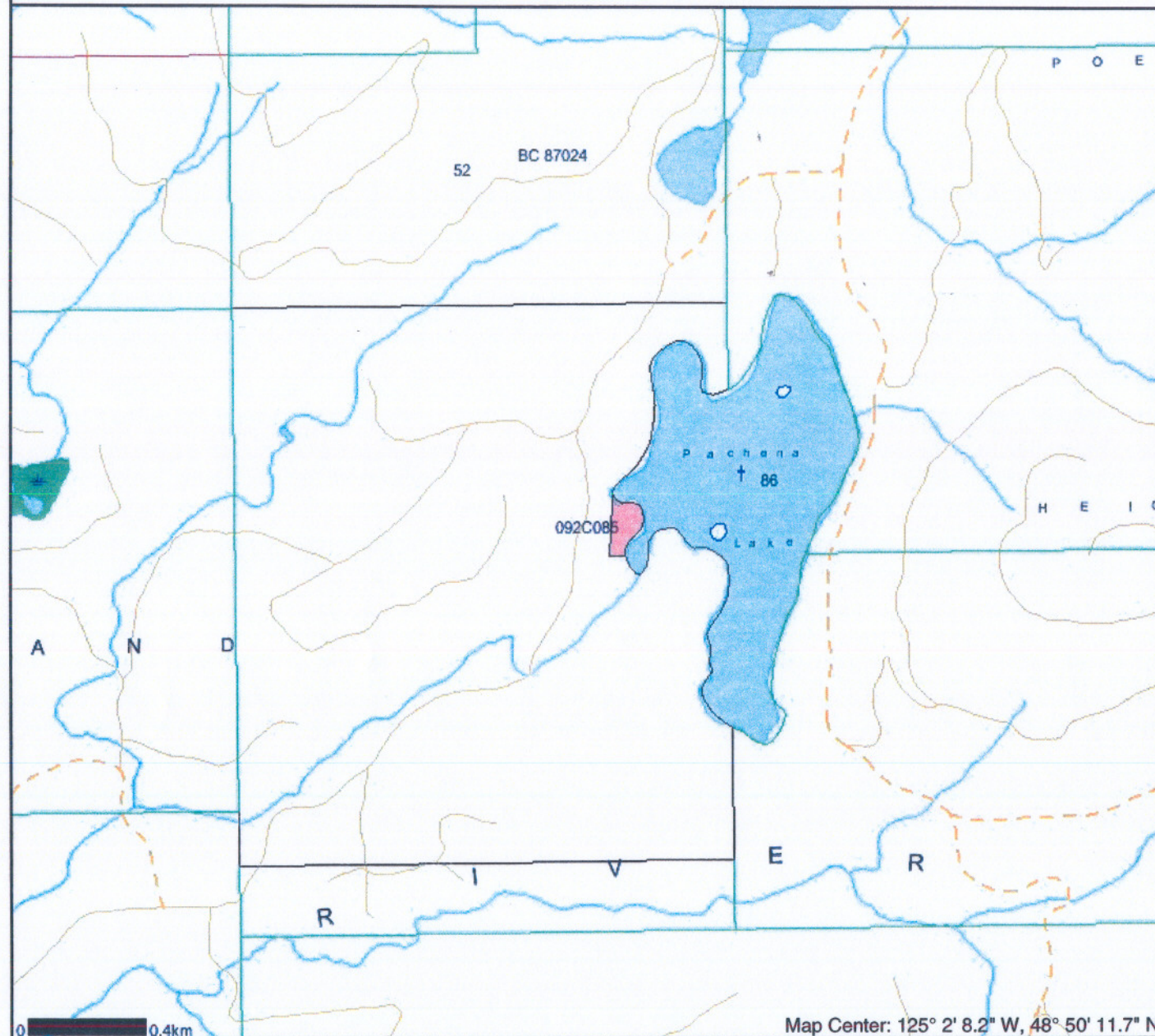
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# 1412895 Site 2 - Pachena Lake

## Legend



- Survey Parcels**
- Primary
  - Indian Reserves Primary
  - Mineral Claim
  - Timber Licence
  - Subdivision
  - Indian Reserves Subdivision
  - Right of Way
  - Unknown
  - BCGS Grid
- Annotation (1:20K)**
- Transportation - Points (TRIM)**
- Heliport
- Transportation - Lines (TRIM)**
- Airfield
  - Airport
  - Airstrip
  - Airport Abandoned
  - Ferry Route
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  - Road (Paved Divided) - U/C - Not Elevated - 2 Lanes Each Way
  - Road (Paved Undivided) - Not Elevated - 1 Lane
  - Road (Paved Undivided) - Not Elevated - 2 Lanes
  - Road (Paved Undivided) - Not Elevated - 4 Lanes
  - Road (Paved Undivided) - U/C - Not Elevated - 4 Lanes
  - Road (Unimproved)
  - Cut (Roadway)
  - Embankment/Fill (Roadway)
  - Trail
  - Bridge - Foot
  - Bridge - Trestle
  - Tunnel
  - Bridge
  - Rail Line (Double Track)
  - Rail Line (Multiple Track)
  - Rail Line (Single Track)
  - Rail Line - Abandoned Track
  - Spur
- Transportation - Airfield (EBM)**
- Air Facility
  - Airport
  - Airstrip
  - Abandoned Airfield
  - Heliport
- Water - Points (TRIM)**
- Rapids

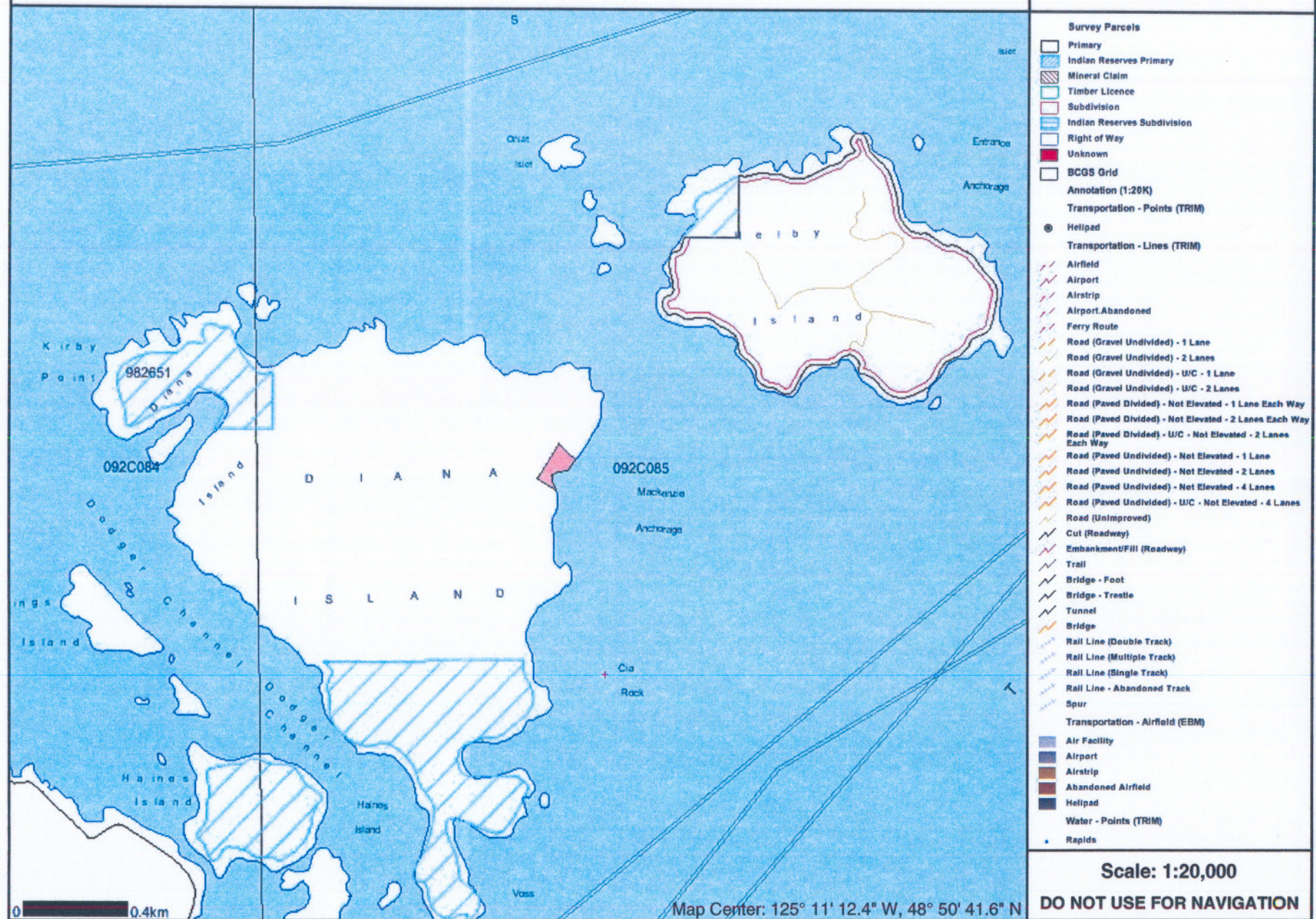
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# 1412895 Site 3 - MacKenzie Anchorage

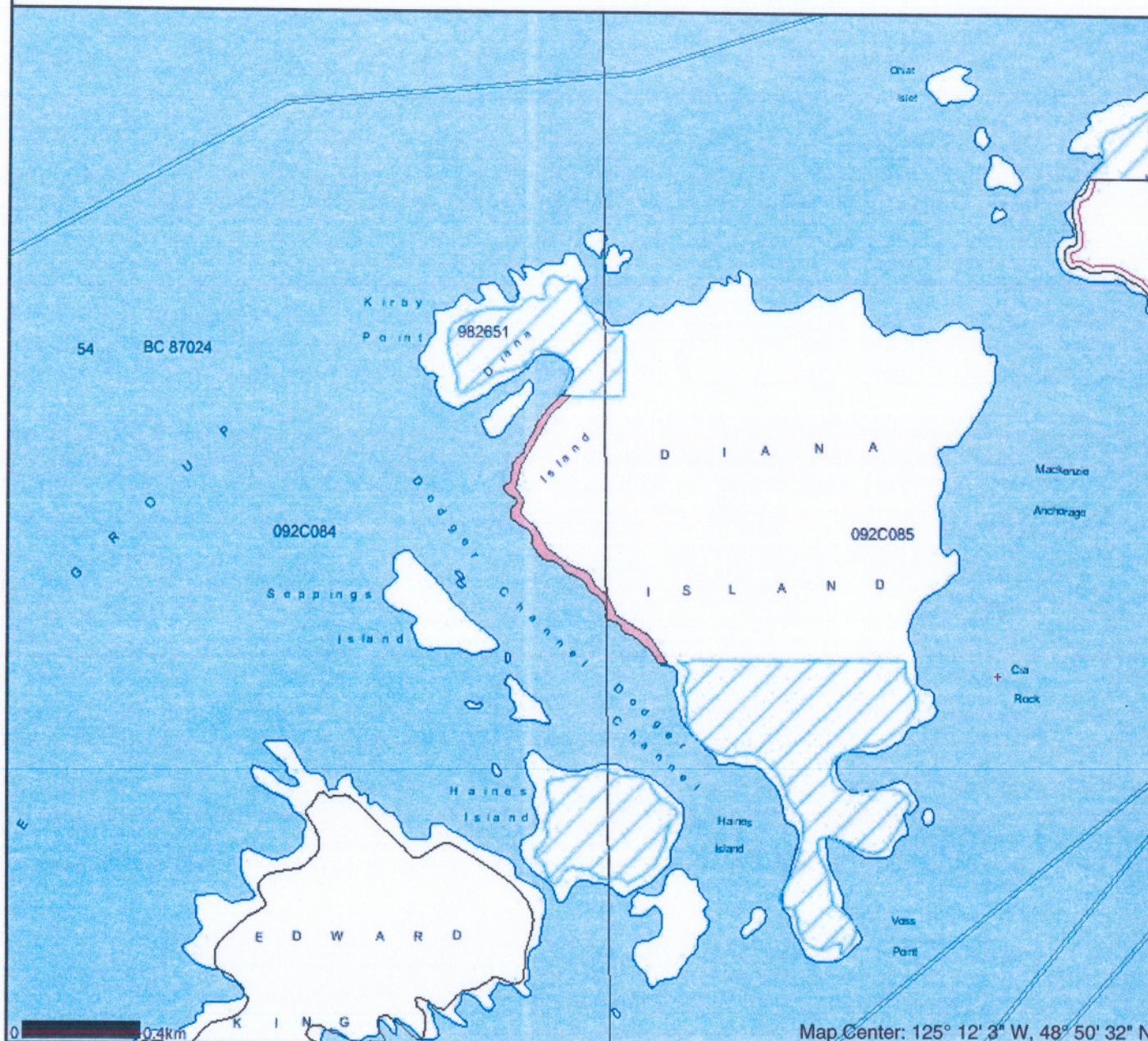
## Legend





# 1412895 Site 4 - Dodger Channel

## Legend



- Survey Parcels**
- Primary
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  - Mineral Claim
  - Timber Licence
  - Subdivision
  - Indian Reserves Subdivision
  - Right of Way
  - Unknown
  - BCGS Grid
  - Annotation (1:20K)
- Transportation - Points (TRIM)**
- Helipad
- Transportation - Lines (TRIM)**
- Airfield
  - Airport
  - Airstrip
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  - Ferry Route
  - Road (Gravel Undivided) - 1 Lane
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  - Road (Paved Divided) - U/C - Not Elevated - 2 Lanes Each Way
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  - Road (Paved Undivided) - Not Elevated - 2 Lanes
  - Road (Paved Undivided) - Not Elevated - 4 Lanes
  - Road (Paved Undivided) - U/C - Not Elevated - 4 Lanes
  - Road (Unimproved)
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  - Embankment/Fill (Roadway)
  - Trail
  - Bridge - Foot
  - Bridge - Trestle
  - Tunnel
  - Bridge
  - Rail Line (Double Track)
  - Rail Line (Multiple Track)
  - Rail Line (Single Track)
  - Rail Line - Abandoned Track
  - Spur
- Transportation - Airfield (EBM)**
- Air Facility
  - Airport
  - Airstrip
  - Abandoned Airfield
  - Helipad
- Water - Points (TRIM)**
- Rapids

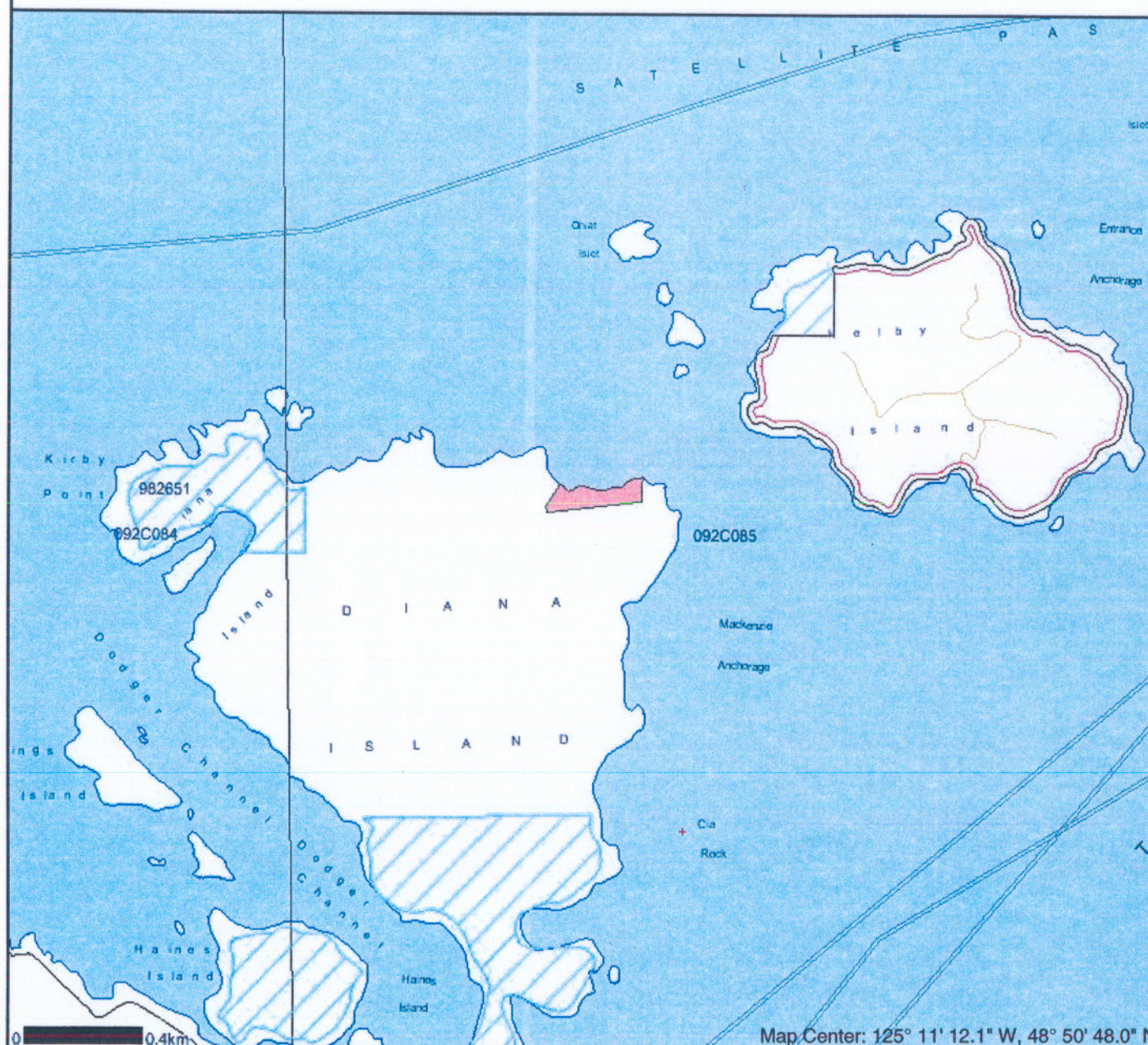
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# 1412895 Site 5 - Diana Island # 2

## Legend



- Survey Parcels**
- Primary
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  - Mineral Claim
  - Timber Licence
  - Subdivision
  - Indian Reserves Subdivision
  - Right of Way
  - Unknown
  - BCGS Grid
- Annotation (1:20K)**
- Transportation - Points (TRIM)**
- Helipad
- Transportation - Lines (TRIM)**
- Airfield
  - Airport
  - Airstrip
  - Airport/Abandoned
  - Ferry Route
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  - Road (Gravel Undivided) - U/C - 2 Lanes
  - Road (Paved Divided) - Not Elevated - 1 Lane Each Way
  - Road (Paved Divided) - Not Elevated - 2 Lanes Each Way
  - Road (Paved Divided) - U/C - Not Elevated - 2 Lanes Each Way
  - Road (Paved Undivided) - Not Elevated - 1 Lane
  - Road (Paved Undivided) - Not Elevated - 2 Lanes
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  - Road (Paved Undivided) - U/C - Not Elevated - 4 Lanes
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  - Rail Line - Abandoned Track
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  - Airport
  - Airstrip
  - Abandoned Airfield
  - Helipad
- Water - Points (TRIM)**
- Rapids

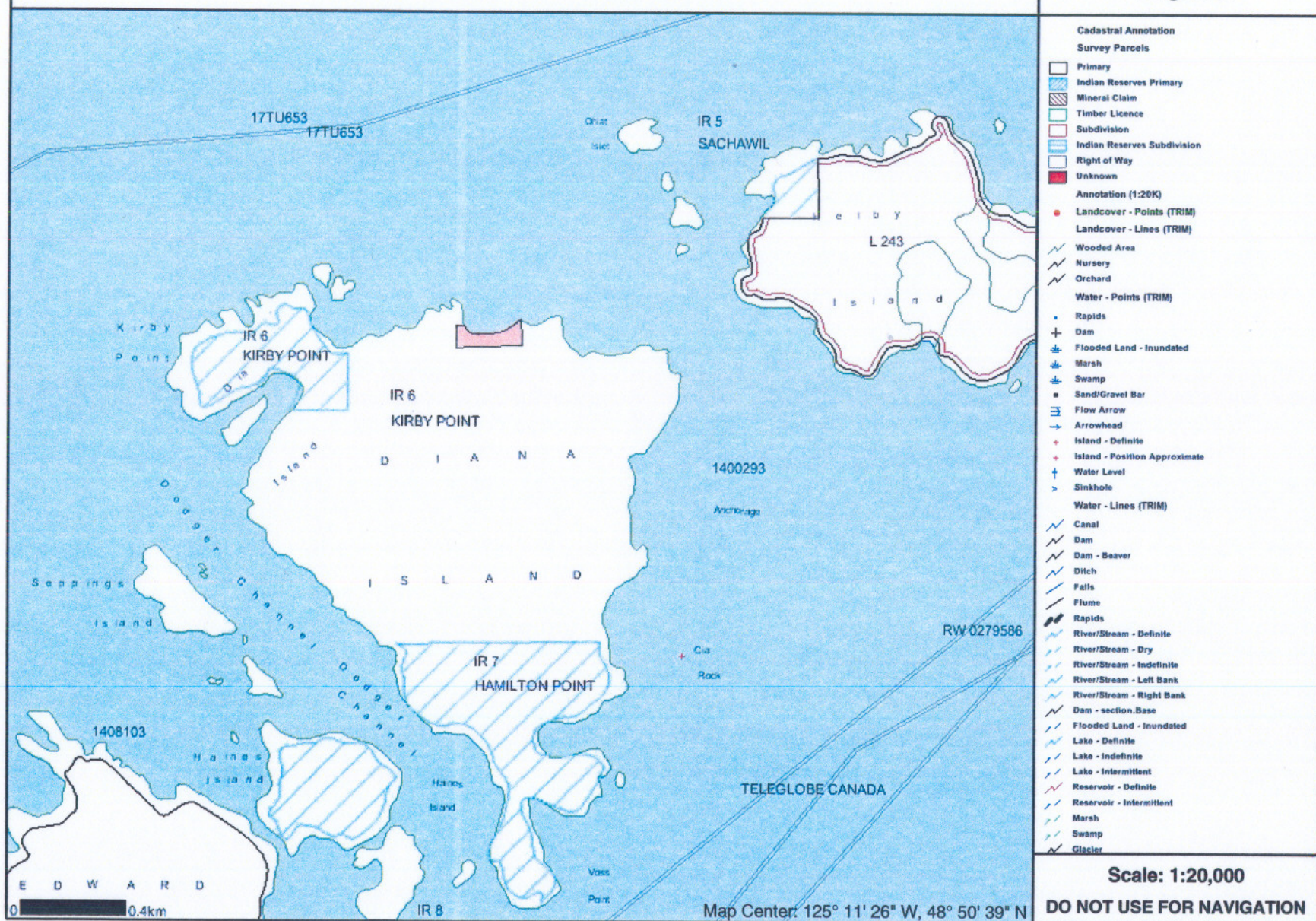
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# 1412895 Site 6 - Diana Island # 1

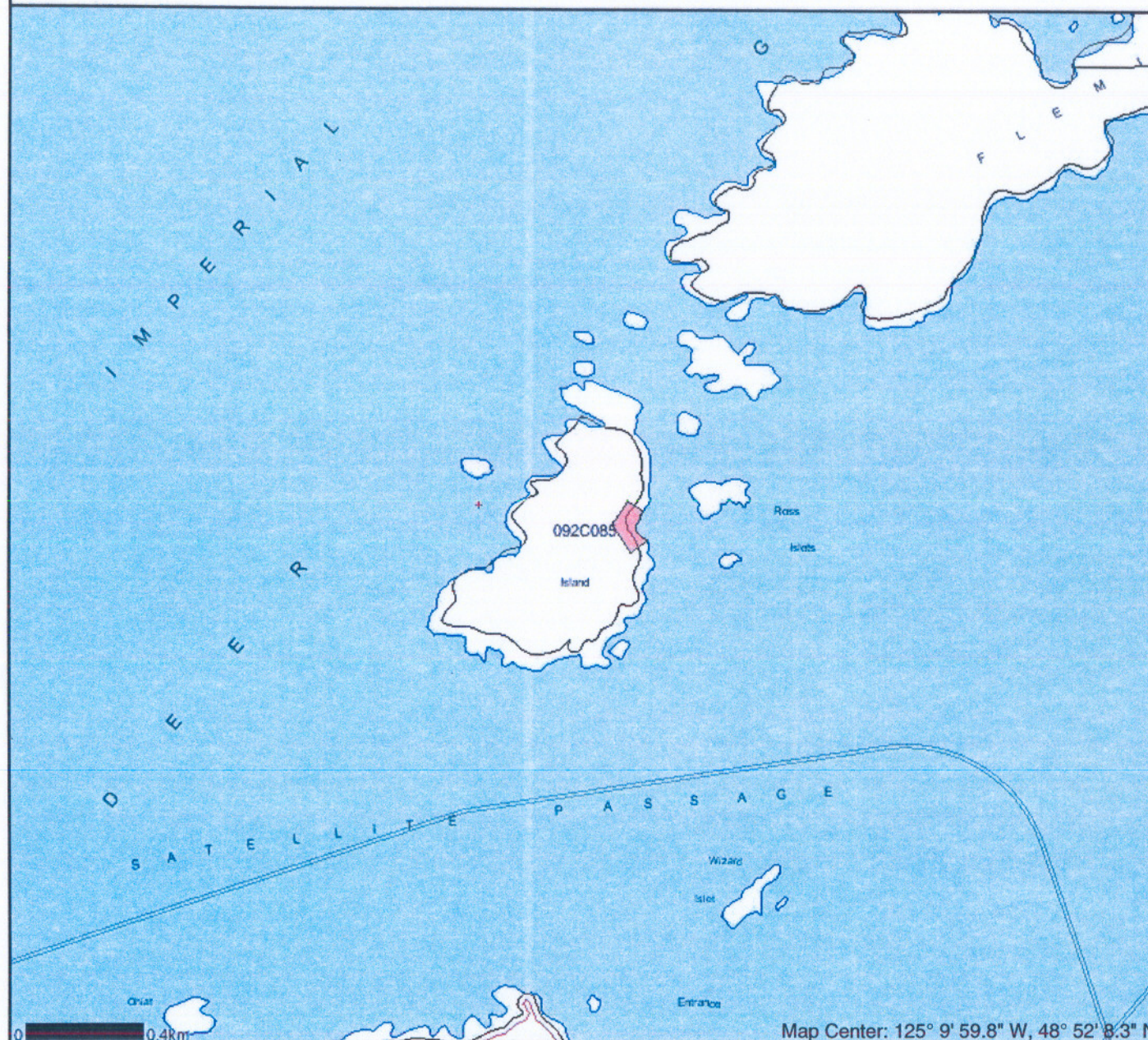
## Legend





# 1412895 Site 7 - Sanford Island

## Legend



- Survey Parcels**
- Primary
  - Indian Reserves Primary
  - Mineral Claim
  - Timber Licence
  - Subdivision
  - Indian Reserves Subdivision
  - Right of Way
  - Unknown
  - BCGS Grid
  - Annotation (1:20K)
- Transportation - Points (TRIM)**
- Helipad
- Transportation - Lines (TRIM)**
- Airfield
  - Airport
  - Airstrip
  - Airport Abandoned
  - Ferry Route
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  - Airstrip
  - Abandoned Airfield
  - Helipad
- Water - Points (TRIM)**
- Rapids

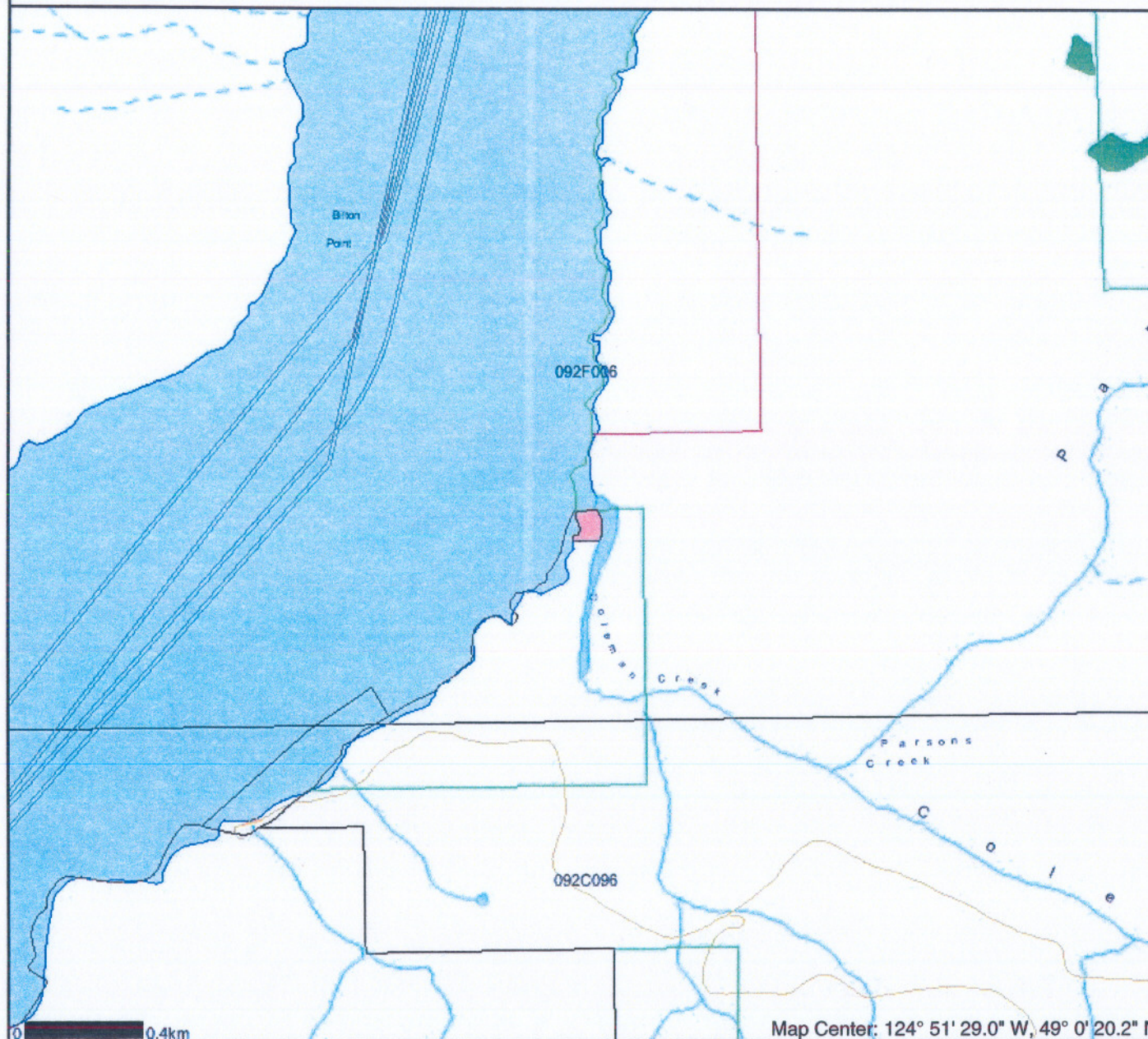
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# 1412895 Site 8 - Coleman Creek

## Legend



- Survey Parcels**
  - Primary
  - Indian Reserves Primary
  - Mineral Claim
  - Timber Licence
  - Subdivision
  - Indian Reserves Subdivision
  - Right of Way
  - Unknown
  - BCGS Grid
- Annotation (1:20K)**
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  - Bridge
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  - Rail Line (Multiple Track)
  - Rail Line (Single Track)
  - Rail Line - Abandoned Track
  - Spur
  - Transportation - Airfield (EBM)
- Air Facility**
  - Airport
  - Airstrip
  - Abandoned Airfield
  - Helipad
- Water - Points (TRIM)**
  - Rapids

Scale: 1:20,000

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