PACHEEDAHT FIRST NATION

INCREMENTAL TREATY AGREEMENT

BRITISH
COLUMBIA

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INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference the 26th day of March, 2013

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation

AND:

Pacheedaht First Nation, on behalf of itself and its Members, as represented by their Chief and Council

(Collectively referred to as the "Parties" and individually referred to as a "Party")

WHEREAS:

A. The Pacheedaht First Nation asserts that they have used, occupied, governed and have exercised exclusive ownership of the Traditional Territory from time immemorial.

B. The Pacheedaht First Nation is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process.

C. The Parties are desirous of creating momentum in the treaty negotiations and concluding a Final Agreement.

D. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations—BC Region, First Nations Summit and the Union of BC Indian Chiefs, have entered into a New Relationship.

E. This Agreement will provide the Pacheedaht First Nation with transitional economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1: INTERPRETATION

1.1 **Definitions.** In this Agreement and the Recitals to this Agreement, unless the context requires otherwise:

"AIP" means the Pacheedaht First Nation Agreement-in-Principle currently being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

"AIP Date" means the date the Parties and Canada initial the AIP as part of completing Stage 4 of the British Columbia Treaty Commission process;

"Chief" means, in respect of the Pacheedaht First Nation, "chief" within the meaning of the *Indian Act*;

"Closing" means the completion of those land transfers, deliveries and other matters contemplated by this Agreement in relation to a transfer of the Lands by the Province to a Designated Company on a Closing Date;

"Closing Date" means the date on which the applicable Lands are transferred to a Designated Company as set out in section 5.1(a) to (c);

"Council" and **"Band Council"** mean, in respect of the Pacheedaht First Nation, the elected "council" within the meaning of the *Indian Act*;

"Crown Corridor" means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes and that is identified in Part 3 of Schedule 1;

"Designated Company" means a company incorporated under the *Business Corporations Act* (British Columbia) which is controlled, as that term is defined in that Act, by the Pacheedaht First Nation, and which the Pacheedaht First Nation has designated to take registered fee simple to any of the Lands;

"District Lot 247 Block A" means, prior to the completion and approval of the surveys contemplated by subsection 5.13 (f), the area of approximately 87.1 hectares of Crown land as shown approximately in Map 2 of Part 1 of Schedule 1 and, following the completion and approval of a survey or re-survey of those lands, that area legally described by the applicable survey, which for greater certainty will not include any land below the natural boundary (as defined in the *Land Act*) or any Crown Corridor;

"District Lot 247 Block B" means, prior to the completion and approval of the surveys contemplated by subsection 5.13 (f), the area of approximately 90.8 hectares of Crown land as shown approximately in Map 2 of Part 1 of Schedule 1 and, following the completion and approval of a survey or re-survey of those lands, that area legally described by the applicable survey, which for greater certainty will not include any land below the natural boundary (as defined in the *Land Act*) or any Crown Corridor;

"District Lot 251" means, prior to the completion and approval of the surveys contemplated by subsection 5.13 (f), the area of approximately 190.9 hectares of Crown land as shown approximately in Map 1 of Part 1 of Schedule 1 and, following the completion and approval of a survey or re-survey of those lands, that area legally described by the applicable survey, which for greater certainty will not include any land below the natural boundary (as defined in the *Land Act*) or any Crown Corridor;

"District Lot 252" means, prior to the completion and approval of the surveys contemplated by subsection 5.13 (f), the area of approximately 227.0 hectares of Crown land as shown approximately in Map 1 of Part 1 of Schedule 1 and, following the completion and approval of a survey or re-survey of those lands, that area legally described by the applicable survey, which for greater certainty will not include any land below the natural boundary (as defined in the *Land Act*) or any Crown Corridor;

"Effective Date" means the date on which the Final Agreement takes effect;

"Existing Legal Proceedings" means the following legal actions:

- *Pacheedaht (Arthur Jeffery Jones) v. BC and Canada* – Vancouver Registry No. L0033481, filed December 08, 2003;

"Final Agreement" means the Pacheedaht First Nation Final Agreement to be concluded by Canada, the Province and the Pacheedaht First Nation at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

"Final Agreement Signing Date" means the date which the authorized signatories for the Parties and Canada sign the Final Agreement in accordance with the Ratification Chapter of the Final Agreement as part of completing Stage 5 of the British Columbia Treaty Commission process;

"Governmental Action" means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements, and other actions whatsoever, issued, granted, entered into or otherwise taken by a Provincial Official either before or after the date of this Agreement;

"HST" means the harmonized sales tax imposed under the *Excise Tax Act (Canada)* or equivalent tax imposed under federal or provincial law;

"Indian Act" means the *Indian Act*, R.S.C. 1985, c.I-5;

"ITA Date" means the date on which this Agreement is executed and delivered by the Parties;

"Jordan River 2" means Parcel B (DD 99860I) of Section 9 Renfrew District, except those Parts in Plans 13455, 32802 and VIP58390;

"Lands" means District Lot 251, District Lot 252, District Lot 247 Block A and District Lot 247 Block B, or any of those fee simple lands, as shown for illustrative purposes in Part 1 of Schedule 1;

"Member" means any person who is:

a) a "member of the band", as that phrase is defined in the *Indian Act*, of the Pacheedaht First Nation band; or

b) enrolled or entitled to be enrolled as a beneficiary under the Final Agreement;

and their heirs, descendants, legal representatives, successors and assigns;

"New Relationship" means the vision developed in March 2005 by the Province and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal rights;

"Pacheedaht First Nation" means the "band", as that term is defined in the *Indian Act*, named the "Pacheedaht First Nation" and includes all Members;

"Permitted Encumbrances" means the reservations, exceptions, liens, charges, and interests as described in Part 2 of Schedule 1 for each of the Lands;

"Province" means Her Majesty the Queen in right of the Province of British Columbia;

"Provincial Official" means:

a) the Province;

b) any minister, public official, employee, or agent of the Province;

c) any government corporation;

d) any director, officer, employee, or contractor acting on behalf of a government corporation, the Province or an agent of the Province; or

e) any person acting as a decision maker under any enactment of the Province.

"Subsurface Resources" means:

a) earth, including diatomaceous earth, soil, peat, marl, sand and gravel;

b) slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash, rock, riprap, and stone products;

c) minerals, including placer minerals;

d) coal, petroleum and natural gas;

e) fossils; and

f) geothermal resources.

"Title Instrument" means a Crown grant (as defined in the *Land Act*), or any other enactment or instrument which is legally effective to cause fee simple title in any of the Lands to be transferred to, or vested in, a Designated Company, subject to the Permitted Encumbrances;

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed by the Pacheedaht First Nation with the British Columbia Treaty Commission.

1.2 **Interpretation.** For purposes of this Agreement, except as otherwise expressly provided:

a) "this Agreement" means this Incremental Treaty Agreement, including the Schedules hereto, and any agreement, document or instrument entered into, made or delivered pursuant to the terms hereof, as any of them may from time to time be supplemented or amended and in effect;

b) all references in this Agreement to a designated "Article", "section", "subsection" or other subdivision or to a Schedule are to the designated Article, section, subsection or other subdivision of, or Schedule to, this Agreement;

c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, section, subsection or other subdivision or Schedule;

d) the headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof;

e) all reference to currency refer to lawful money of Canada (unless expressed to be in some other currency);

f) a reference in this Agreement to any particular enactment or other statute or regulation or any particular section or portion thereof shall be deemed to be a reference to any enactment, statute, regulation or to any particular section or portion thereof, as the case may be, which is enacted in substitution therefore or in replacement thereof;

g) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;

h) words importing gender include the masculine, feminine or neutral gender and words in the singular include the plural and vice versa;

i) the use of "including" is to be read as not limiting the generality of the preceding term or phrase;

j) there shall be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party;

k) any reference to the delivery on Closing of an agreement or document "in the form" of an attached schedule means an agreement or document substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Province and the Pacheedaht First Nation authorized for that purpose; and

l) each and every release, covenant and other agreement given, and action to be taken, by the Pacheedaht First Nation in this Agreement means the Pacheedaht First Nation acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the

Pacheedaht First Nation on its own behalf, and for and on behalf of its Members.

1.3 **Schedules.** The following are the Schedules to this Agreement:

- Schedule 1 — Part 1: Maps of Lands for Illustrative Purposes
- Schedule 1 — Part 2: Permitted Encumbrances
- Schedule 1 — Part 3: Crown Corridors
- Schedule 2 — Addition to Reserve Restrictive Covenant
- Schedule 3 — Agreement of Designated Company
- Schedule 4 — Statutory Right of Way Agreement – Industrial Roads
- Schedule 5 — Express Charge Terms Statutory Right of Way Agreement (BC Hydro and Telus)
- Schedule 6 — Statutory Right of Way Agreement – Gravel
- Schedule 7 — Map of Gravel Resources

1.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

ARTICLE 2: PURPOSES

2.1 **Purposes.** The purposes of this Agreement are to:

a) demonstrate the commitment of the Parties to concluding a Final Agreement;

b) provide the Pacheedaht First Nation with incremental treaty benefits in advance of a Final Agreement, in the spirit of the New Relationship. The Lands to be transferred in accordance with this Agreement will become an element of the Final Agreement;

c) develop capacity within the Pacheedaht First Nation to enable them to more effectively implement the Final Agreement; and

d) establish additional certainty on the land base within the Pacheedaht First Nation's Traditional Territory.

ARTICLE 3: COMING INTO EFFECT

3.1 **Commencement.** This Agreement comes into effect when it has been executed and delivered by each of the Parties.

3.2 **Termination.** This Agreement will terminate on the occurrence of the earliest of any of the following events:

a) upon notice by either Party prior to the ministerial order authorizing the disposition of the Lands that are the subject of the ministerial order under 5.13 (g);

b) mutual agreement of the Parties; or

c) the Effective Date of the Final Agreement.

3.3 **Survival.** Notwithstanding 3.2, and subject to the Final Agreement, the following sections of this Agreement survive the termination of this Agreement and, as applicable, continue to apply to any Lands transferred in accordance with this Agreement: section 5.5; section 5.6; section 5.8; section 5.11; section 5.12; and subsections 8.1 (b), (c), (f), (g), and (h).

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1 **Pacheedaht First Nation Representations.** The Pacheedaht First Nation represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:

a) they enter into this Agreement for, and on behalf of, their Members;

b) their Members have provided them with a mandate to negotiate an AIP and Final Agreement;

c) they, as represented by their Chief and Council, have the legal power, capacity and authority to accept, execute and deliver this Agreement and to carry out their obligations under this Agreement on behalf of the Pacheedaht First Nation and their Members;

d) this Agreement is binding upon and enforceable against the Pacheedaht First Nation and their Members in accordance with its terms;

e) this Agreement has been duly authorized, executed and delivered by and on behalf of the Pacheedaht First Nation and their Members;

f) any company designated by the Pacheedaht First Nation as a Designated Company for the purposes of this Agreement will be a company duly incorporated under the *Business Corporations Act* (British Columbia) and controlled by the Pacheedaht First Nation such that it is duly constituted on the applicable Closing as a Designated Company as defined herein; and

g) any Designated Company has the power and capacity to enter into each transaction and agreement to which it is a Party in accordance with this Agreement and to carry out its obligations in connection with such transactions and agreements.

4.2 **Provincial Representations.** The Province represents and warrants that on Closing each of the representations and warranties set out below will be true and complete and acknowledges that the Pacheedaht First Nation has entered into this Agreement in reliance on the truthfulness of each of these representations and warranties:

a) it has the power and authority to cause fee simple title to the Lands to be transferred to or vested in a Designated Company as contemplated by this Agreement.

ARTICLE 5: LAND TRANSFERS

5.1 **Transfers of the Lands.** Subject to the Permitted Encumbrances and the terms of this Agreement, the Province will transfer to a Designated Company the Lands as follows:

a) District Lot 251 and District Lot 252 as soon as practicable after the ITA Date;

b) District Lot 247 Block B as soon as practicable after the AIP Date; and

c) District Lot 247 Block A as soon as practicable after the Final Agreement Signing Date.

5.2 **Designation and Notice.** Forty five (45) days prior to a Closing Date the Pacheedaht First Nation will deliver to the Province a direction identifying the Designated Companies that will take registered title to the applicable Lands.

5.3 **Closing Deliveries by the Pacheedaht First Nation**. Three (3) days prior to a Closing Date the Pacheedaht First Nation shall execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:

a) a restrictive covenant granted by the Designated Company substantially in the form attached as Schedule 2 in relation to the applicable Lands;

b) an Agreement of the Designated Company substantially in the form attached as Schedule 3 in relation to the applicable Lands;

c) a Statutory Right of Way for Industrial Roads substantially in the form attached as Schedule 4 in relation to the applicable Lands;

d) an Express Charge Terms Distribution Statutory Right of Way substantially in the form attached as Schedule 5 (BC Hydro and Telus);

e) a certificate signed by an officer of the Designated Company confirming the Designated Company's HST registration number and registered status; and

f) a Statutory Right of Way for Gravel substantially in the form attached as Schedule 6 in relation to the applicable Lands.

5.4 **Closing Procedure.** The transactions contemplated by this Agreement will be closed in accordance with procedures to be agreed to by the respective legal counsel of the Pacheedaht First Nation and the Province such that all deliveries and the lodging for registration of any documents at the Land Title Office, for which registration is necessary or advisable, may be completed concurrently.

5.5 **Environmental Matters.** The Pacheedaht First Nation acknowledges and agrees that any of the Lands acquired by the Designated Company under this Agreement are acquired "as is". The Pacheedaht First Nation waive the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands and except as otherwise specifically set forth herein, the Province has not given any warranty or representation concerning:

a) the fitness of the Lands for any particular use, including the intended use of it by the Pacheedaht First Nation or by a Designated Company;

b) the condition of the Lands (including surface and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Lands and any surrounding or neighbouring land;

c) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands; and

d) the economic feasibility of the development of the Lands;

5.6 **Environmental Remediation.** The Pacheedaht First Nation will from and after the Closing:

a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);

b) indemnify and save harmless the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and

c) release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

5.7 **Land Use.** To the best of the Province's knowledge, the Lands have not been used for a prescribed industrial or commercial purpose or any other purpose or activity prescribed under the *Environmental Management Act*, and the Province is not required, under that *Act*, to prepare or provide a site profile for any of the Lands.

5.8 **Permitted Encumbrances.** The Pacheedaht First Nation acknowledge that they are familiar with the Permitted Encumbrances and accept title to the Lands subject to the same and covenant not to do, or allow to be done, anything that would constitute a default under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.

5.9 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:

a) the cost of any survey or re-survey required for any Crown grant or any other Title Instrument in relation to the Lands;

b) any other costs or fees associated with the preparation of Crown grants or any other Title Instrument; and

c) property transfer tax (and for certainty the Province agrees to either pay or waive the requirement to pay any property transfer tax payable under the *Property Transfer Tax Act* in connection with the transfer of the Lands under this Agreement).

5.10 **Public Utility—Permitted Encumbrances.** Notwithstanding 5.9, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.

5.11 **HST and Charges.** The Pacheedaht First Nation is responsible for any federal or provincial sales tax, including HST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

5.12 **Annual Taxes and Other Costs**. Subject to the Final Agreement, and in accordance with provincial law, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume financial or other obligations with respect to the Lands.

5.13 **Conditions Precedent in Favour of the Province.** The obligation of the Province to transfer any of the Lands to the Pacheedaht First Nation under this Agreement is subject to:

a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;

b) the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on or before the applicable Closing Date on cost sharing the value of the Lands for treaty settlement purposes;

c) the representations and warranties of the Pacheedaht First Nation herein being true and correct on the applicable Closing Date;

d) the Pacheedaht First Nation having complied with all covenants of the Pacheedaht First Nation herein on the applicable Closing Date;

e) in respect of all previously transferred Lands, all obligations of the Pacheedaht First Nation and the Designated Company having been fully performed in accordance with this Agreement;

f) surveys for the Lands approved by the Surveyor General in accordance with provincial law having been completed prior to the applicable Closing Date; and

g) the Province having given notice to the Pacheedaht First Nation that the minister responsible has authorized the disposition of the Lands in accordance with provincial law.

ARTICLE 6: TREATY NEGOTIATIONS MATTERS

6.1 **Pacheedaht First Nation Land Acquisition Treaty Related Measure.** As part of Final Agreement negotiations, the Province will explore with Pacheedaht First Nation and Canada the potential for entering into a treaty related measure by which Canada and the Province will acquire, on a willing buyer-willing seller basis, private lands located within the Jordan River area and including, without limitation, Jordan River 2 or a portion thereof, for the purposes of offering such lands to the Pacheedaht First Nation in accordance with the terms and conditions of the Final Agreement. For greater certainty, the Province will require appropriate cost-sharing arrangements with Canada and Cabinet and Treasury Board approval before finalizing any such treaty related measure.

6.2 **Land Protection Measures.** As soon as practicable after the chief negotiators for the Parties and Canada initial an agreement that AIP land selection negotiations are substantially complete, the Province will enter into negotiations with Pacheedaht First Nation and Canada to conclude an agreement whereby the appropriate Provincial Officials will, subject to the terms of such agreement, take the necessary statutory and administrative steps to implement the following measures under appropriate provincial legislation:

a) withdraw the negotiated AIP land selections from disposition under the *Land Act*; and

b) prohibit the staking of mineral claims on the negotiated AIP land selections under the *Mineral Tenure Act*.

6.3 **Status of Lands on Effective Date.** As part of Final Agreement negotiations, the Parties will agree that the Lands transferred under this agreement will become "Pacheedaht First Nation Lands" within the meaning of the Final Agreement.

6.4 **Status of Statutory Right of Way Agreement Industrial Roads.** As part of Final Agreement negotiations, the Parties will negotiate whether the Statutory Right of Way Agreement for Industrial Roads will continue to apply to the applicable Lands on the Effective Date of the Final Agreement.

6.5 **Subsurface Resources.** As part of Final Agreement negotiations, the Parties and Canada will negotiate the ownership of Subsurface Resources on the Lands and any Permitted Encumbrances that would apply to the Subsurface Resources.

6.6 **Gravel Resources.** The Parties will negotiate and attempt to reach agreement on provisions to be included in the Final Agreement that will establish a process for the Parties to meet and discuss the potential transfer to Pacheedaht First Nation of those gravel pits and areas of granular potential shown as areas A and B in Schedule 7 that are excluded from the Lands if the Province, in its sole discretion, determines that such gravel pits or areas of granular potential are surplus.

6.7 **Environmental Matters**. The Parties acknowledge that as part of Final Agreement negotiations they will negotiate and attempt to reach agreement on provisions dealing with the environmental condition and potential remediation of Pacheedaht First Nation treaty settlement lands, and that sections 5.5 and 5.6 of this Agreement are without prejudice to and are not intended to limit:

a) Final Agreement negotiations related to the environmental condition and potential remediation of Pacheedaht First Nation treaty settlement lands; or

b) the operation of any provisions in the Final Agreement dealing with the environmental condition and potential remediation of any Pacheedaht First Nation treaty settlement lands.

ARTICLE 7: RECONCILIATION

7.1 **Reconciliation.** The Pacheedaht First Nation acknowledges and agrees that in the spirit of the New Relationship and to advance Final Agreement negotiations the Lands transferred to the Pacheedaht First Nation in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Pacheedaht First Nation's interests and the settlement of the Pacheedaht First Nation's aboriginal rights and title claims within the Traditional Territory through treaty negotiations and, as such, the benefits provided to the Pacheedaht First Nation under this Agreement will be counted as a portion of the Province's contribution towards the Final Agreement settlement.

ARTICLE 8: OTHER ACKNOWLEDGEMENTS AND COVENANTS

8.1 **Other Pacheedaht First Nation Covenants.** The Pacheedaht First Nation further acknowledges and covenants that:

a) during the term of this Agreement, subject to Provincial Officials complying with the consultation processes established under existing provincial policies and procedures and any process that may be established under 8.1 (d) or (e), Pacheedaht First Nation will not initiate any court action or proceeding to challenge any Governmental Action associated with a

provincial Crown land disposition or land use authorization by any Provincial Official within the Traditional Territory on the basis that the Province has failed to fulfill any duty to consult or accommodate in respect of such matter or that any such matter constitutes an unjustifiable infringement of any aboriginal rights or title of the Pacheedaht First Nation;

b) any of the Lands that may be transferred to a Designated Company in accordance with this Agreement will not be "lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act* and at no time after Closing will the Pacheedaht First Nation seek to add any of the Lands to their reserve lands;

c) the Lands are subject to provincial laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the Pacheedaht First Nation challenge the applicability of provincial laws to the Lands;

d) upon the request of the Province, Pacheedaht First Nation will enter into a process with any applicable provincial ministry or provincial Crown agency to negotiate and attempt to reach agreement on a consultation process related to Crown land or resource use authorizations and dispositions within the Traditional Territory;

e) Pacheedaht First Nation has entered into a Forest and Range Consultation and Revenue Sharing Agreement with the Province which sets out consultation arrangements and responsibilities regarding forest resources within the Traditional Territory;

f) the Pacheedaht First Nation will not permit the Designated Company to dispose of its fee simple estate in the Lands for a period of time commencing on the applicable Closing Date and ending on the earlier of:

    i) the ten year anniversary of the Closing Date; or

    ii) the Effective Date;

g) notwithstanding 8.1 (f),

    i) the Designated Company may charge or encumber the Lands provided that the Designated Company advises the intended charge or encumbrance holder in writing that the Lands may, on the Effective Date, be transferred by the Designated Company to the Pacheedaht First Nation and may become Pacheedaht First Nation treaty settlement lands; and

ii) the Pacheedaht First Nation may permit the Designated Company to transfer its fee simple estate in the Lands to another company provided that company also qualifies as a Designated Company within the meaning of this Agreement and has provided the Province with a fully executed copy of an "Agreement of the Designated Company" substantially in the form attached to this Agreement as Schedule 3; and

h) the Pacheedaht First Nation will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with:

i) the unlawful interference by the Pacheedaht First Nation, the Designated Company, or their agents, with the exercise of any rights under a Permitted Encumbrance;

ii) any charge or encumbrance granted by Pacheedaht First Nation under 8.1 (g);

iii) the transfer of the fee simple estate in the Lands to the Pacheedaht First Nation; or

iv) the Lands becoming Pacheedaht First Nation Lands within the meaning of the Final Agreement.

8.2 **Existing Legal Proceedings**. The Parties acknowledge that in respect of the Existing Legal Proceedings, during the term of this Agreement;

a) rather than continuing to litigate the Existing Legal Proceedings, the Parties will not take any further steps in the Existing Legal Proceedings;

b) this Agreement is without prejudice to the merits of any positions that the Parties have or may take in the Existing Legal Proceedings; and

c) the Parties will not rely on the passage of time from the date this Agreement comes into force to its termination as the basis for any legal or equitable defence in the Existing Legal Proceedings, including defenses of latches, acquiescence, estoppel or limitations.

ARTICLE 9: DISPUTE RESOLUTION

9.1 **Representatives**. If a dispute arises between the Province and the Pacheedaht First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as practicable to attempt to resolve the dispute.

9.2 **Senior Representatives**. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the Pacheedaht First Nation.

9.3 **Other Means**. The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 10: NOTICES

10.1 Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, or facsimile copier, when received as follows:

if to the Province:

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O Box Stn Prov Govt
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to the Pacheedaht First Nation:

Pacheedaht First Nation
General Delivery
Port Renfrew, B.C. V0S 1K0
Attention: Chief Councilor

Fax: (250) 647-5561

10.2 Either Party may, from time to time, give written notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

ARTICLE 11: GENERAL

11.1 **Non-waiver.** No term or condition of this Agreement and no breach by one Party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other Party.

11.2 **Written Waiver.** The written waiver by one Party of any breach by the other Party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other Party of the same or any other term or condition of this Agreement.

11.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

11.4 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

11.5 **Not a Treaty.** This Agreement does not:

a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or

b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.

11.6 **Successors and Assigns.** This Agreement will enure to the benefit of and be binding upon the Pacheedaht First Nation and their successors and the Province.

11.7 **Band Council Resolution.** Prior to the execution of this Agreement, the Pacheedaht First Nation will deliver to the Province a resolution made by their elected Council authorizing the Pacheedaht First Nation's representatives named in the resolution to execute this Agreement on behalf of the Pacheedaht First Nation.

11.8 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

11.9 **No Admissions.** Nothing in this Agreement will be construed as an:

a) admission by the Province of the validity of any claim by the Pacheedaht First Nation to a specific aboriginal right or title within the meaning of section 35 of the *Constitution Act, 1982*; or

b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Pacheedaht First Nation.

11.10 **No Fetter**. Nothing in this Agreement shall be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

11.11 **Amendment.** This Agreement may be amended from time to time by the Parties by an instrument in writing. No term of this Agreement may be amended or waived except by written instrument.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

Signed on behalf of the Pacheedaht First Nation this 26 day of March, 2013

Chief Marvin McClurg

Tracy Charlie, Witness

Dorothy Hunt, Witness

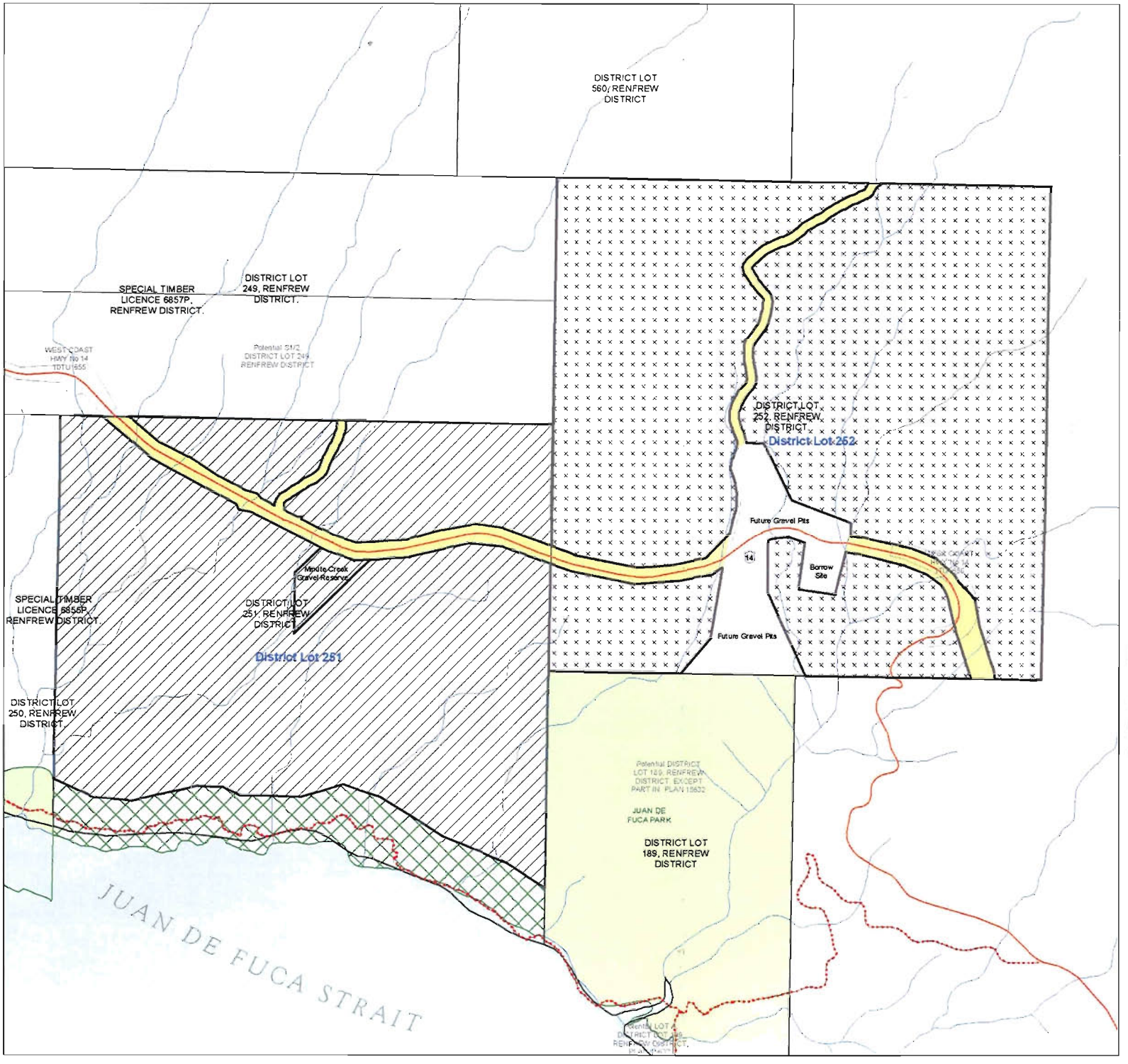
Signed on behalf of Her Majesty the Queen In Right of the Province of British Columbia by the Minister Responsible for the Ministry of Aboriginal Relations and Reconciliation this 26 day of March, 2013

Honourable Ida Chong, FCGA

Witness

Schedule 1: Maps of Lands for Illustrative Purposes and Permitted Encumbrances

Part 1 - Maps of Lands for Illustrative Purposes



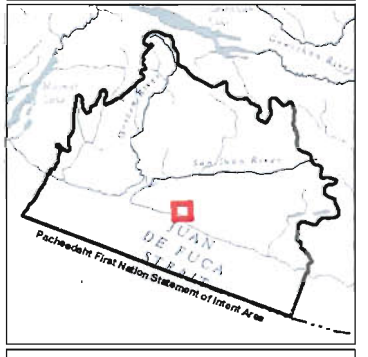
Map of Lands for Illustrative Purposes
Pacheedaht First Nation
Incremental Treaty Agreement
Schedule 1, Part 1

District Lot 251
District Lot 252
Juan de Fuca Trail
Trail / Park Corridor
Pacheedaht First Nation Indian Reserve
Other Indian Reserve
Primary Survey Parcel
Subdivision Survey Parcel
Crown Corridor
Provincial Parks and Protected Areas
Federal Park

Transportation
Highway
Road, paved
Unpaved Road

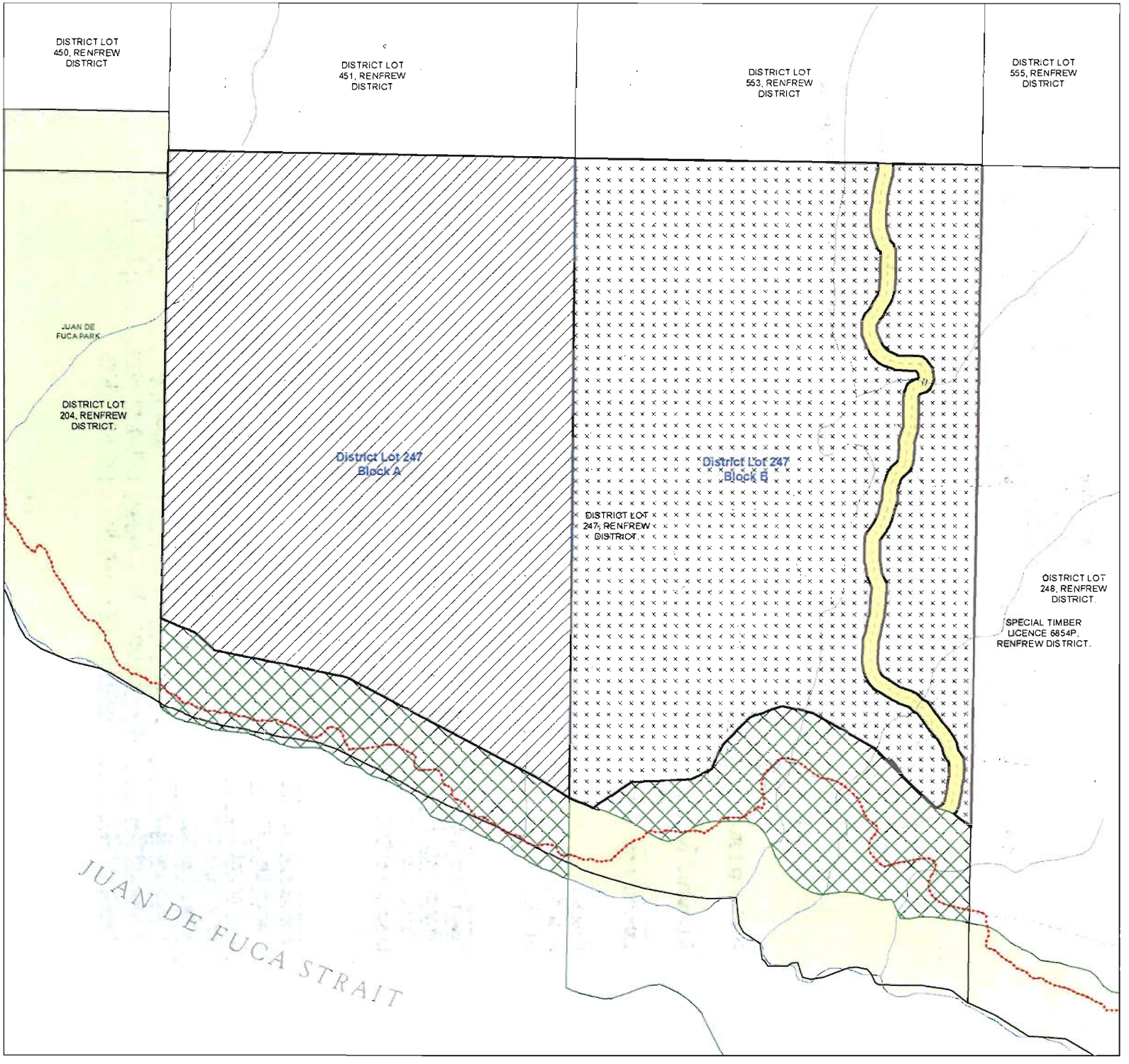
N

0 200
Meters



Produced by: GeoBC under the
Canada - BC Information Sharing Protocol
Created by: Natural Resources Decision Support, GeoBC, SS
Projection/Datum: BC Albers NAD 83
TRIM Map Sheet: 092C.077

Map 1
District Lot 251 and
District Lot 252



Map of Lands for Illustrative Purposes
Pacheedaht First Nation
Incremental Treaty Agreement
Schedule 1, Part 1

District Lot 247 Block A
District Lot 247 Block B
Trail / Park Corridor
Juan de Fuca Trail
Pacheedaht First Nation Indian Reserve
Other Indian Reserve
Primary Survey Parcel
Subdivision Survey Parcel
Crown Corridor
Provincial Parks and Protected Areas
Federal Park

Transportation
Highway
Road, paved
Unpaved Road

N
0 200
Meters

Produced by: GeoBC under the
Canada - BC Information Sharing Protocol
Created by: Natural Resources Decision Support, GeoBC, SS
Projection/Datum: BC Albers NAD 83
TRIM Map Sheet: 092C.077

Map 2
District Lot 247 Block A and
District Lot 247 Block B

Part 2 – Permitted Encumbrances

In respect of all of the Lands:

1. All subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the Lands.
2. All the interests, rights, privileges and titles contained in section 50 of the *Land Act.*
3. Any conditional or final water licence or substituted water license issued or given under the *Water Act,* or any prior or subsequent enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the Lands and to maintain, repair and operate any works permitted on the Lands under the license at the date of the Crown Grant.
4. All subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act, Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect.
5. All notations and endorsements noted as "Legal Notations" on the title, if any, to the Lands or any parcel from which the Lands may be created.

And in addition, in respect of those particular portions of the Lands identified below:

Tenures that will Exist under Existing Terms and Conditions

Land Parcel	Interest Holder	Tenure Type	Tenure Document Number
District Lot 247 Block A and District Lot 247 Block B	Scott Le Barron Degourlay Phillips Raymond Joseph Gordon Oshurst Stuart Saunders	Mineral Claim	#570309
District Lot 251	Dean Michael Arbic	Mineral Claim	#360261
District Lot 251	William Alfred Hamilton	Placer Claim	#551805
District Lot 251 and District Lot 252	Scott Le Barron Degourlay Phillips Raymond Joseph Gordon Oshurst, Stuart Saunders	Mineral Claim	#570307
District Lot 251 and District Lot 252	Pacific Iron Ore Corporation	Mineral Claim	#905269
District Lot 252	Douglas Calver Webb	Mineral Claim	#905269
District Lot 252	Triangle Ventures Ltd.	Mineral Claim	#523408
District Lot 252	Douglas Calver Webb	Placer Claim	#523057
District Lot 252	Dennis Lewis Lee	Placer Claim	#964589
District Lot 252	Kevin Ryan MacDougall	Placer Claim	#521078
District Lot 252	Keith Douglas Nemeth	Placer Claim	#681023

Land Parcel	Interest Holder	Tenure Type	Tenure Document Number
District Lot 252	Ken Arni Swanson	Placer Claim	#401283
District Lot 252	Keith Douglas Nemeth	Placer Claim	#982902
District Lot 252	Triangle Ventures Ltd	Placer Claim	#523188

Encumbrances that will be Registered on Title

Lands	Encumbrance
District Lot 247 Block A, District Lot 247 Block B, District Lot 251, District Lot 252	Addition to Reserve Restrictive Covenant (Section 219 Covenant)
District Lot 247 Block A, District Lot 247 Block B, District Lot 251, District Lot 252	Statutory Right of Way (Industrial Roads)
District Lot 247 Block A, District Lot 247 Block B, District Lot 251, District Lot 252	Express Charge Terms Statutory Right of Way Agreement (BC Hydro and Telus)
District Lot 251, District Lot 252	Statutory Right of Way (Gravel)

Part 3 – Crown Corridors

General Location	Road	Exluded Road Width (metres)
District Lot 251, District Lot 252	Highway 14 – West Coast (Sooke)	30
District Lot 247 Block B	Parkinson Creek access road	30
District Lot 252	Sombrio FSR	30

Schedule 2: Addition to Reserve Restrictive Covenant

Addition to Reserve Restrictive Covenant

LAND TITLE ACT
FORM C
(Section 233)

Province of
British Columbia
GENERAL INSTRUMENT-PART 1 (This area for Land Title Office Use) Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

(Signature of Solicitor or Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*
(PID) (LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

Description	Document Reference (Page and paragraph)	Person Entitled to Interest
Section 219 Covenant	Entire Document	Transferee (Grantee)

4. TERMS: Part 2 of this instrument consist of (select one only)

(a)	Filed Standard Charge Terms	☐	D.F. No.
(b)	Express Charge Terms	■	Annexed as Part 2
(c)	Release	☐	There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

3. TRANSFEROR(S):* (Grantor)

3. TRANSFEREE(S): (Including postal address(es) and postal code(s))* (Grantee)

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Agriculture and Lands, Parliament Buildings, PO Box 9043, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
				_____ By Its authorized signatory(ies):
				_____ Print Name:
				_____ Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered owner of:

_____

(the "Land");

B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One ($1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:

   a. Reserves or special reserves as defined in the *Indian Act*; or

   b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.

2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.

3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

4. The Grantor will indemnify and save harmless the Grantor from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.

5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.

6. This Agreement will be interpreted according to the laws of the Province of British Columbia.

7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.

8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C attached.

END OF DOCUMENT

Schedule 3: Agreement of Designated Company

Agreement
Of
[Name of Designated Company]
(the "Designated Company")

WHEREAS:

A. Her Majesty the Queen in the Right of the Province of British Columbia as represented by The Minister of Aboriginal Relations and Reconciliation and the Pacheedaht First Nation has entered into an Agreement date as of _____ (the "Agreement") whereby the Designated Company is acquiring fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

B. As a condition of the Designated Company's acquisition of fee simple title to the Lands the Pacheedaht First Nation and the Designated Company have agreed that the Designated Company grant and enter into this agreement on the terms set out below.

NOW THEREFORE in consideration of the premises, and the sum of ONE ($1.00) DOLLAR and other valuable consideration paid by the Province to the Designated Company, the receipt of which is hereby acknowledged by the Designated Company, the Designated Company hereby release, waives, acknowledges and agrees as follows:

1. The terms "Province" and ""Pacheedaht First Nation" and any other capitalized terms used herein and defined in the Agreement have the meaning given to those terms in the Agreement.

2. The Designated Company waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.

3. The Designated Company agrees with the Province that each covenant, representation, warranty, acknowledgement and every other term of the Agreement given by Pacheedaht First Nation or otherwise set out in the Agreement which is for the benefit of the Province is legally binding on the Designated Company in relation to the Lands as fully and as effectively as if the Designated Company had entered into and executed the Agreement along with the Pacheedaht First Nation, including, without limitation, each of those representations and acknowledgements set out in section 5.5 and 5.6 of the Agreement.

4. By executing and delivering this Covenant each of the parties intends to create both a contract and a deed executed and delivered under seal.

Signed, Sealed and Delivered as of _____, 20__ by:

[Name of Designated Company]

_____

Per: Authorized Signatory

END OF DOCUMENT

Schedule 4: Statutory Right of Way Agreement — Industrial Roads

Statutory Right of Way Agreement — Industrial Roads

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office use)

1. APPLICATION: *(Name, address, phone number and signature of applicant, applicant's solicitor or agent)*

Ministry of Forests, Lands and Natural Resource Operations
Forest Tenures Branch
Forest Land Acquisitions

1810 Blanshard Street,
P. O. Box 9510, Stn. Prov. Govt.
Victoria, British Columbia V8W 9C2
Telephone: (250) 387-8646

Signature

2. (a) PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID) *(Legal Description)*
Block A and Block B, District Lot 247, Renfrew District
District Lot 251, Renfrew District
District Lot 252, Renfrew District

3. NATURE OF INTEREST:*

Description Interest	*Document Reference (page and paragraph)*	*Person Entitled to*
Statutory Right-of-Way		**Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms ☐ D.F. No.
(b) Express Charge Terms ■ Annexed as Part 2
(c) Release ☐ There is no Part 2 of this instrument.

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

---

5. TRANSFEROR (GRANTOR):*

Pacheedaht First Nation

---

6. TRANSFEREE (FOREST SERVICE):* (*Including* postal address(es) and postal codes(s))

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations, c/o Forest Tenures Branch, Forest Land Acquisitions, 1810 Blanshard Street, P. O. Box 9510, Stn. Prov. Govt., Victoria, British Columbia V8W 9C2

---

7. ADDITIONAL OR MODIFIED TERMS:*

None

LAND TITLE ACT
FORM C

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnesses	Execution Date			Parties' Signatures
	Y	M	D	
Signature				Authorized Signatory of Pacheedaht First Nation
Printed name				
Address				
Occupation				
Officer Signature				Authorized Signatory of Her Majesty The Queen as Represented by the Minister of Forests, Lands and Natural Resource Operations

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, *R.S.B.C. 1996, c. 124,* to take affidavits for use in British Columbia and certifies the matters set out in *Part 5* of the *Land Title Act* as they pertain to the execution of this instrument.

*If space insufficient, enter "SEE SCHEDULE" and attached schedule in Form E.

BRITISH COLUMBIA

Terms of Instrument

STATUTORY RIGHT OF WAY AGREEMENT - INDUSTRIAL ROADS

This agreement is dated for reference this ____day of _____, 2012

BETWEEN:

DESIGNATED COMPANY

("the Grantor")

AND: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
as Represented By The Minister Of Forests, Lands and Natural Resource Operations
c/o Forest Tenures Branch, Forest Land Acquisitions
1810 Blanshard Street, P.O. Box 9510, Station Provincial Government,
Victoria, British Columbia, V8W 9C2

("the Forest Service")

WHEREAS:

A. The Grantor is the registered owner of land legally described as follows (or as otherwise described if and when a new survey is completed):

Block A and Block B, District Lot 247, Renfrew District
District Lot 251, Renfrew District
District Lot 252, Renfrew District

("the Lands")

B. The Grantor owns private industrial roads constructed on a portion of the Lands;

C. The Grantor has agreed to provide to the Forest Service, on the terms and conditions set out in this agreement, the right to use certain roads which exist on the Lands at the date of this agreement.

THE GRANTOR AND THE FOREST SERVICE NOW AGREE AS FOLLOWS:

Definitions

In this agreement:

"**Right-of-Way**" means the rights granted to the Forest Service in Part 1;

"**Roads**" means the roads shown in bold black lines on the two maps attached hereto as Schedule "A";

"**Road Activity**" means building, upgrading, maintaining, or using a Road; and

"**Forest Service**" includes the Forest Service's employees, agents, licensees, permittees, invitees, and contractors.

Part 1 Grant of Right-of-Way

1.01 In consideration of the sum of $10.00 (Ten Dollars) paid by the Forest Service to the Grantor, the Grantor hereby grants to the Forest Service a Right-of-Way to pass and repass along, and over the Lands, together with the right to use, maintain, upgrade, relocate and construct roads, for the purpose of transporting logs from forest tenures, and for all purposes necessarily ancillary thereto.

1.02 The Right-of-Way will be non-exclusive and perpetual, provided that the Forest Service may bring this agreement to an end at any time on written notice to the Grantor.

1.03 This Right-of-Way is granted pursuant to 218 of the *Land Title Act* and is necessary for the operation and maintenance of the Forest Service's undertaking.

1.04 The parties intend that this agreement will constitute a charge running with the Lands and will be registered in the Land Title Office.

Part 2 Limitation on Use

2.01 The Forest Service covenants that, despite that this Right-of-Way is granted over all of the Lands, the Forest Service will exercise the rights granted in section 1.01 only along and over the Roads.

2.02 Each Road will be deemed to be 20 metres wide centered on the centre line of the Road; provided, however, that, if, in the reasonable opinion of the Province, more width is required for any portion (or portions) of the Road to deal with either of the following:

(a) a risk to the integrity of the Road bed, or
(b) an extraordinary hazard to the safe operation of traffic on the Road,

then the Road shall be deemed to be wide enough to deal with the condition and the Forest Service will have the right to enter on the Lands and to make the necessary improvements.

2.03 The covenant in section 2.01 will be deemed to be a personal covenant of a contractual nature, rather than part of the grant made in Part 1.

Part 3.0 Liability for Roads

In this section, "Road" means a Road or a part, or a section, of a Road.

3.01 The parties accept the Roads in their condition as of the reference date of this agreement.

3.02 Subject to the provisions below concerning Road Activities, the Forest Service will have no liability associated with the Roads, and no obligation to carry out a Road Activity.

3.03 If and when the Forest Service wishes to carry out a Road Activity, it will, before it commences the Road Activity, first give written notice to the Grantor containing the following information:

a) the Road on which the Road Activity will take place;
b) the nature of the Road Activity;
c) start and end dates of the Road Activity;
d) the condition of the road prior to the road activity and expected condition of the road upon completion of the activity.

3.04 When the Forest Service commences a Road Activity, the Forest Service becomes liable, whether or not the notice required in 3.03 has been given, to indemnify and save harmless the Grantor from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that the Grantor may sustain, incur, suffer or be put to arising from an incident which occurs during, and as a result of, the Road Activity, excepting always liability arising out of the negligent acts or omissions of the Grantor, its employees, agents, invitees, licensees, permittees or contractors;

3.05 When the Forest Service concludes a Road Activity:

(a) subject to subsection (b) below, the Forest Service may remove any improvements it has installed during a Road Activity;

(b) the Forest Service will leave the Road or the part of the Road:

(i) in the same or better condition than it was in when the Forest Service commenced the Road Activity; and

(ii) in a condition that meets or exceeds the duty of care required of an occupier of similar premises as set out in the British Columbia *Occupiers Liability Act;*

(c) the Forest Service may then give written notice to the Grantor:

(i) confirming what Activities were done on the Road;
(ii) stating what condition the Road has been left in; and
(iii) confirming that the conditions in 3.05(b)(i) and (ii) have been met; and

(d) upon giving such notice, the Forest Service:

(i) will have no obligation to maintain the Road or the part of the Road thereafter; and
(ii) will thenceforth have no liability associated with the Road except liability for breach of any of the Forest Service's covenants in this agreement.

3.06 Grantor will indemnify and save harmless the Forest Service from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that the Forest Service may sustain, incur, suffer or be put to arising from claims made by third parties as a result of incidents which occur during periods of time when the Forest Service was not carrying out a Road Activity on the site where the incident occurred.

3.07 The procedures and the liability regime set out in this section will apply to any and all subsequent Road Activities which the Forest Service may carry out.

3.08 The Forest Service will not carry out any Road Activity on the Roads without complying with this Part, except for occasional use ancillary to Road Activity.

Part 4 Promises

4.01 The Forest Service will:

(a) use, and permit the use of, the Roads only for the purposes set out in this agreement, and for no other purpose, without the express written consent of the Grantor, which consent will not be unreasonably withheld;
(b) not cause any damage or disturbance to the Roads, and in particular (but without limiting this covenant) will not cause damage or disturbance to the natural drainage pattern of the Lands;
(c) not park or place vehicles or machinery in a manner which will interfere with the use of any cross-road, driveway or entrance or exit ramp;

(d) use its best efforts to prevent, control and extinguish any fire on the Lands or any lands adjacent to the Roads which the Forest Service may cause, and will conform to and observe the provisions of the *Wild Fire Act* (as amended or replaced from time to

time) and any other statutes and regulations that are in force or may in the future be enacted or made regarding the prevention of fires;

(e) reimburse the Grantor for any costs or expenses the Grantor incurs to fight fires for which the Forest Service is responsible;

(f) carry out its Road Activities in a safe manner having regard to all the circumstances and, in particular, having regard to others who may be using the Road at the same time;

(g) comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the use of the Right-of-Way;

(h) ensure that the right-of-way remains in an environmentally sound, clean, safe and orderly condition, and free from all waste, including, without limitation, wood waste relating to the use of the right-of-way by the Forest Service; and

(i) not assign its rights under this agreement without the prior written approval of the Grantor, which may not be unreasonably withheld.

4.02 The Grantor will not do or knowingly permit to be done any act or thing which will interfere with any Road Activities being carried out by the Forest Service.

Part 5 Notice

5.01 Any notice, document or communication required or permitted to be given under this agreement:

(a) must be in writing;

(b) may be given by delivery by hand, by courier, or by double-registered mail to the following addresses: :

To the Province:

Forest Tenures Branch
Ministry of Forests, Lands and Natural Resource Operations PO Box 9510 Stn Prov Govt
Victoria , British Columbia V8W 9C2

To the Grantor:

_____
_____
_____
_____, British Columbia V_____

or at such other addresses as the parties hereto may from time to time designate in writing.

(c) may be given by e-mail, provided that there is proof of receipt, at e-mail addresses provided by the parties to each other.

Part 6 Alternative Right-of-Way

6.01 The Grantor may, by written notice delivered to the Forest Service, request the Forest Service to relocate all or a portion of the Roads to another location on the Lands.

6.02 The Forest Service will comply with the Grantor's request provided that:

a) the new location is, in the reasonable opinion of the Forest Service, suitable for the purposes identified in this agreement;
b) the Grantor gives the Forest Service reasonable notice to permit proper design, planning and construction of the Roads to be relocated;
c) before any relocation, the Grantor has paid all of the reasonable costs and expenses of the relocation, including costs of design, supervision and construction as estimated by the Forest Service, to which appropriate adjustments based on actual expenditures will be made after the relocation is complete; and
(d) the Grantor agrees that the terms and conditions of this agreement will cover the relocated Roads.

6.03 If for any reason the whole or a portion of a Road becomes unsuitable for the purposes described in paragraph 1.01, then the Grantor will, at no cost to the Forest Service, consent to relocating and replacing the Road elsewhere on the Lands as follows:

(a) the Forest Service will, before undertaking any relocation work, deliver a sketch plan to the Grantor indicating the contemplated relocation of the Roads for approval by the Grantor, which approval will not be unreasonably withheld, delayed or made subject to compensation or to any unreasonable conditions;
(b) the Forest Service will take into account any likely material effect of the relocated Roads on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by the Forest Service for the relocated Roads in relation to alternative locations;
(c) the Forest Service will design, prepare and construct the relocated Roads at no cost to the Grantor; and
(d) the terms and conditions of this Agreement will cover the relocated Road

Part 7 Defaults

7.01 If the Forest Service defaults in the observance and performance of any material term and condition contained in this Agreement and such default is not remedied within a reasonable period of time after the Grantor has given notice to the Forest Service specifying the default and requesting it be cured, Grantor may remedy the default and seek reimbursement from the Forest Service.

7.02 Any failure by the Grantor to exercise its rights with respect to any particular default of the Forest Service will not operate as a waiver of its rights with respect to any continuing subsequent default.

Part 8 Entire Agreement

8.01 This Agreement constitutes the entire agreement between the Grantor and the Forest Service regarding the right-of-way and supersedes all prior agreements and understandings between them. There are no representations, promises, agreements or understandings between the Grantor and the Forest Service concerning the Right-of-Way that are not expressly set out in this Agreement.

Part 9 Enurement

9.01 This Agreement will enure to the benefit of and be binding upon the Grantor and the Forest Service and their respective successors and permitted assigns. The word *Grantor* is deemed to include the heirs, executors, administrators, successors, and assigns, wherever the context so admits.

Part 10 Governing Law

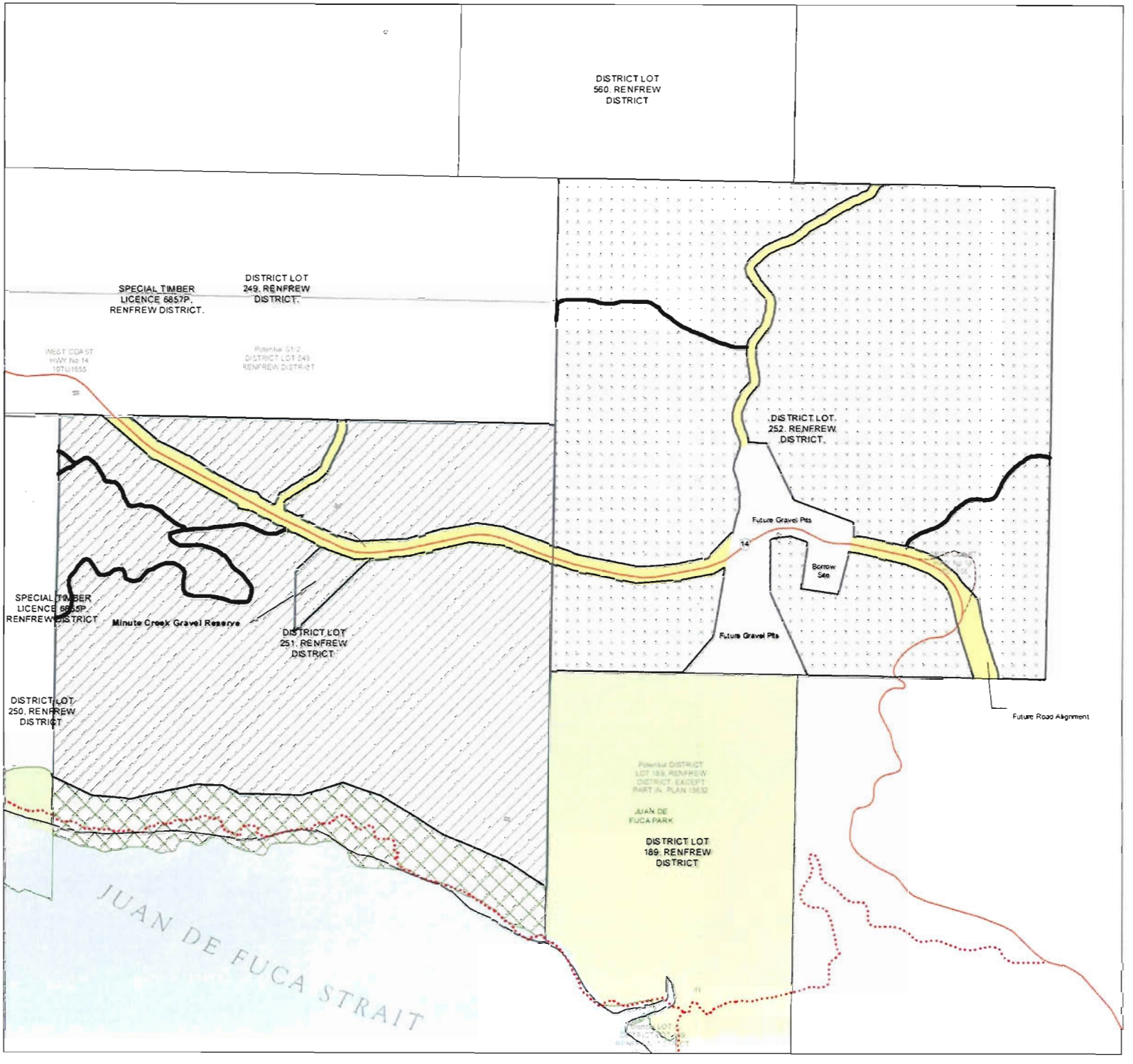
10.01 This Agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

Part 11 Arbitration

11.01 If any dispute shall arise between the parties concerning the rights and obligations contained in this Agreement created herein, which dispute cannot be resolved by agreement, then the dispute will be resolved pursuant to the *Commercial Arbitration Act* of the Province of British Columbia.

Schedule "A"

Pacheedaht First Nation
Statutory Right of Way
(Industrial Roadsd)
Schedule A, Map 1



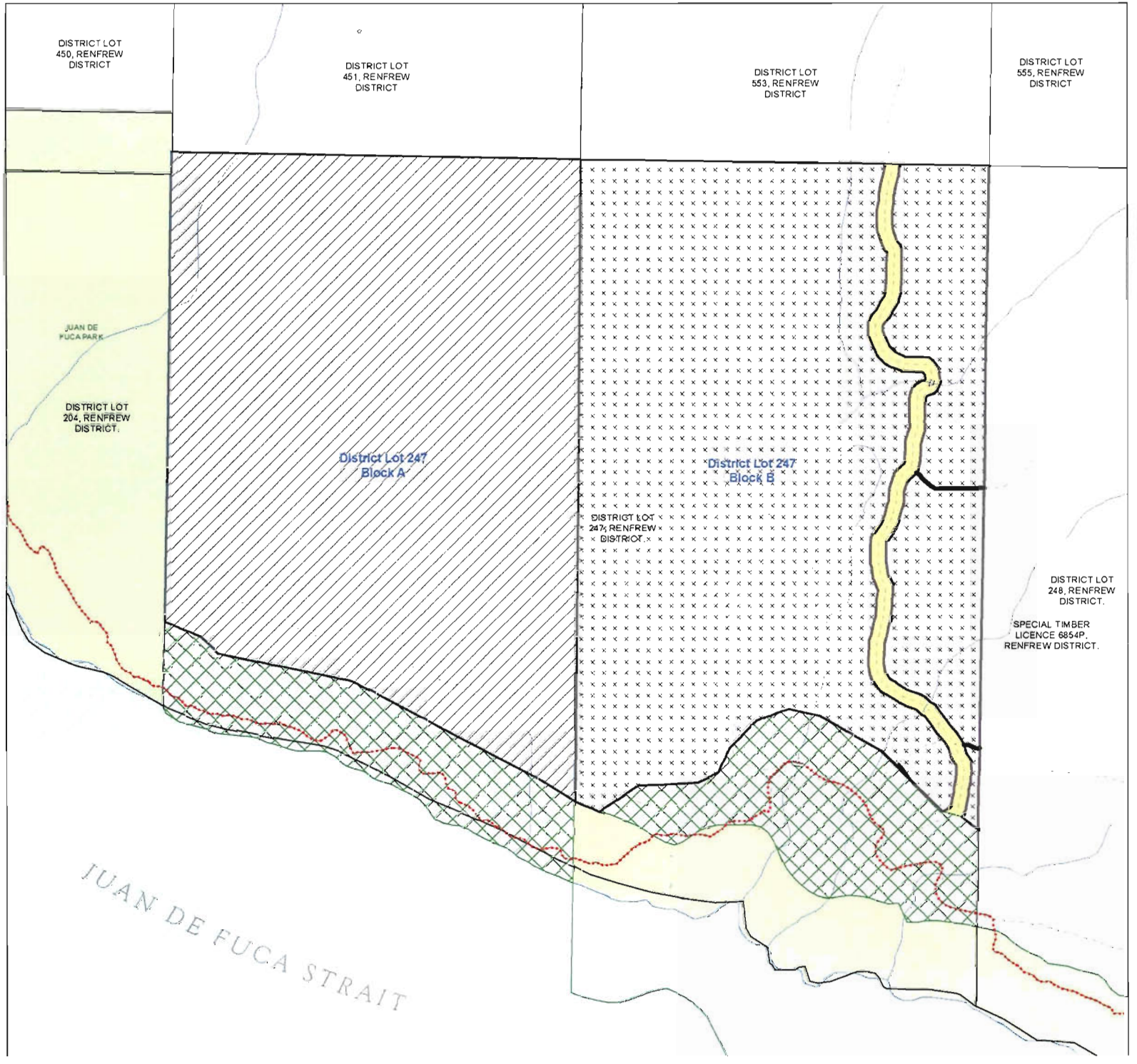
District Lot 251
District Lot 252
Right-of-Way Agreement Road
Trail / Park Corridor
Juan de Fuca Trail
Pacheedaht First Nation Indian Reserve
Other Indian Reserve
Primary Survey Parcel
Subdivision Survey Parcel
Crown Corridor
Provincial Parks and Protected Areas
Federal Park

Transportation
Highway
Paved Road
Unpaved Road

N

Produced by: GeoBC under the
Canada - BC Information Sharing Protocol
Created by: Natural Resources Decision Support
GeoBC, SS
Projection/Datum: BC Albers NAD 83
TRIM Map Sheet: 092C.077

Schedule A
Map 1
District Lot 251 and
District Lot 252



Pacheedaht First Nation
Statutory Right of Way
(Industrial Roads)
Schedule A, Map 2

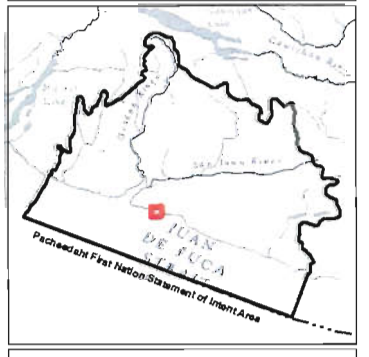
- District Lot 247 Block A
- District Lot 247 Block B
- Right of Way Agreement Road
- Trail / Park Corridor
- Juan de Fuca Trail
- Pacheedaht First Nation Indian Reserve
- Other Indian Reserve
- Primary Survey Parcel
- Subdivision Survey Parcel
- Crown Corridor
- Provincial Parks and Protected Areas
- Federal Park

Transportation

- Highway
- Road, paved
- Unpaved Road

N

0 200
Meters



Produced by: GeoBC under the
Canada - BC Information Sharing Protocol
Created by: Natural Resources Decision Support
GeoBC, SS
Projection/Datum: BC Albers NAD 83
TRIM Map Sheet: 092C.077

Schedule A
Map 2
District Lot 247 Block A and
District Lot 247 Block B

END OF DOCUMENT

Schedule 5: Express Charge Terms Statutory Right of Way Agreement

Express Charge Terms Statutory Right of Way Agreement
(BC Hydro and Telus)

LAND TITLE ACT
FORM C
(Section 233)
Province of
British Columbia

GENERAL INSTRUMENT – PART 1 *(This area for Land Title Office use)*Page 55 of **Error! Bookmark not**

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
   MAI REMPEL, Solicitor for British Columbia Hydro and Power Authority, 8th Floor - 333 Dunsmuir Street, Vancouver, BC, V6B 5R3, Telephone: 604-623-4132

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)	(LEGAL DESCRIPTION)

3. NATURE OF INTEREST: *

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
STATUTORY RIGHT OF WAY	ENTIRE INSTRUMENT	TRANSFEREE (British Columbi Hydro and Power Authority)
STATUTORY RIGHT OF WAY	ENTIRE INSTRUMENT	TRANSFEREE (TELUS Communications Inc.)

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms	☐	D.F. Number: •
(b) Express Charge Terms	☒	Annexed as Part 2
(c) Release	☐	There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): *

_____ **LTD.**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

   BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, 12th Floor - 333 Dunsmuir Street, Vancouver, B.C., V6B 5R3 and **TELUS COMMUNICATIONS INC.** 15079 – 64th Avenue, First Floor, Surrey, B.C., V3S 1X9 (Registration No. A055547),

7. ADDITIONAL OR MODIFIED TERMS: *

   N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date Y	M	D	Party(ies) Signature(s)
	[Y]	[M]	[D]	_____ **LTD.**, by its authorized signatory(ies):
_____				_____ Name:
(as to all signatures for the Transferor only)				_____ Name:

Officer Signature(s)	Execution Date Y	M	D	Party(ies) Signature(s)
	[Y]	[M]	[D]	**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, by its authorized signatory(ies):
_____				_____ Name:
(as to all signatures for British Columbia Hydro and Power Authority only)				_____ Name:

Officer Signature(s)	Execution Date Y	M	D	Party(ies) Signature(s)
	[Y]	[M]	[D]	**TELUS COMMUNICATIONS INC.**, by its authorized signatory(ies):
_____				_____ Name:
(as to all signatures for TELUS Communications Inc. only)				_____ Name:

EXPRESS CHARGE TERMS
(DISTRIBUTION STATUTORY RIGHT OF WAY)

OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act,* R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

WHEREAS:

A. Hydro and TELUS wish to obtain from the Grantor a statutory right of way for certain rights on, over and under the Lands, as hereinafter defined;

B. The Grantor has agreed to grant to each of Hydro and TELUS a statutory right of way in respect of the Lands; and

C. The statutory right of way herein granted is necessary for the operation and maintenance of each of Hydro's and TELUS's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereto covenant and agree as follows:

1.0 Definitions

1.1 In this Agreement:

(a) "**Affiliate**" has the meaning ascribed to it in the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended or replaced from time to time and, in the case of TELUS, includes an affiliate (as defined in that Act) of TELUS and any partnership or other unincorporated association in which TELUS or any affiliate (as defined in that Act) of TELUS has a controlling interest;

(b) "**Agreement**" means the General Instrument and any attached schedule, and includes these Filed Terms;

(c) "**Area of the Works**" means those portions of the Lands located within 6 metres of either side of the center of the alignment of the Works and includes the Right of Way Area;

(d) "**Environment**" means all the components of the earth including, without limitation, all layers of the atmosphere, air, land (including, without limitation, all underground spaces and cavities and all lands submerged under water), soil, water (including, without limitation, surface and underground water), organic and inorganic matter and living organisms, the interacting natural systems that include the foregoing and all other external conditions or influences under which humans, animals and plants live or are developed;

(e) "**Excluded Right of Way Area**" means any right of way area or corridor that is not part of the Lands but in whole or in part passes through the Lands or is adjacent to such Lands;

(f) "**Filed Terms**" means these filed standard charge terms;

(g) "**General Instrument**" means the Form C General Instrument – Part 1, which refers to these Filed Terms and any other pages attached thereto;

(h) "**Grantor**" means the person named as the transferor in Item 5 of the General

Instrument;

(i) "**Hydro**" means British Columbia Hydro and Power Authority;

(j) "**Lands**" means the lands and premises legally described in Item 2 of the General Instrument;

(k) "**Right of Way Area**" means those portions of the Lands more particularly described in Section 3 of this Agreement, as may be modified under this Agreement;

(l) "**TELUS**" means TELUS Communications Inc.; and

(m) "**Works**" means:

(i) as it relates to the rights and responsibilities of Hydro, all things and components, using any type of technology from time to time, necessary or convenient for the purposes of transmitting and distributing electricity and for the purpose of telecommunications related to the business of Hydro, including: poles, towers, antennae (except for monopole free standing antennae), guy wires, brackets, crossarms, insulators, above ground or underground transformers, anchors, attachments, lines, access nodes and cables, including underground or fibre optic cables, underground conduits, lines and pipes of every kind, cabinets, all ancillary appliances and fittings, reasonably required associated protective installations and related works such as fencing for safety or security, devices and identifying colours for aircraft warning, and utility services for the operation of any of the foregoing, but does not include transmission towers or any electrical works operated at a voltage of 69 kV or higher;

(ii) as it relates to the rights and responsibilities of TELUS, all things and components, using any type of technology from time to time, necessary or convenient for the purpose of telecommunications, including: poles, towers, guy wires, brackets, crossarms, insulators, transformers, anchors, attachments, lines, access nodes, public pay telephone equipment and enclosures, and cables, including fibre optic cables, in whole or in part and underground conduits, lines and pipes of every kind, underground cables, including fibre optic cables, together with all ancillary appliances, fittings and cabinets and above ground or underground equipment shelters.

1.2 With respect to any obligation on the part of Hydro or TELUS under this Agreement, any reference to Hydro or TELUS includes their respective servants, officers, employees, agents, contractors, sub-contractors, invitees, licensees, successors, permitted assigns, and those for whom either or both of them is responsible in law.

2.0 Grant of Right of Way

2.1 The Grantor grants over the Lands separately to each of Hydro and TELUS and their respective employees, representatives, contractors, agents, licensees, successors and assigns, for so long as required, the uninterrupted right, liberty and right of way to:

(a) use the Right of Way Area as follows:

(i) excavate for, construct, install, erect, abandon, replace, extend, upgrade, operate, maintain, alter, remove and repair the Works on, over, in, under, across and through the Right of Way Area; and

(ii) clear the Right of Way Area and keep it cleared (including pruning or removal) of any trees or growth at any time located therein;

(b) use the Area of the Works as follows:

(i) enter, work, pass and repass upon, on, and along the Area of the Works;

(ii) construct, maintain, repair, replace and use trails, roads, lanes, and bridges on the Area of the Works including, in addition, any portions reasonably required adjacent to the Area of the Works for the sake of continuity, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;

(iii) clear the Area of the Works and keep it cleared of all or any part of any obstruction, improvement or other matter which, in the reasonable opinion of Hydro or TELUS, does or might interfere with or endanger the Works, disrupt service to Hydro's or TELUS's customers, or pose a hazard to persons or property in relation to the Works; and

(iv) clear the Area of the Works and keep it cleared (including pruning or removal) of all or any part of any trees or growth which do or might, in the opinion of Hydro or TELUS, interfere with or endanger the Works, disrupt service to Hydro's or TELUS's customers, or pose a hazard to persons or property in relation to the Works;

and Hydro or TELUS, as the case may be, must compensate the owner of any obstruction, improvement or other matter removed under paragraph 2.1(b)(iii) above that was in existence before the affected Works were installed;

(c) to enjoy further rights as follows:

(i) Hydro and TELUS may, with the prior approval of the Grantor and any party with a registered interest in the affected areas, such approval not to be unreasonably withheld, delayed or conditioned, cut trees or growth outside the Area of the Works, if in the opinion of Hydro or TELUS such trees or growth might interfere with or endanger the Works (whether on or off the Lands) or pose a hazard to persons or property in relation to the Works. Hydro and TELUS, as the case may be, will, except in an emergency, give the Grantor written notice prior to exercising their rights under this Section;

(ii) Hydro and TELUS may pass and repass over, and maintain, repair, replace and use, all trails, roads, lanes, and bridges on the Lands outside of the Area of the Works with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;

(iii) if there are no suitable trails, roads, lanes, or bridges under paragraph 2.1(c)(ii), Hydro and TELUS may either:

(A) construct, maintain, repair, replace and pass and repass over trails, roads, lanes or bridges on the Lands; or

(B) pass and repass over the Lands elsewhere than on trails, roads, lanes and bridges, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement, subject to prior approval of the route by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Hydro and TELUS do not require such approval if there is an emergency or a reasonably apprehended emergency or for the determination of electricity consumption, but will report to the Grantor the purpose and extent of the access as soon as practicable;

(iv) to conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of Hydro or TELUS, and the application of herbicides and pesticides with the consent of the Grantor, provided that Hydro and TELUS will not conduct any aerial application of herbicides or pesticides on the Lands;

(v) to install, maintain and use gates in all fences which are now or hereafter shall be on the Right of Way Area and in fences affecting access to the Area of the Works;

(vi) to ground any structures, installation or things, by whomsoever owned, from time to time situated anywhere on the Right of Way Area or adjacent Lands where, in the reasonable opinion of Hydro and TELUS, such grounding will eliminate or reduce hazards to persons or property in relation to the Works;

(vii) Hydro and TELUS may enter onto the Lands outside the Area of the Works for the purpose of undertaking works to protect any Works located within the Lands or within an Excluded Right of Way Area or to protect persons or property that may be at risk from such Works, provided that:

(A) Hydro or TELUS will before commencing such works deliver to the Grantor for approval a written work plan describing the proposed work on the Lands;

(B) the Grantor will not unreasonably withhold, condition or delay approval of such work plan, and shall take into consideration the effect of the proposed work, the cost of the proposed work compared to the cost of alternate solutions and the extent of the risk of not undertaking the work. If Hydro or TELUS, as the case may be, and the Grantor cannot agree on a work plan requested by Hydro or TELUS within 30 days of receipt by the Grantor of the proposed work plan, then either party may refer the disagreement to dispute resolution under Section 18.1 of this Agreement;

(C) Hydro or TELUS, as the case may be, will pay compensation for any damage to the Lands resulting from the implementation of the work plan;

(D) if Hydro or TELUS, as the case may be, determines in its reasonable judgment that an emergency situation exists or there are imminent safety concerns, Hydro and TELUS may, without approval of the Grantor, undertake works and take such steps on the Lands as are reasonably required to be taken immediately in order to protect the Works, or to protect persons or property that may be at risk from the Works, and in that event Hydro or TELUS will as soon as reasonably possible thereafter notify the Grantor; and

(E) generally, do all such other acts or things as may reasonably be necessary or incidental to the business of Hydro or TELUS in connection with any of the above.

3.0 Right of Way Area

3.1 The Right of Way Area consists of:

(a) all portions of the Lands reasonably required for the following:

(i) those Works existing at the date of this Agreement;

(ii) any additional Works constructed adjacent to, along the sides of or across any roads, lanes or bridges from time to time existing on or through the Lands;

(iii) any additional Works that provide service to any lands adjacent to any roads, lanes, or bridges from time to time existing on or through the Lands;

(iv) any additional Works that provide service to any lands or customers where either the Grantor or a lessee of any intervening parcel of the Lands consents to the installation of any such Works; and

(b) any such other portions of the Lands as may from time to time be consented to in writing by the Grantor, or by any delegate appointed by the Grantor.

3.2 The parties agree that the sketch plan attached to this Agreement as Schedule "A" reasonably represents the approximate location of the Works existing as of the date of this Agreement. Hydro and TELUS agree to provide the Grantor on request with an updated sketch of the Works if the Works have been extended in the previous calendar year, unless such information is available to the Grantor on line. The Parties confirm that this Agreement, and all of its terms and provisions, shall apply to such new works in their entirety.

3.3 Nothing in this Article 3 is intended to affect the rights of Hydro or TELUS to make arrangements directly with a person in legal possession of any lands for the construction, operation and maintenance of the Works and all matters incidental thereto.

4.0 Non-Exclusive Use

4.1 Notwithstanding anything else in this Agreement, Hydro and TELUS acknowledge and agree that:

(a) this Agreement does not grant a fee simple interest in the Lands, but rather grants a non-exclusive use over the Area of the Works; and

(b) subject to the rights granted to Hydro and TELUS in this Agreement, the Grantor may grant to third parties other interests on the Area of the Works, provided that any such grant or other interests shall not compromise or, by action of the Grantor or the Grantee, damage, disrupt, adversely affect or interfere with the use by Hydro and TELUS of the Works or Area of the Works.

5.0 Protection of the Environment

5.1 Hydro and TELUS will undertake activities permitted under this Agreement having regard for the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment. Hydro and TELUS, as the case may be, will remediate in accordance with applicable provincial or federal environmental legislation any damage they respectively may cause to the Environment.

6.0 Covenants of Hydro and TELUS

6.1 Hydro and TELUS each covenant separately with the Grantor to:

(a) pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged to the account of Hydro or TELUS, as the case may be, which relate to the Right of Way Area and which Hydro or TELUS is liable to pay;

(b) keep the portions of the Lands used by Hydro or TELUS under this Agreement in a safe, clean and sanitary condition to the extent the condition relates to the use or occupation by Hydro or TELUS of such Lands, as the case may be, provided that Hydro and TELUS have no obligation to keep any roads within the Area of the Works suitable for use by anyone except Hydro and TELUS;

(c) bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;

(d) if any human remains, burial pit or grave are unearthed or discovered on the Lands by either Hydro or TELUS, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity and take such reasonable steps and precautions to protect the site as may be directed by the Grantor;

(e) if any archaeological material is unearthed or discovered on the Lands by either Hydro or TELUS, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity, and take such reasonable steps and precautions to protect the site as may be directed by the Grantor. At the request of the Grantor, Hydro or TELUS, as the case may be, will deliver such artifact to a location on the Lands as directed by the Grantor, at the expense of the Grantor if such expense is significant;

(f) not bury debris or rubbish of any kind on the Lands in excavations or backfill, and to remove shoring and similar temporary structures as backfilling proceeds; and

(g) not commit or suffer any willful or voluntary waste, spoil or destruction on the Right of Way Area, or do or suffer to be done thereon anything that may be or become a nuisance to the Grantor, except to the extent required by Hydro or TELUS, acting reasonably, to exercise the rights granted under this Agreement.

7.0 New Works Constructed by Hydro or TELUS

7.1 Prior to undertaking construction on the Lands of any new Works which are not alterations, extensions or additions to existing Works, Hydro or TELUS, as the case may be, will deliver to the Grantor, for prior approval, a sketch plan showing with reasonable accuracy the location of such proposed Works, which approval will not be unreasonably withheld, delayed or conditioned.

8.0 Relocation of Hydro and TELUS Works Due to Change

8.1 If a material change occurs to the Lands, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area or an Excluded Right of Way Area unsuitable for any of the Works, then the Grantor will, at no cost to Hydro and TELUS, consent to the relocation and replacement of such Works to a new location on the Lands, as follows:

(a) Hydro or TELUS, as the case may be, will, before undertaking any work, deliver a sketch plan to the Grantor indicating the contemplated relocation of the Works for approval by the Grantor, which approval will not be unreasonably withheld, delayed or conditioned;

(b) Hydro or TELUS, as the case may be, will take into account any likely material effect of the relocated Works on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by Hydro or TELUS for the relocated Works in relation to alternative locations;

(c) the relocated Works will be subject to the terms and conditions of this Agreement; and

(d) subject to the foregoing, the cost of such relocation will be borne by Hydro or TELUS, as the case may be.

9.0 Relocation of Hydro Works at the Request of the Grantor

9.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, Hydro will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

(a) the new location is, in the reasonable opinion of Hydro, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;

(b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;

(c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation, including costs of design, supervision and construction as estimated by Hydro, with appropriate adjustments based on actuals after the relocation is complete; and

(d) the relocated Hydro Works will be subject to the terms and conditions of this Agreement.

10.0 Relocation of TELUS Works at the Request of the Grantor

10.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, TELUS will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

(a) the new location is, in the reasonable opinion of TELUS, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;

(b) the Grantor gives TELUS reasonable notice to permit proper design, planning and construction of the Works to be relocated;

(c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation as estimated by TELUS, including costs of design, supervision and construction with appropriate adjustments based on actuals after the relocation is complete; and

(d) The relocated TELUS Works will be subject to the terms and conditions of this Agreement.

11.0 Fencing

11.1 With the exception of transformer stations and equipment shelters, Hydro and TELUS will not fence the Area of the Works without the prior consent of the Grantor, such consent not to be unreasonably withheld, delayed or conditioned.

12.0 Inspections

12.1 It will be lawful for the Grantor at all reasonable times to enter upon the Right of Way Area for the purposes of visually inspecting the Right of Way Area and the Works, or carrying out tests, surveys and inspections at its own expense that do not interfere with the Works. If the Grantor requires access to any Area of the Works that has been fenced off or enclosed, the Grantor will notify Hydro and TELUS, who will provide such safe access as may be reasonably required by the Grantor for visual inspection.

13.0 Restoration

13.1 When a portion of the Right of Way Area is no longer required for the Works, Hydro or TELUS, as the case may be, will restore the ground surface of the affected portion of the Right of Way Area, as near as is reasonably practicable to its condition prior to the installation of the Works, including the removal of any above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts in such portion of the Right of Way Area.

13.2 Sections 13.1 and 13.2 will survive the expiration or any termination of this Agreement.

14.0 Removal of Works

14.1 If certain Works are no longer required by Hydro and TELUS under this Agreement:

(a) Hydro or TELUS, as the case may be, may, subject to the consent of the Grantor, abandon the Works and transfer to the Grantor all ownership, right and interest in the whole or part of the Works. If the consent of the Grantor is not obtained within one year after the date of the expiration of the Agreement, Hydro or TELUS, as the case may be, will remove the above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts as soon as reasonably possible in the circumstances; and

(b) Hydro or TELUS, as the case may be, will decommission any roads constructed by either Hydro or TELUS pursuant to paragraph 2.1(c)(iii), which are no longer required in relation to such Works, unless otherwise requested by the Grantor.

14.2 Hydro will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then Hydro will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.

14.3 TELUS will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then TELUS will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.

14.4 Sections 14.1, 14.2, 14.3 and 14.4 will survive the expiration or any termination of this Agreement.

15.0 Covenants of the Grantor

15.1 The Grantor covenants with Hydro and TELUS that:

(a) Hydro and TELUS shall and may peaceably enjoy and hold the rights granted in this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any other person lawfully claiming from or under the Grantor, provided however that nothing in this section 15.1 shall limit the Grantor's right of inspection pursuant to section 12.1;

(b) the Grantor will not permit or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, pile of material, fill, obstruction, equipment, thing or inflammable substance, or plant any growth upon the Area of the Works, if any such action or thing, in the reasonable opinion of Hydro or TELUS:

(i) may interfere with or endanger the Works or any part thereof or the installation, operation, maintenance, removal or replacement of the Works or any part thereof;

(ii) may obstruct access to the Works or any part thereof by those authorized by Hydro or TELUS; or

(iii) may by its operation, use, maintenance or existence on the Area of the Works create or increase any hazard to persons or property in relation to the Works;

(c) the Grantor will not carry out blasting or aerial logging operations on or adjacent to the Area of the Works without prior written permission from Hydro and TELUS, which permission will not be unreasonably withheld, conditioned or delayed; and

(d) the Grantor will not diminish or increase the ground elevation in the Area of the Works by any method, including piling any material or creating any excavation, drain, or ditch in the Area of the Works, unless permission in writing from Hydro and TELUS has first been received, which permission will not be unreasonably withheld, conditioned or delayed.

16.0 Compensation for Damages

16.1 Subject to the rights granted in this Agreement, Hydro and TELUS covenant with the Grantor that if Hydro or TELUS, or their respective contractors, damage any structures, buildings, fixtures, improvements, or chattels outside the Area of the Works, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, trails, bridges, or roads on the Lands, or contaminate the Lands in the exercise of vegetation management rights under paragraph 2.1(c)(iv), and such damage is not caused as a result of the Grantor's breach of the terms of this Agreement, or the negligence or willful act of the Grantor or its contractors, agents or permittees, then Hydro or TELUS, as the case may be, will:

(a) compensate the Grantor for such damages, to the extent caused by Hydro or TELUS;

(b) compensate the Grantor for, and remediate the Lands from, such contamination, to the extent caused by Hydro or TELUS; or

(c) within a reasonable period of time, repair in a good and workman-like manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.

16.2 Compensation paid to the Grantor for merchantable timber pursuant to Section 16.1 will be in accordance with generally accepted principles of timber valuation and the parties agree that on payment, title to any timber cut on the Lands under this Agreement will vest in Hydro or TELUS, as the case may be.

17.0 Indemnity

17.1 Hydro will at all times save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

(a) any breach, violation or non-performance by Hydro of any of Hydro's covenants, conditions or obligations under this Agreement; and

(b) any act or omission on the part of Hydro in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, and the exercise of vegetation management rights pursuant to paragraph 2.1(c)(iv) herein, but only to the extent any such matter is found to be the responsibility of Hydro, and was not contributed to by the negligence, breach, violation or non-performance

of the Grantor, and not for any matters based on nuisance or the rule in *Rylands v. Fletcher* unless Hydro was negligent.

17.2 TELUS will at all times save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

(a) any breach, violation or non-performance by TELUS of any of TELUS' covenants, conditions or obligations under this Agreement; or

(b) any act or omission on the part of TELUS in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, but only to the extent any such matter is found to be the responsibility of TELUS and was not contributed to by the negligence, breach, violation or non-performance of the Grantor.

18.0 Dispute Resolution

18.1 Any dispute arising out of or in connection with this Agreement will be resolved as follows:

(a) the parties will attempt to resolve disputes by negotiations, including timely disclosure of all relevant facts, information and documents;

(b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;

(c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution in accordance with the British Columbia *Commercial Arbitration Act*. If the parties do not agree to arbitration, then any party may refer the matter to a court of competent jurisdiction; except that it is not incompatible with this Section 18.1 for a party to apply to a court of competent jurisdiction at any time for interim or conservatory relief and for the court to grant that relief; and

(d) for the purposes of this Section 18.1, Hydro and TELUS will only be considered as one party where the dispute arises between the Grantor, on the one hand, and Hydro and TELUS jointly, on the other.

19.0 Runs With the Land

19.1 This Agreement runs with and binds the Lands to the extent necessary to give full force and effect to this Agreement.

20.0 Assignment

20.1 This Agreement:

(a) may not be assigned in part or in whole or otherwise transferred without the prior written consent of the Grantor, which consent will not be unreasonably withheld, conditioned or delayed; but

(b) may be assigned or otherwise transferred to an Affiliate without consent.

20.2 During any time that TELUS carries on business as a telecommunications services provider in partnership with one or more Affiliates of TELUS, TELUS may allow that partnership and its members to exercise some or all of the rights granted to TELUS in this Agreement, provided that TELUS ensures that the partnership and its members comply with TELUS' obligations in this Agreement. For greater certainty, TELUS shall remain fully liable for all of its obligations under this Agreement in such circumstances.

20.3 Hydro and TELUS's rights hereunder may be exercised by their respective employees, officers, representatives, contractors, subcontractors, agents, invitees and licensees. For greater certainty, Hydro or TELUS, as the case may be, remains fully liable for all of its obligations in this Agreement despite the exercise of such rights by such other persons.

21.0 Notice

21.1 Whenever it is required or permitted that notice or demand be given by any party to the other, the same will be in writing and will be forwarded to the following addresses:

To the Grantor: _____ Ltd.
c/o Pacheedaht First Nation
_____
_____, British Columbia
_____

To Hydro: Manager, Properties
B.C. Hydro
12th Floor - 333 Dunsmuir Street
Vancouver, British Columbia
V6B 5R3

Fax: (604) 623-3951

To TELUS: Manager, Real Estate
TELUS
15079 – 64th Avenue, First Floor,
Surrey, British Columbia
V3S 1X9

Fax: (604) 599-0396

21.2 If any question arises as to the date on which such notice was communicated to any party, it will be deemed to have been given on the earlier of:

(a) if it was delivered personally or by courier, on the next business day;

(b) if it was sent by fax, on the next business day; or

(c) if it was sent by mail, on the sixth day after the notice was mailed.

In the event of postal disruption or an anticipated postal disruption, notices may not be given by mail.

21.3 A change of address by any party may be given to the others in accordance with this provision.

22.0 General

22.1 A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.

22.2 No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.

22.3 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

22.4 The parties agree that this Agreement will be registered in the provincial Land Title Office. At the request of any party to this Agreement, all parties will cooperate in executing any documents or plans required to accomplish the registration of this Agreement and to preserve the substance and priority of this Agreement in relation to those portions of the Lands affected by this Agreement.

22.5 Hydro or TELUS may grant licences respecting their rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor provided that no licence will act as a release of any of Hydro's or TELUS's obligations set out in this Agreement.

22.6 A delegate appointed by the Grantor may provide Hydro and TELUS with all commentary, authorizations and approvals required pursuant to this Agreement including without limitation, all commentary, authorizations or approvals required in relation to sketch plans, access to the Area of the Works, and relocations or replacements of any Works.

22.7 This Agreement may not be amended except by written agreement signed by all parties to this Agreement.

23.0 Interpretation

23.1 In this Agreement:

(a) all schedules attached to these Filed Terms or the General Instrument form an integral part of this Agreement;

(b) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of this Agreement;

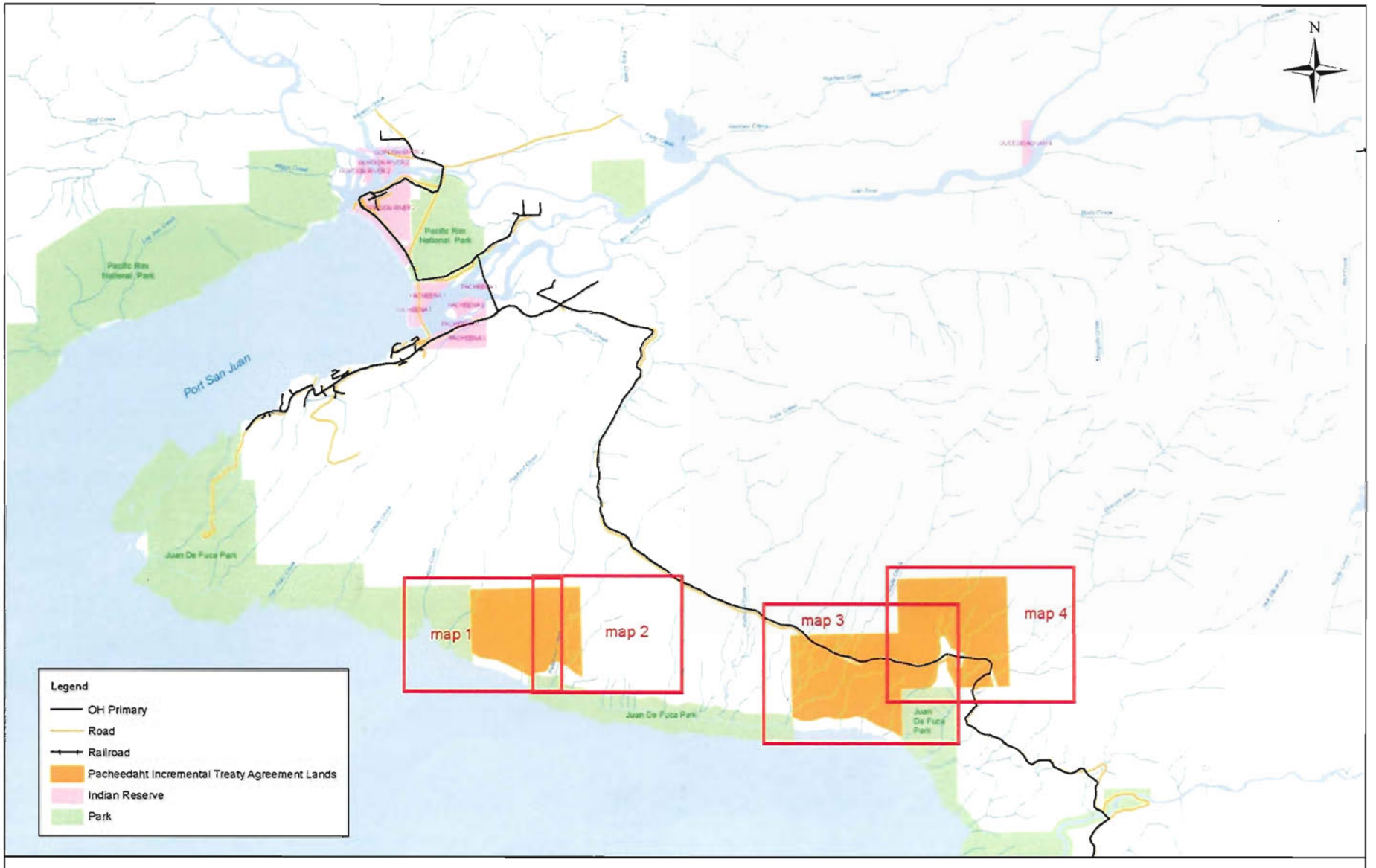
(c) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination; and

(d) any reference to a statute includes any regulations made pursuant to that statute and, unless otherwise expressly provided herein, includes a reference to all amendments made thereto and in force from time to time and any statute or regulation that may be passed which has the effect of supplementing or superseding that statute or those regulations.

SCHEDULE "A"

(Sketch Plan of Works, pursuant to Section. 3.2 of the Agreement)

Schedule A

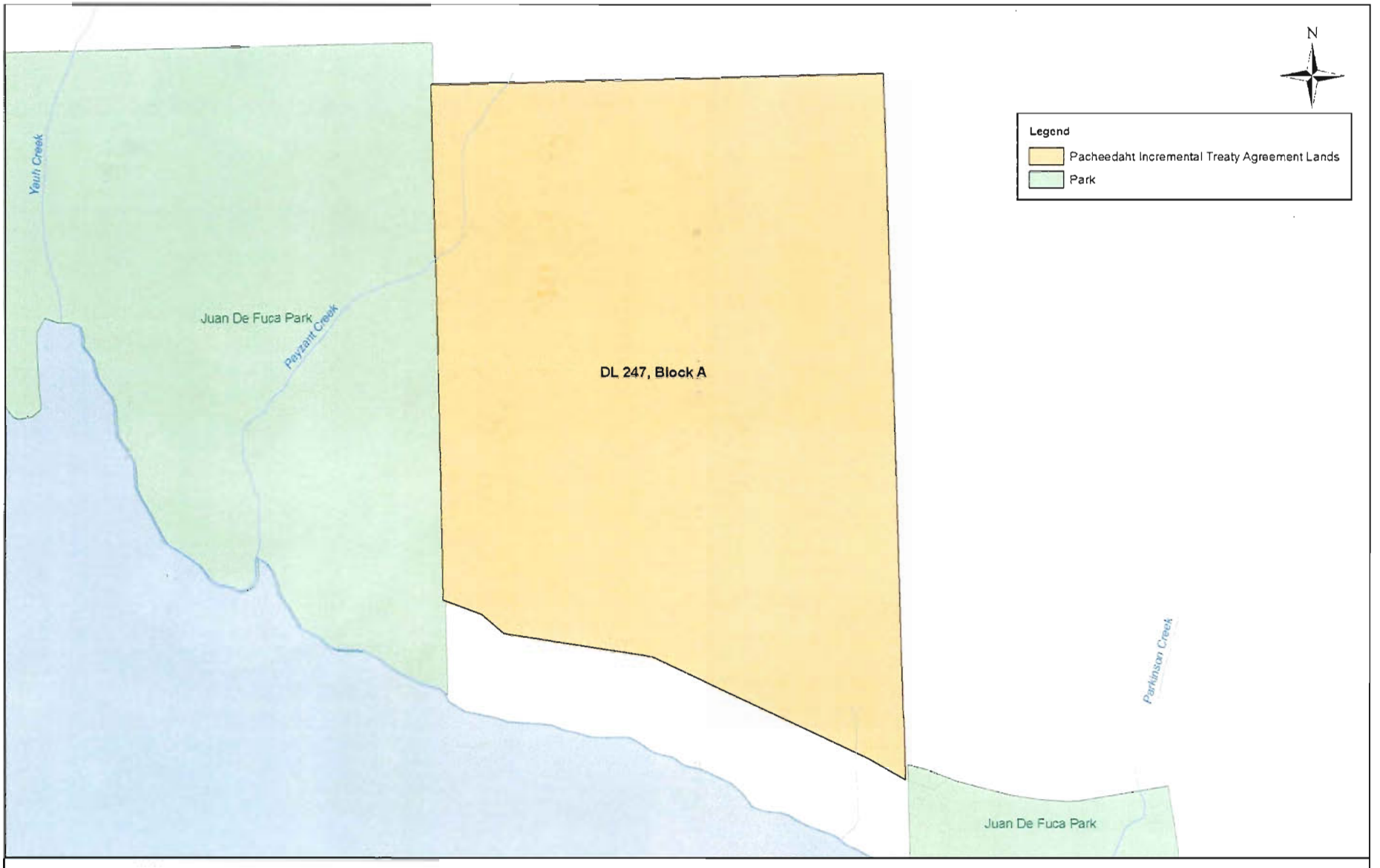


FOR REFERENCE ONLY
POSITIONAL ACCURACY UNKNOWN

Pacheedaht Incremental Treaty Agreement Lands

2013/PACHEEDAHT/ITA/index

Schedule A



FOR REFERENCE ONLY
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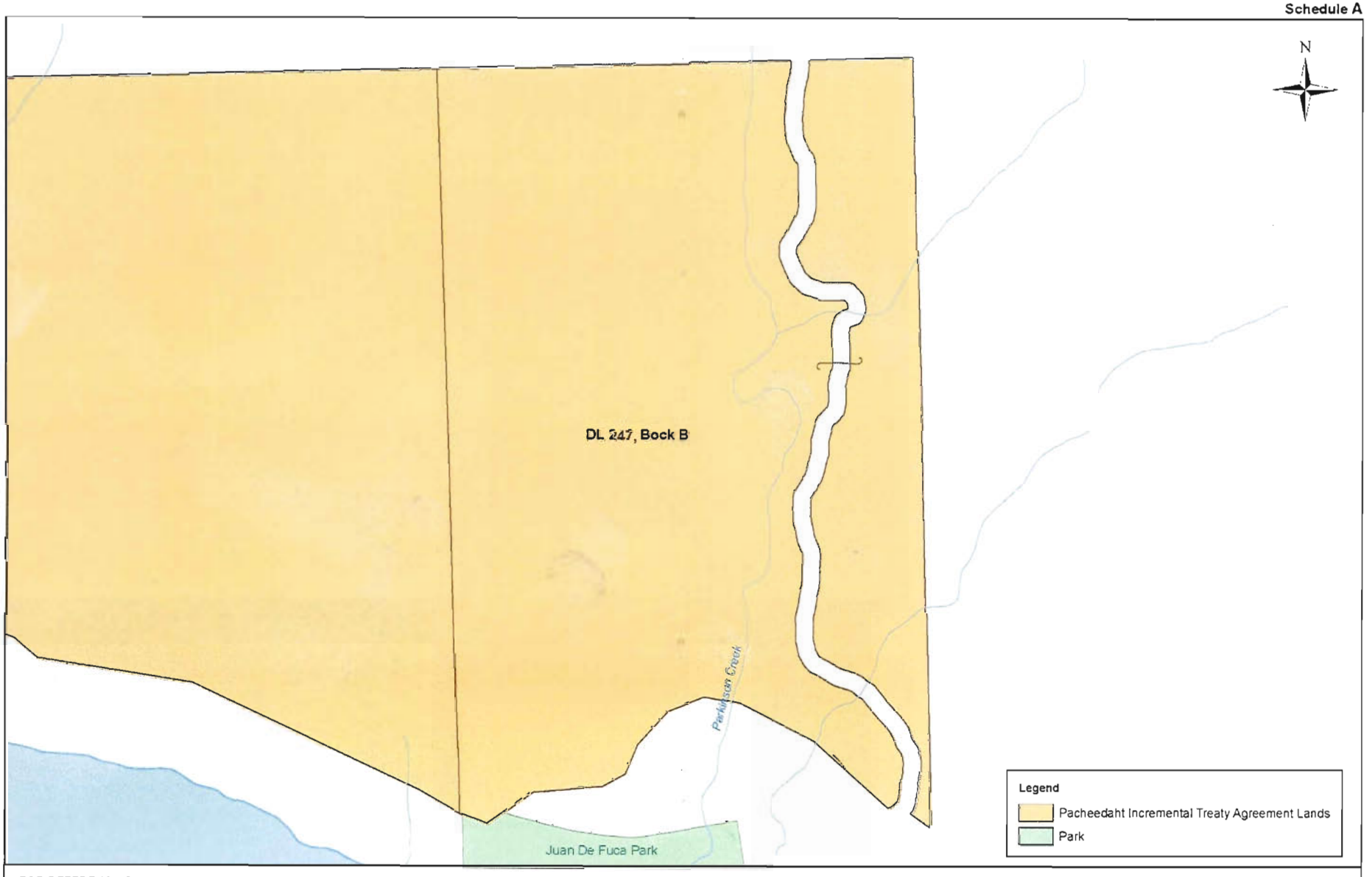
Pacheedaht: DL 247, Block A

2013/PACHEEDAHT/ITA/001

Schedule A



FOR REFERENCE ONLY
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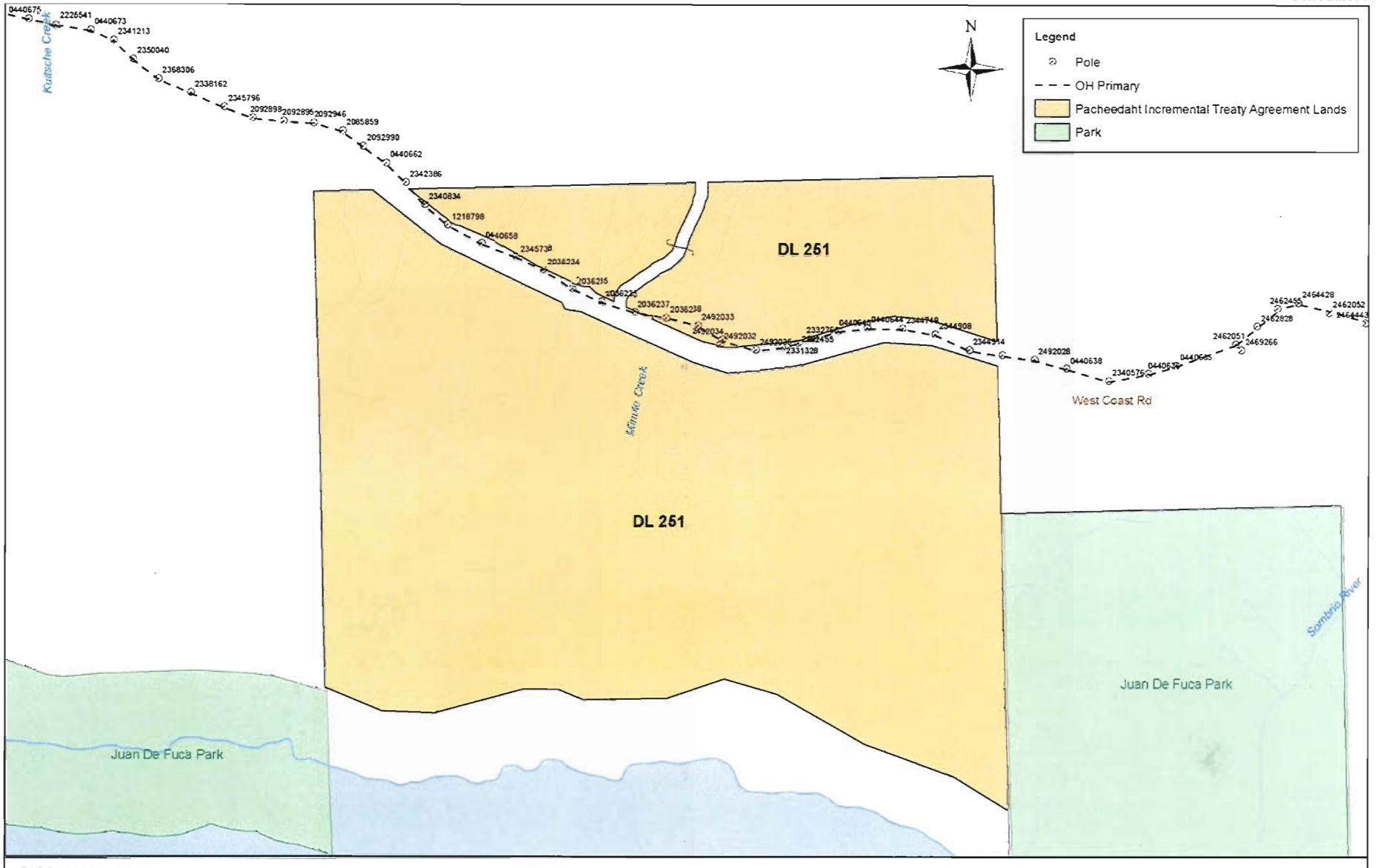
Pacheedaht: DL 247, Block B

2013/PACHEEDAHT/ITA/002

Schedule A



FOR REFERENCE ONLY
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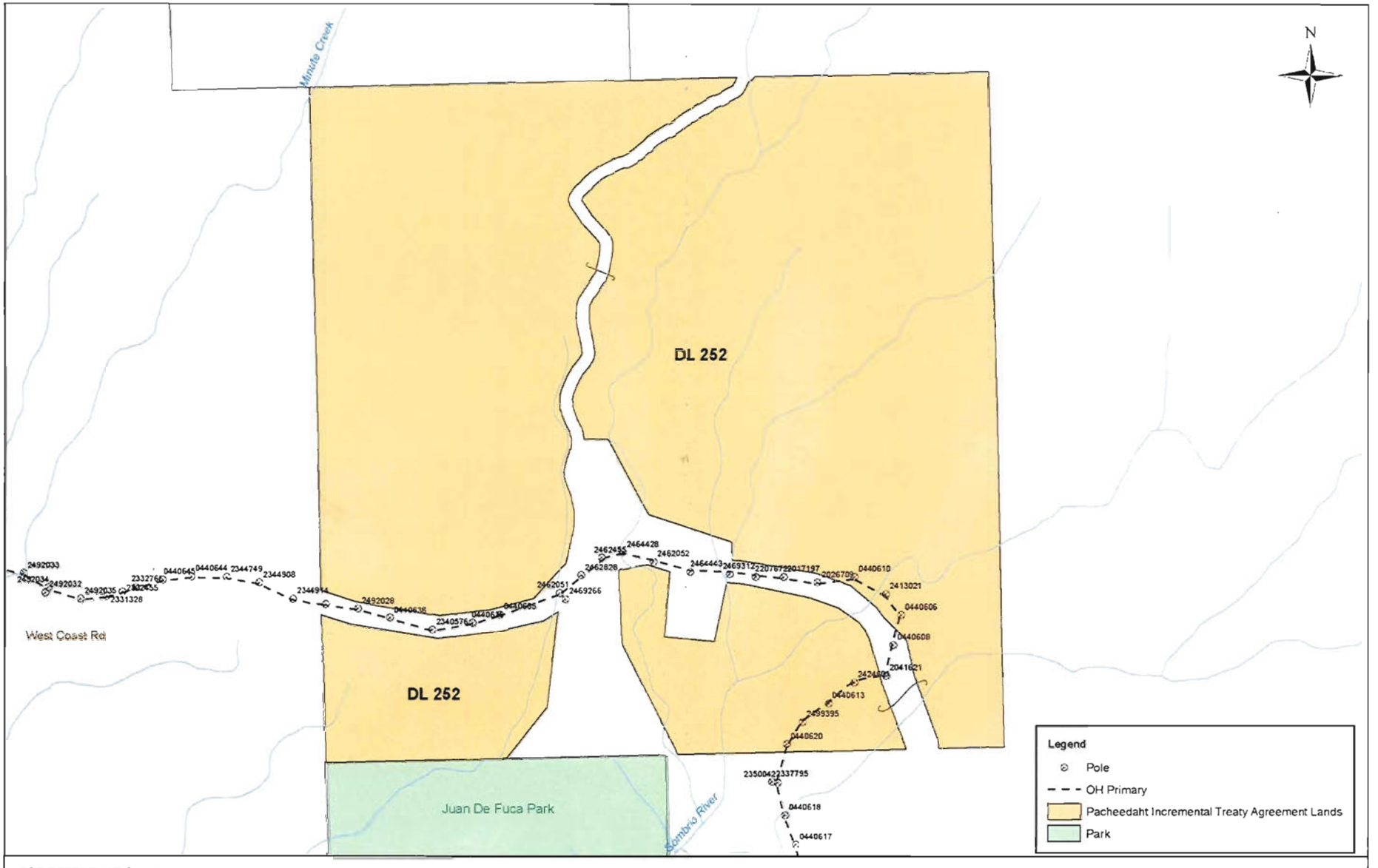
Pacheedaht: DL 251

2013/DITIDAHT/ITA/003

Schedule A



FOR REFERENCE ONLY
POSITIONAL ACCURACY UNKNOWN

Pacheedaht: DL 252

2013/PACHEEDAHT/ITA/004

END OF DOCUMENT

Schedule 6: Statutory Right of Way Agreement — Gravel

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office use)

1. APPLICATION: *(Name, address, phone number and signature of applicant, applicant's solicitor or agent)*

2. (a) PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*
(PID) *(Legal Description)*

District Lots 251 and 252, Renfrew District

3. NATURE OF INTEREST:*

Description	*Document Reference (page and paragraph)*	*Person Entitled to Interest*
Statutory Right-of-Way		**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms ☐ D.F. No.
(b) Express Charge Terms ■ Annexed as Part 2
(c) Release ☐ There is no Part 2 of this instrument.

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFEROR (GRANTOR):*

BANDCO

6. TRANSFEREE:* (*Including* postal address(es) and postal codes(s))

Her MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure

7. ADDITIONAL OR MODIFIED TERMS:*

None

LAND TITLE ACT

FORM C

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnesses	Execution Date			Parties' Signatures
	Y	M	D	
Signature Printed name Address Occupation				Authorized Signatory of Bandco
Officer Signature				Authorized Signatory of Her Majesty The Queen as Represented by the Minister of Transportation and Infrastructure

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act, R.S.B.C. 1996, c. 124,* to take affidavits for use in British Columbia and certifies the matters set out in *Part 5* of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attached schedule in Form E.

Terms of Instrument

STATUTORY RIGHT OF WAY AGREEMENT — GRAVEL

This Agreement dated for reference _____, 20____, is made:

BETWEEN:

DESIGNATED COMPANY

("the Grantor")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
As Represented by
The Minister of Transportation and Infrastructure

("the Province")

WHEREAS:

A. The Grantor is the registered owner of land legally described as follows (or as otherwise described if and when a new survey is completed):

District Lot 251, Renfrew District
District Lot 252, Renfrew District

Except that land shown on Survey Plans #_____

("the Lands")

B. There are several deposits of Gravel on the Lands;

C. The Province has started a Project (as defined below) in the vicinity of the Lands which will involve the realignment of a portion of Highway 14, and which will require a considerable amount of gravel

D. The Grantor has agreed to grant to the Province, on terms and conditions herein set out, the right to access and remove Gravel from a Gravel Area (as defined below);

ACCORDINGLY, in consideration of the sum of $10.00 (Ten Dollars) paid by the Province to the Grantor, the Grantor and the Province agree as follows:

Definitions

In this agreement:

"**Grantor's Users**" means the Grantor and its employees, agents, invitees, licensees, permittees and contractors;

"**Gravel**" means gravel, quarry rock, random borrow materials, and sand, and any other granular materials;

"Gravel Area" means the area shown and described as "Gravel Area" on the map attached as Schedule "1";

"**Project**" means the **Hwy 14–Sombrio No. 1 Bridge Replacement Structure No. 1494 and Roadworks**;

"**Province's Users**" means the Province and its employees, agents, invitees, licensees, permittees and contractors;

"**Provincial Road**" means a road under the administration and control of British Columbia adjacent to or nearby the Lands or a road maintained by the Province;

"**Right-of-Way**" means the rights granted to the Province in Part 1;

"**Road or Roads**" means:

(a) the road shown in red-and-white lines on the map attached hereto as Schedule "1"; and
(b) any other road that is built or relocated pursuant to the Province's authority in Part 2;

or any part or parts thereof.

Part 1. Grant of Right-of-Way

1.01 The Grantor hereby grants to the Province a Right-of-Way along and over the Lands for the following:

(a) to pass and repass for the purposes of constructing roads;
(b) to pass and repass for the purposes of obtaining Gravel on the Lands and Gravel beyond the Lands;
(c) to use, maintain, upgrade, relocate and construct roads;
(d) to access, process and remove Gravel from the Lands; and

(e) to deposit fill materials associated with the Project.

1.02 This Right-of-Way shall be perpetual;

1.03 This Right-of-Way is granted pursuant to 218 of the *Land Title Act* and is necessary for the operation and maintenance of the Province's undertaking;

1.04 The parties intend that this agreement shall constitute a charge running with the Lands and shall be registered in the Land Title Office.

Part 2. Limitation on Use

2.01 The Province covenants that, despite that this Right-of-Way is granted over all of the Lands, the Province will limit its exercise of the rights granted in Part 1 to the extent of the covenants set out in this part.

2.02 The said covenants shall be deemed to be personal covenants of a contractual nature, rather than part of the grant made in Part 1.

2.03 With respect to the removal of Gravel:

(a) the Province shall be entitled to remove Gravel only from the Gravel Area;
(b)the Province may remove Gravel for a period of 2 years from the reference date of this agreement (c) the Province's rights are exclusive;
(d) the removed Gravel shall be used only for the purpose of constructing, upgrading, repairing and maintaining Provincial Roads and bridges adjacent to, or in the vicinity of, the Lands;

2.04 With respect to Roads:

(a) The Province shall limit the exercise of the rights granted in Part 1 to the Road or Roads;
(b) The Province may construct new Roads or relocate existing Roads if:

(i) a new or relocated Road is the only reasonable way to provide to the Province access to Gravel deposits outside the boundaries of the Lands; or
(ii) a material change shall occur to the condition of a Road as a result of erosion, flooding, rock fall, slope failure or any other environmental condition which for any reason makes the continued use of the road unsuitable for the purposes described in Part 1.

(c) Before building a new Road, the Province shall deliver a sketch plan to the Grantor indicating the contemplated relocation of the road for approval by the Grantor, which

approval will not be unreasonably withheld, delayed or made subject to compensation or to any unreasonable conditions.

(d) The Province, in proposing a new or relocated Road, will take into account any likely material effect of the new or relocated Road on adjacent parts of the Lands, and the Grantor, in considering whether or not to approve the proposal, will take into account the cost efficiencies of the location selected by the Province for the relocated Road in relation to alternative locations.

(e) All Roads shall be deemed to be 20 metres wide centered on the centre line of the Road; provided, however, that, if, in the reasonable opinion of the Province, more width is required for any portion (or portions) of the Road to deal with either of the following:

(i) a risk to the integrity of the Road bed, or
(ii) an extraordinary hazard to the safe operation of traffic on the Road,

then the Road shall be deemed to be wide enough to deal with the conditions and the Province will have the right to enter on the Lands and to make the necessary improvements;

(f) the Province shall design, prepare and construct the relocated road at no cost to the Grantor.

2.05 Provided that the Grantor does not interfere with the exercise by the Province's Users of rights granted under this agreement, nothing in this agreement shall exclude the Grantor's use of the Road.

2.06 Before initiating any development in the proximity of a Road, the Grantor shall deliver a sketch plan to the Province indicating the contemplated location of the development for confirmation by the Province that the development is consistent with the Province's exercise of rights granted under this agreement, which confirmation will not be unreasonably withheld, delayed or made subject to compensation or to any unreasonable conditions.

Part 3. Liability for the Road

3.01 Subject to the provisions below, the Province will have no liability associated with a Road, and no obligation to maintain it.

3.02 If and when the Province wishes to use a Road, (for rights granted under this agreement) it will first give written notice to the Grantor containing the following information:

(a) the nature of the proposed use;
(b) when the use will commence and when it will end;
(c) what condition the Province expects to leave the Road in.

3.03 When the Province starts to use a Road, the Province becomes liable, whether or not the notice required in 3.02 has been given, to indemnify and save harmless the Grantor from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that the Grantor may sustain, incur, suffer or be put to arising from an incident which occurs during, and as a result of, the use of the Road by the Province, excepting always liability arising from the negligent acts or omissions of the Grantor's Users.

3.04 When the Province finishes using a Road:

(a) the Province will approach the Grantor to discuss options for closing the Road;
(b) unless otherwise agreed to by the parties, the Province may remove any improvements (including bridges) which the Province made or installed on the Road after the reference date of this agreement;

(c) if the Road was in existence as of the reference date of this agreement, or if the Road was built after the reference date and the Province has decided not to decommission the Road, the Province will leave the Road:

(i) in the same or better condition than it was in when the Province commenced use; and
(ii) in a condition that meets or exceeds the duty of care required of an occupier of similar premises as set out in the British Columbia *Occupiers Liability Act;*

(d) If and when the conditions in 3.04(c) have been met, the Province:

(i) will have no obligation to maintain the Road thereafter (unless and until the Province wishes to use the Road again); and
(ii) will thenceforth have no liability associated with the Road except liability for breach of any of the Province's covenants in this agreement.

Part 4. Covenants

4.01 Both parties shall comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the activities contemplated herein.

4.02 Both parties shall ensure that their respective resource extraction activities conducted on the Lands comply with all applicable laws and regulations in effect at the time.

4.03 Neither party shall assign its rights under this agreement without the prior written approval of the other.

Part 5. Notice

5.01 Any notice, document or communication required or permitted to be given under this agreement:

(a) must be in writing;

(b) may be given by delivery by hand, by courier, or by double-registered mail to the following addresses: :

To the Province:

Properties and Land Management Branch

Ministry of Transportation and Infrastructure

940 Blanshard Street

Victoria, BC

V8W 9T5

To the Grantor:

or to such other addresses as the parties may from time to time designate in writing.

Part 6. Entire Agreement

6.01 This agreement constitutes the entire agreement between the Grantor and the Province regarding the Right-of-Way and supersedes all prior agreements and understandings between them. There are no representations, promises, agreements or understandings between the Grantor and the Province concerning the Right-of-Way that are not expressly set out in this agreement.

Part 7 Enurement

7.01 This agreement will enure to the benefit of and be binding upon the Grantor and the Province and their respective successors and permitted assigns. The word *Grantor* is deemed to include the heirs, executors, administrators, successors, and assigns, wherever the context so admits.

Part 8 Governing Law

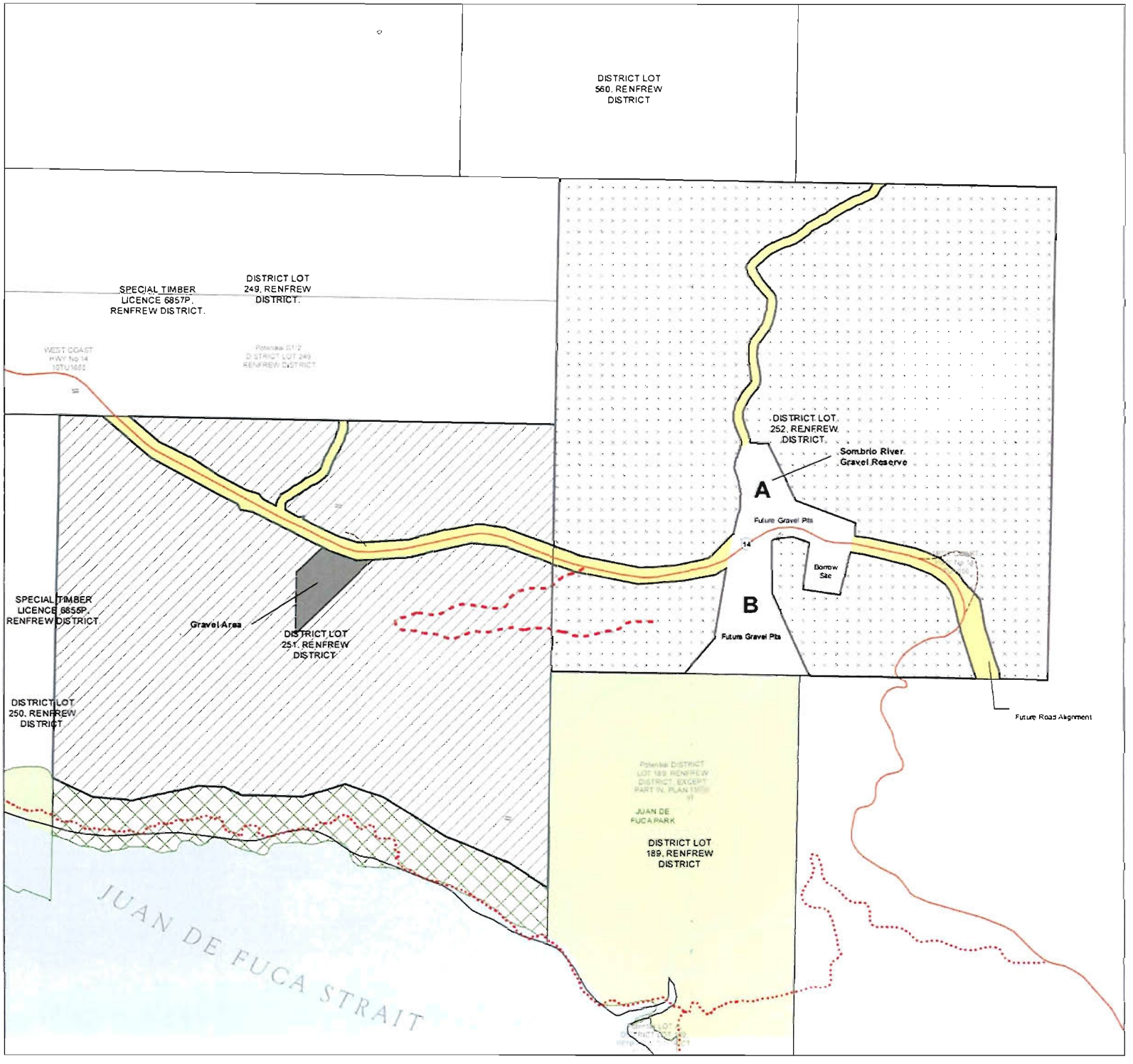
8.01 This agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

Part 9 Arbitration

9.01 If any dispute shall arise between the parties concerning the rights and obligations contained in this agreement created herein, which dispute cannot be resolved by agreement, then the dispute will be resolved pursuant to the *Commercial Arbitration Act* of the Province of British Columbia.

Schedule “1”

Map of Lands for Illustrative Purposes
Pacheedaht First Nation
Schedule 1
Map of Gravel Area and Roads

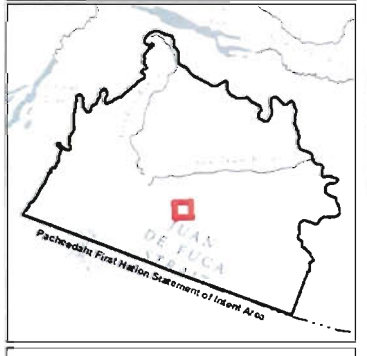


District Lot 251
District Lot 252
Gravel Area
Right-of-Way Agreement Road
Trail / Park Corridor
Juan de Fuca Trail
Pacheedaht First Nation Indian Reserve
Other Indian Reserve
Primary Survey Parcel
Subdivision Survey Parcel
Crown Corridor
Provincial Parks and Protected Areas
Federal Park

Transportation
Highway
Paved Road
Unpaved Road

N

0 200
Metres

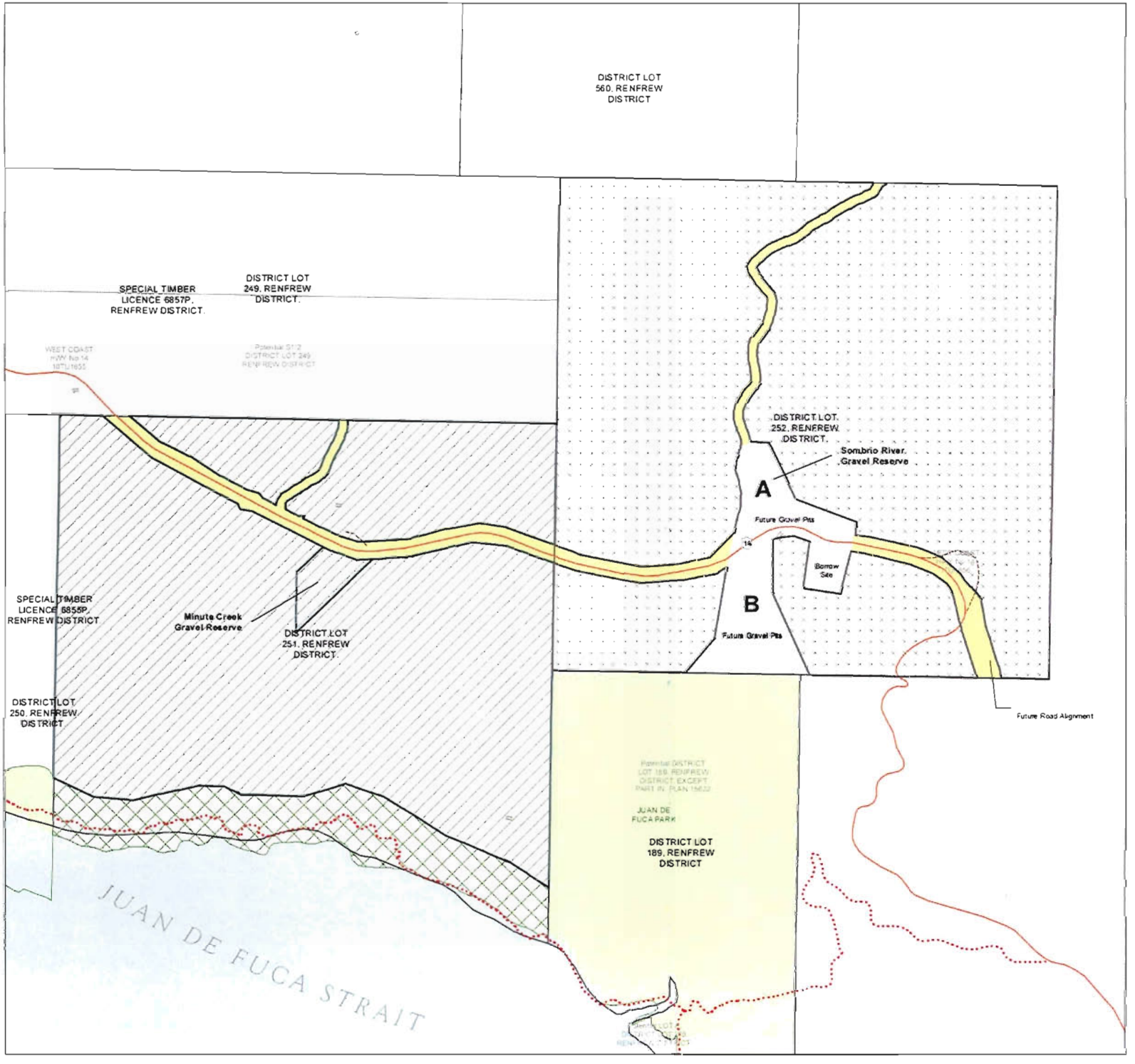


Produced by: GeoBC under the
Canada - BC Information Sharing Protocol
Created by: Natural Resources Decision Support, GeoBC, SS
Projection/Datum: BC Albers NAD 83
TRIM Map Sheet: 092C.077

BRITISH COLUMBIA
Ministry of Aboriginal Relations and Reconciliation

Schedule 7: Map of Gravel Resources

Map of Lands for Illustrative Purposes
Pacheedaht First Nation
Schedule 7
Map of Gravel Resources



District Lot 251
District Lot 252
Trail / Park Corridor
Juan de Fuca Trail
Pacheedaht First Nation Indian Reserve
Other Indian Reserve
Primary Survey Parcel
Subdivision Survey Parcel
Crown Corridor
Provincial Parks and Protected Areas
Federal Park

Transportation
Highway
Road, paved
Unpaved Road

N

0 200
Metres

Produced by: GeoBC under the Canada - BC Information Sharing Protocol
Created by: Natural Resources Decision Support, GeoBC, SS
Projection/Datum: BC Albers NAD 83
TRIM Map Sheet: 092C.077

BRITISH COLUMBIA
Ministry of Aboriginal Relations and Reconciliation