

## **TSAY KEH DENE AND PROVINCE OF BRITISH COLUMBIA ENVIRONMENTAL STEWARDSHIP INITIATIVE AGREEMENT**

### **Between:**

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Indigenous Relations and Reconciliation and the Minister of Forests, Lands, Natural Resources Operations and Rural Development (the "Province")

### **And:**

Tsay Keh Dene Nation ("TKD")

(referred to as a "Party" or collectively referred to as the "Parties")

### **Whereas:**

- A. TKD is a First Nation with its traditional territory in north-central BC, which traditional territory as identified by TKD and shown for illustrative purposes in Schedule A to this Agreement.
- B. TKD as a Sekani people has inherent and unextinguished Aboriginal rights and title in its traditional territory under section 35 of the *Constitution Act, 1982* ("s. 35 Right"), and TKD asserts the full range of rights outlined in the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") ("asserted UNDRIP Rights").
- C. The Province has enacted the *Declaration on the Rights of Indigenous Peoples Act* and through that Act the Province is required in accordance with s. 3 to take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration and in accordance with s. 4 to prepare and implement an action plan to achieve the objectives of the UNDRIP.
- D. TKD has frequently raised concerns with the Province about the scale, scope and manner of development in TKD territory, with special concern for historical and ongoing forestry operations throughout the territory, and these concerns include TKD's view that the scale, scope and manner of development in TKD territory is not sustainable, is environmentally destructive or harmful and is inconsistent with TKD's Indigenous Rights.
- E. TKD's position is that its ability to meaningfully exercise its Indigenous Rights including the right to practice its culture and otherwise exercise its right of self-determination has been seriously constrained and is under threat by the cumulative effects of natural resource development in TKD territory.

- F. TKD and the Province agree that both of them have a legitimate role in environmental stewardship in TKD territory and collaboration, joint problem solving and other new approaches to decision making described in this Agreement are the preferred means to properly address TKD's concerns and fulfil the Province's commitment to collaboratively implement TKD's Indigenous Rights and otherwise meet their respective interests.
- G. TKD and the Province agree that implementing measures for environmental protection and TKD's Indigenous Rights pursuant to this initiative must be approached in a manner that achieves a balance with other rights and interests where appropriate.
- H. TKD and the Province wish through this Agreement to establish a new framework for collaboration on environmental stewardship in TKD territory along with supporting structures and processes to achieve an in depth understanding of and address the Parties' mutual concerns about priorities for environmental stewardship.

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

#### **1.0 Interpretation**

- 1.1 For the purposes of this Agreement, the combination of s. 35 Rights and asserted UNDRIP Rights will be referred to as "Indigenous Rights."

#### **2.2 Environmental Stewardship Initiative**

- 2.1 The Parties will collaborate in designing and incrementally implementing a Environmental Stewardship Initiative ("ESI") with the objectives, elements and processes described in this Agreement.
- 2.2 The Parties agree that the ESI will assist the Parties in achieving the objectives of this Agreement including collaboration on stewardship matters within TKD traditional territory and the Omineca Region more broadly. However, the ESI is not intended to prevent or discourage other initiatives to address TKD concerns where appropriate or TKD participation in other processes for recognition or collaborative implementation of TKD Indigenous Rights.

#### **3.0 ESI Objectives**

- 3.1 The objectives of the ESI include the following:

- a. to assess the cumulative effects of natural resource development in TKD territory on valued ecosystem components ("VECs") that are linked to TKD's Indigenous Rights and TKD's ability to meaningfully exercise their Indigenous Rights.

(Collectively referred to as the "Effects Assessment").

- b. to use the results of the Effects Assessment to guide and inform recommendations that could:
  - i. preserve or enhance the VECs in a manner that supports the ability of TKD to meaningfully exercise its Indigenous Rights;
  - ii. avoid, minimize and mitigate the effects of natural resource development on the VECs and the exercise of TKD's Indigenous Rights; and
  - iii. contribute to the larger goal of achieving an appropriate balance between environmental protection, the exercise by TKD of its Indigenous Rights and other cultural, economic and social interests of the Parties;
- c. to generate information that TKD and the Province trust and that can be accessed in a useable form to inform natural resource decisions;
- d. provide a mechanism for the Parties to explore and develop longer term bilateral approaches to reconciliation that build on the ESI including:
  - i. approaches to shared decision making based on the recommendations developed through this Agreement; and
  - ii. approaches that link the implementation of this Agreement to the reconciliation of TKD and BC rights, titles and interests where appropriate.

#### **4.0 ESI Elements**

- 4.1 The Parties agree that the ESI will be carried out by a "Project Team" with representatives of the Parties and will include the following elements:
  - a. define study areas ("Study Area") that include TKD territory, relevant ecological boundaries for the VECs referred to in 4.1 c. and, where appropriate, regional initiatives undertaken by BC that will assist in meeting address TKD and BC interests;
  - b. appropriate spatial, temporal and ecological scales for the proper assessment of VECs in the Study Area;



- c. the VECs of moose, caribou, grizzly bear, marmot and fresh water fish and their terrestrial and aquatic habitats including water and forest biodiversity will inform work plan content and priorities;
- d. a cumulative effects assessment that considers and reflects:
  - i. a description of historical baseline conditions and natural variability of the VECs;
  - ii. a description of the current conditions of VECs;
  - iii. a description of how the VECs have changed due to the effects of past development and natural disturbance;
  - iv. the ability of the TKD people to access, use and harvest VECs in the Study Area including any constraints on their ability to do so resulting from past and ongoing development and natural disturbance;
  - v. the goals and priorities of the Parties for future development or limits on development within the Study Area including any known plans for development; and
  - vi. the views of the Parties on the desired future states of the VECs and how those states can be achieved.
- e. seek consensus on recommendations through a Project Team for any management responses that can effectively address the risks to the current and desired future state of the VECs and the risk to TKD's ability to meaningfully exercise its Indigenous Rights and the identification of immediate measures and a realistic plan for their implementation;
- f. a collaborative process to engage with and enlist the support of stakeholders, communities and proponents of natural resource development prior to finalizing the recommendations collaboratively developed under this Agreement;
- g. a collaborative monitoring program or approach to ensure that any management decisions or responses implemented pursuant to the ESI are effective;
- h. an evaluation of methodologies used in the ESI and, where appropriate, recommendations on changes to assessment methodologies to increase their effectiveness in achieving the objectives of the ESI; and
- i. use of best available information, including scientific and traditional knowledge, at all stages of the design and implementation of the ESI.

- 4.2 To enhance the ESI and its design and implementation, the Parties may undertake initiatives to collect or develop data to improve information or eliminate information gaps over time.
- 4.3 The Province agrees that it will provide access to all relevant databases and or other sources of relevant information to TKD to assist TKD in participating in the ESI and otherwise implementing this Agreement.
- 4.4 The Parties agree they may need to take further steps or enter into further agreements regarding data-sharing, use or disclosure of confidential information, including traditional knowledge, as part of the implementation of this Agreement and/or the ESI.

## **5.0 ESI Implementation**

- 5.1 The Parties will collaboratively implement the elements of the ESI described in part 4.0 of this Agreement through the Project Team that:
  - a. includes representatives of TKD and the Province;
  - b. with the agreement of both parties, may include other parties including other First Nations, Federal agencies, other levels of government and resources proponents; and,
  - c. strives for consensus on all decisions and recommendations.
- 5.2 The Project Team will:
  - a. as soon as practicable develop work plans, including budgets, to carry out this agreement;
  - b. report to the Parties' senior representatives as needed on the progress made or challenges encountered in implementing this Agreement;
  - c. submit recommendations that require decision to their respective leadership as needed in order advance the objectives of the Agreement.
  - d. Discuss opportunities to work with other First Nations, communities and stakeholders to establish a Regional Stewardship Forum ("RSF") that can support shared collaborative stewardship interests.
- 5.3 The Province will provide funding for the implementation of this Agreement in accordance with part 6.0 and the General Provisions of this Agreement.
- 5.4 The Parties agree that this Agreement will be implemented in two phases as follows:

- i. phase 1 to be completed by March 31, 2020; and
  - ii. phase 2 to be completed by March 31, 2021.
- 5.5 The Parties agree that a priority for the Project Team is to develop work plans with budgets, timelines and clear deliverables for phases 1 and 2 by consensus. In developing work plans and budgets, the Project Team will be guided by, but not limited to, the following:
  - a. In phase 1, the Parties will review the information gathered and recommendations, including immediate measures developed, in the Omineca Environmental Stewardship Demonstration Project for areas in which Takla Lake Nation and other Carrier Sekani First Nations assert Aboriginal rights and title and that overlap with TKD Territory. This review will focus on ensuring that the information gathered, and recommendations developed in that Project address the elements described in paragraph 4.1 and any TKD concerns, priorities and interests or, where gaps or deficiencies are identified, how those gaps and deficiencies can and will be addressed.
  - b. the objectives of this Agreement and the elements to be addressed under paragraph 4.1;
  - c. pursuant to paragraph 4.1 of this Agreement, seek consensus on recommendations for immediate measures that can assist in the recovery of the Chase and Wolverine caribou herds; and
  - d. the commitment of the Parties to work with other First Nations, local governments and other stakeholders to draw on the information gathered and recommendations developed through this Agreement along with regional initiatives undertaken by the Province, where relevant and appropriate, to develop Terms of Reference for Resource Management Planning that has broad support within the Omineca Region including support by the Parties.
- 5.6 In April 2020 the Parties will develop the work plan(s) with budget(s) for phase 2 and undertake the collaborative work described in paragraph 4.1 for other parts of TKD Territory not addressed by the work in phase 1.
- 5.7 The Province acknowledges that the work in phase 2 is no less important than the work in phase 1, and TKD's participation in phase 1 is based on the Province's assurances that it is equally committed to carrying out the work in phase 2.
- 5.8 The Parties acknowledge that the work in phase 2 may not be completed by March 31, 2021. Where phase 2 work is not completed by the end of the term, the Parties



agree to seek additional mandates and approvals required to carry out any work remaining in phase 2.

5.9 A map of the Phase 1 and Phase 2 areas is attached in Schedule A.

## **6.0 Funding for TKD**

6.1 The Province agrees to provide funding to TKD to enable TKD to effectively participate in designing and implementing the ESI and otherwise implementing this Agreement. Funding will be in addition to any other sources of funding received by TKD from the Province from time to time.

6.2 Without limiting paragraph 6.1, funding from the Province to TKD will be based on the following:

- a. the fees of professional consultants, advisors or experts engaged by the Parties jointly or TKD for purposes of this Agreement, including funding for TKD to retain Chu Cho Environmental LLP to undertake the work described in 5.5 a;
- b. TKD community engagement and other internal work to enable TKD to participate in and build strong support for the process(es) established by this Agreement including any joint recommendations developed through those process(es);
- c. travel costs associated with implementation of this Agreement; and
- d. a contribution towards the salary and benefits of a ESI coordinator to be employed by TKD.

6.3 For greater certainty, the amount of funding by the Province under this part 6.0 and how it will be allocated will be determined in good faith based on a budget or budgets to be collaboratively developed by the Project Team in accordance with this part 6.0 and approved by the Parties

## **7.0 General Provisions**

7.1 This Agreement and the ESI do not:

- a. constitute a treaty or land claim Agreement within the meaning of section 25 and section 35 of the *Constitution Act, 1982*;
- b. define, limit, amend, abrogate or derogate from any rights recognized and affirmed under section 35(1) of the *Constitution Act, 1982*, UNDRIP, other Aboriginal or Indigenous rights TKD may have in domestic or international law or any human rights recognized as a matter of international customary law;

- c. establish the scope or geographic extent of rights including Aboriginal title under section 35(1) of the *Constitution Act*, 1982 or any human rights recognized as a matter of international customary law;
  - d. interfere with the decision-making authority or jurisdiction of any Party or fetter the discretion of any decision-making authority of the Parties;
  - e. replace or interfere with processes undertaken by the BC Environmental Assessment Office pursuant to the *Environmental Assessment Act* or the Canadian Impact Assessment Agency of Canada under the *Canadian Impact Assessment Act*, and for greater certainty, the ESI is not a class assessment pursuant to the *Environmental Assessment Act*; and
  - f. prejudice or limit the position(s) that *either Party* may advance in any negotiations or litigation and unless otherwise expressly agreed in writing, nothing in this Agreement will be interpreted as fulfilling the obligations of the Crown to consult and accommodate TKD and its Aboriginal title, rights and interests or any treaty right TKD may acquire.
- 7.2 The Parties agree that where collaboration and engagement on proposed natural resource activities are ongoing, the ESI may inform those processes.
- 7.3 Notwithstanding any other provisions of this Agreement, the funding to be provided by the Province to TKD is subject to:
- a. there being sufficient monies available in an appropriation as defined in the *Financial Administration Act*, where required, to enable British Columbia in any fiscal Year or part thereof when such payment is required, to make such payment; and
  - b. Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.
- 7.4 The Parties agree that where information is shared with the Province for the purposes of this Agreement or the ESI and that information is clearly identified as confidential or sensitive information of TKD:
- a. the Province will make all reasonable efforts to prevent the disclosure of such information, subject to disclosure requirements under the *Freedom of Information and Protection of Privacy Act*, or as otherwise required by law; and
  - b. where the Province receives a request under the *Freedom of Information and Protection of Privacy Act* for disclosure of such information, the Province will provide



to TKD the information requested with a notice of the request and the opportunity to express its views regarding the disclosure.

- 7.5 This Agreement may be amended by agreement of the Parties in writing.
- 7.6 This Agreement will be effective on execution by all of the Parties.
- 7.7 The term of this Agreement will be from the date of execution until March 31, 2021, or when the elements in parts 4.0 and 5.0 of this Agreement are completed to the satisfaction of the Parties, whichever is sooner.
- 7.8 Prior to the expiration of the term under paragraph 7.7, the Parties will review the success of this Agreement in meeting the Parties' objectives and a report based on that review will be prepared collaboratively and submitted to the Parties. The Parties may agree to extend the term of this Agreement.
- 7.9 This Agreement may be entered into by each Party signing a separate copy of this Agreement and delivering it to the other Party by facsimile or email transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement.

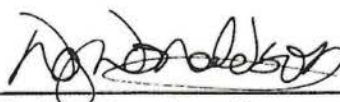
Signed on behalf of Her Majesty the  
Queen in Right of the Province of  
British Columbia by the Minister of  
Indigenous Relations and Reconciliation



Minister Scott Fraser

Date: January 23, 2020

Signed on behalf of Her Majesty the  
Queen in Right of the Province of  
British Columbia by the Minister of  
Forests, Lands, Natural Resource  
Operations and Rural Development



Minister Doug Donaldson

Date: January 23, 2020

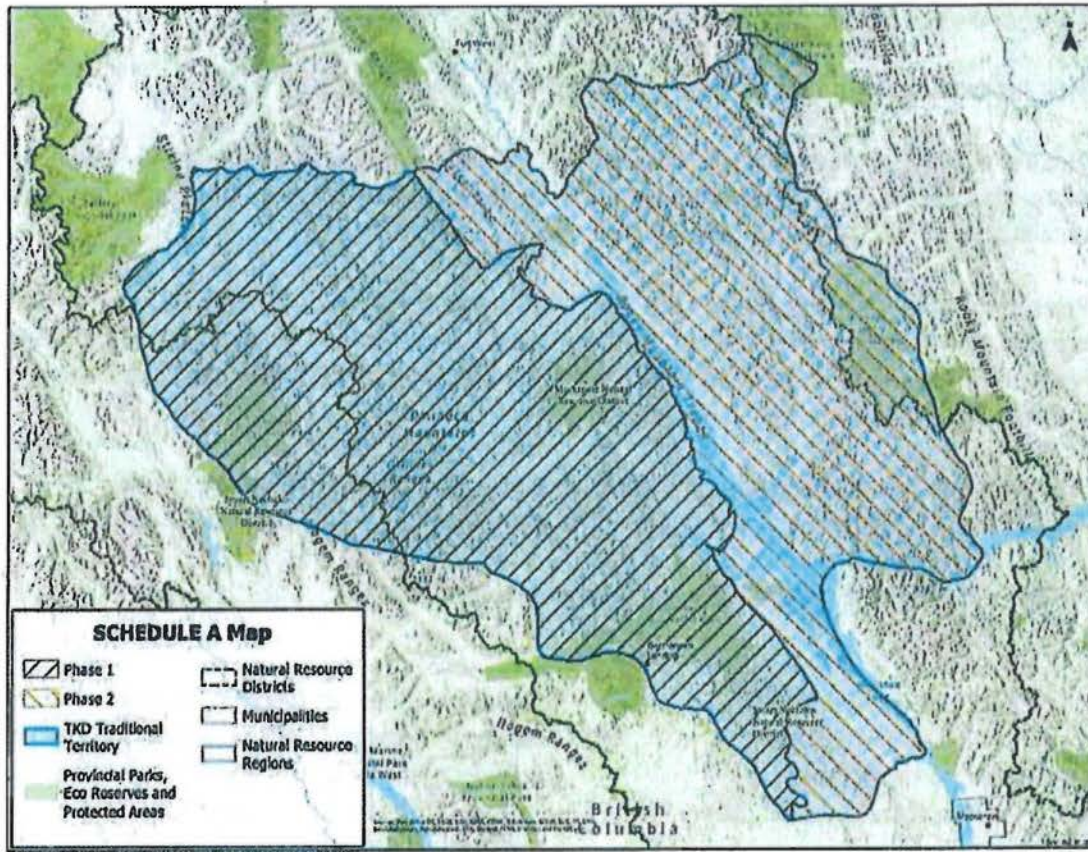
Signed on behalf of Tsay Keh Dene Nation



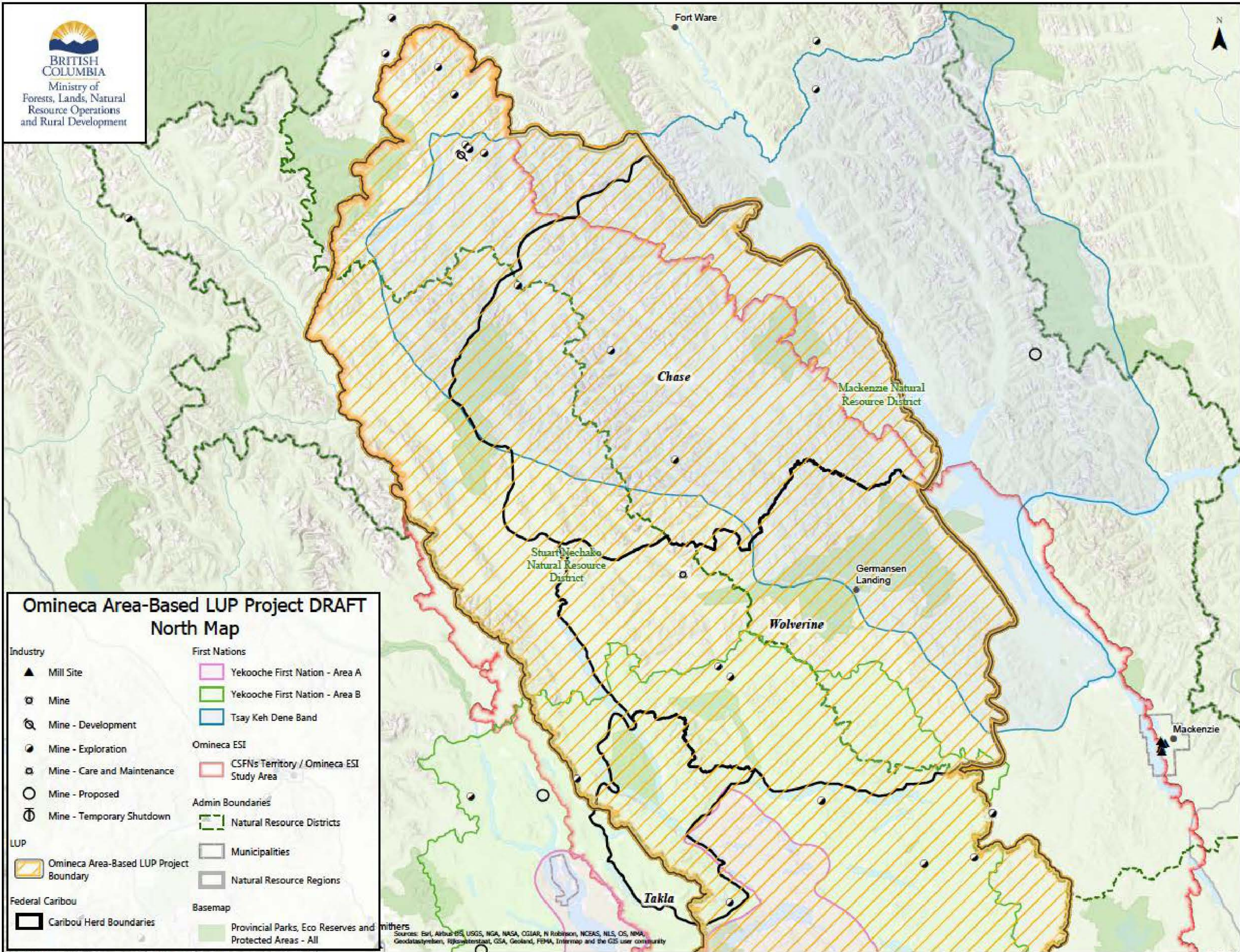
Chief Johnny Pierre

Date:

## Schedule A







## Omineca Area-Based LUP Project DRAFT North Map

### Industry

- ▲ Mill Site
- ⊙ Mine
- ⊙ Mine - Development
- ⊙ Mine - Exploration
- ⊙ Mine - Care and Maintenance
- Mine - Proposed
- ⊙ Mine - Temporary Shutdown

### LUP

- ⬜ Omineca Area-Based LUP Project Boundary

### Federal Caribou

- ⬜ Caribou Herd Boundaries

### First Nations

- ⬜ Yekooche First Nation - Area A
- ⬜ Yekooche First Nation - Area B
- ⬜ Tsay Keh Dene Band

### Omineca ESI

- ⬜ CSFNs Territory / Omineca ESI Study Area

### Admin Boundaries

- ⬜ Natural Resource Districts
- ⬜ Municipalities
- ⬜ Natural Resource Regions

### Basemap

- ⬜ Provincial Parks, Eco Reserves and Protected Areas - All

### Authors

Sources: BCL, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatasystem, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community