

Huu-ay-aht First Nations Commercial Recreation Tenures Memorandum of Understanding, 2021

July 12, 2021

THIS UNDERSTANDING made the ____ day of [date]

BETWEEN

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

(the “Province”)

AND

Huu-ay-aht First Nations, as represented by Huu-ay-aht First Nations Government

(“Huu-ay-aht First Nations”)

(collectively, the “Parties”)

Background

This Background does not form part of this Huu-ay-aht First Nations Commercial Recreation Tenure Memorandum of Understanding (this “2021 MOU”).

Prior to the Effective Date of the Maa-nulth Treaty, the Province and each of the Maa-nulth First Nations signed separate Commercial Recreation Opportunities Memorandum of Understanding, (the “2006 MOUs”) to allow for the protections set out in 2.13.0 of the Maa-nulth Treaty to be brought into effect early. The Province and Huu-ay-aht First Nations entered into the Commercial Recreation Opportunities Memorandum of Understanding, dated December 11, 2006 (“the 2006 Huu-ay-aht First Nations MOU”).

The 2006 MOUs were used by the Province and the Maa-nulth First Nations to operationalize 2.13.0 of the Maa-nulth Treaty when it came into effect on April 1, 2011. In accordance with 2.13.1 of the Maa-nulth Treaty and the understanding set out in the 2006 MOUs, Provincial Crown lands were designated for each Maa-nulth First Nation under s. 17(1) of the *Land Act*, for a term of 15 years.

In 2017 and 2018, the Province and the Maa-nulth First Nations met to review the 2006 MOUs and determined that a number of changes should be made to modernize the 2006 MOUs in the post Effective Date context and that, for some Maa-nulth First Nations, existing designated lands should be amended or cancelled and new designations should be made, while also recognizing that additional time beyond the minimum 15 years in the Maa-nulth Treaty would be helpful for Maa-nulth First Nations to take advantage of these opportunities. The Province and the Maa-nulth First Nations now wish to extend the term of the Existing Designations made under the 2006 MOUs for each of the Maa-nulth First Nations.

These amended understandings are set out in this 2021 MOU. Consistent with the understanding set out in this 2021 MOU, 11.59 hectares of land have been designated under s. 17 of the *Land Act* until 2036.

1. **Definitions.** In this 2021 MOU:
 - a. Words and expressions not defined in this 2021 MOU but defined in the Maa-nulth Treaty have the meanings ascribed to them in the Maa-nulth Treaty;
 - b. “**Designated Site**” means those areas of Provincial Crown land subject to Existing Designations, as illustrated in Schedule 1 of this 2021 MOU;
 - c. “**Existing Designations**” means the designations under s. 17(1) of the *Land Act* for the Designated Sites, made in accordance with the 2006 MOU and 2.13.1 of the Maa-nulth Treaty;
 - d. “**Intensive Use**” means an area of Crown land that is integral to the commercial recreation tenure holder’s operation and typically contain improvements (e.g. cabin), as further described in the Provincial Land Use Operational Policy for Adventure Tourism (February 2015); and
 - e. “**Maa-nulth Treaty**” means the Maa-nulth First Nations Final Agreement between the Maa-nulth First Nations, Canada and the Province, which took effect on April 1, 2011, and includes any amendments made to it from time to time in accordance with its provisions.

2. **General.** This 2021 MOU:
 - a. fully replaces the 2006 Huu-ay-aht First Nations MOU; and
 - b. sets out how the Parties are continuing to fulfill the commitments under 2.13.1-2.13.4 of the Maa-nulth Treaty; and
 - c. provides the following:
 - i. an opportunity for Huu-ay-aht First Nations to build capacity in order to successfully operate commercial recreation businesses by setting aside up to 12 hectares of Crown land with commercial recreation potential as Intensive Use sites in a manner consistent with 2.13.1 of the Maa-nulth Treaty;
 - ii. stimulation of the local tourism sector to deliver lasting regional socio-economic benefits by providing new business opportunities, creating more jobs and expanding Indigenous tourism in the Province; and
 - iii. a positive step forward in reconciliation between the Huu-ay-aht First Nations and the Province.

3. **Designated Sites.** With respect to Designated Sites, the Parties agree as follows:
 - a. the Minister will amend the Existing Designations to extend their terms to April 1, 2036. All of other terms and conditions of the Existing Designations remain unchanged;
 - b. by signing this 2021 MOU, Huu-ay-aht First Nations consents to the amendment of the Existing Designations, as contemplated by 2.13.2 of the Maa-nulth Treaty;
 - c. the Parties will endeavour to work collaboratively to find replacement sites if any of the Existing Designations are amended or cancelled because the land is removed for regional infrastructure purposes as contemplated by 2.13.2 of the Maa-nulth Treaty;
 - d. nothing in this 2021 MOU prevents Huu-ay-aht First Nations from applying for commercial recreation tenures over areas larger than the Designated Sites or at other sites; and
 - e. for greater certainty, Huu-ay-aht First Nations:

- i. will not be required to pay a fee or rent related to any Designated Site; and
- ii. will be required to pay, in accordance with Provincial law and land disposition policy, any applicable fee or rent related to any commercial recreation tenure that may subsequently be applied for or issued in relation to a Designated Site.

4. **Huu-ay-aht First Nations Proposals.** The Parties recognize potential for tourism opportunities to change over time and acknowledge that:

- a. nothing in this 2021 MOU prevents Huu-ay-aht First Nations from requesting that the Minister:
 - i. amend an Existing Designation, including if less than 12 hectares of Provincial Crown land has been designated for Huu-ay-aht First Nations, by adding more area to a Designated Site;
 - ii. cancel an Existing Designation; or
 - iii. create new designations under s. 17(1) of the *Land Act*; and
- b. the Parties will not be required to amend this 2021 MOU prior to an amendment, cancellation or creation of a new designation referred to in (a).

5. **Provincial Decisions.** Huu-ay-aht First Nations acknowledges that any Provincial decision in relation to a request by Huu-ay-aht First Nations under section 4 will be at the sole discretion of the Province and subject to applicable Provincial laws and policies and that in relation to any such decision the Province may take steps including, but not limited to:

- a. consultation with other Indigenous peoples;
- b. public referral;
- c. consideration of information relating to status of lands and land use, including any potential land use conflicts.

6. **Regional Advisory Process.** Huu-ay-aht First Nations may participate in any regional advisory process established by the Province to provide advice on matters pertaining to commercial or public recreation activities within the Maa-nulth First Nation Area of Huu-ay-aht First Nations.

7. **Nature of Understanding**

- a. This 2021 MOU is not intended to create legally binding obligations between the Parties and, for certainty, is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982 (Canada).
- b. This 2021 MOU fulfills the understandings of the Parties in relation to the matters contemplated by 2.13.0 of the Maa-nulth Treaty.
- c. This 2021 MOU only applies to the Parties and, for certainty, does not define, deny, limit, abrogate or derogate from, or amend any aboriginal or treaty rights of any other Aboriginal peoples of Canada or any rights or responsibilities of the Province with respect to any other Indigenous peoples of Canada.
- d. Nothing in this 2021 MOU fetters or limits the authority or discretion of any Provincial decision maker under Provincial law.

- e. Schedule 1 of this MOU is included for illustrative purposes only.

8. Dispute Resolution

- a. The Parties will each endeavour to resolve informally and as between those involved any dispute in a manner that fosters an improved, ongoing and respectful government- to-government relationship between the Province and Huu-ay-aht First Nations.
- b. If any issue arises with respect to the interpretation of this 2021 MOU or in carrying out its terms which cannot be resolved under subsection (a), the Parties agree to use the dispute resolution procedures established in accordance with Chapter 25 Dispute Resolution of the Maa-nulth Treaty.

9. Term of understanding

- a. This 2021 MOU will take effect on the date it is signed by both Parties.
- b. This 2021 MOU ends on April 1, 2036, 25 years from the Maa-nulth Treaty Effective Date.
- c. The Parties recognize and acknowledge that this 2021 MOU provides a foundation for an ongoing relationship among the Parties in respect of 2.13.0 of the Maa-nulth Treaty and commit to conducting a review of this 2021 MOU by March 31, 2031 to review progress on implementation of this 2021 MOU.

10. Amendment. This 2021 MOU may be amended by written agreement of the Parties.

11. Interpretation. In this 2021 MOU:

- a. headings are for convenience only, do not form any part of this 2021 MOU and in no way define, limit, alter or enlarge the scope or meaning of any provision of this 2021 MOU;
- b. a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and
- c. unless it is otherwise clear from the context the use of singular includes the plural and the use of the plural includes the singular.

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12. Execution

- a. This 2021 MOU may be signed in one or more counterparts and each counterpart may be transmitted by facsimile and each signed counterpart will constitute an original document and all those original documents together will constitute one and the same document.
- b. To signify their agreement each Party has executed this 2021 MOU on the date appearing below.

EXECUTED in the presence of:



As to the authorized signatory for Craig Sutherland, Assistant Deputy Minister

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



Per: Craig Sutherland, Assistant Deputy Minister

Date Signed: October 26, 2021

EXECUTED in the presence of:



As to the authorized signatory for the **HUU-AY-AHT FIRST NATIONS** Government

HUU-AY-AHT FIRST NATIONS as represented by **HUU-AY-AHT FIRST NATIONS** Government

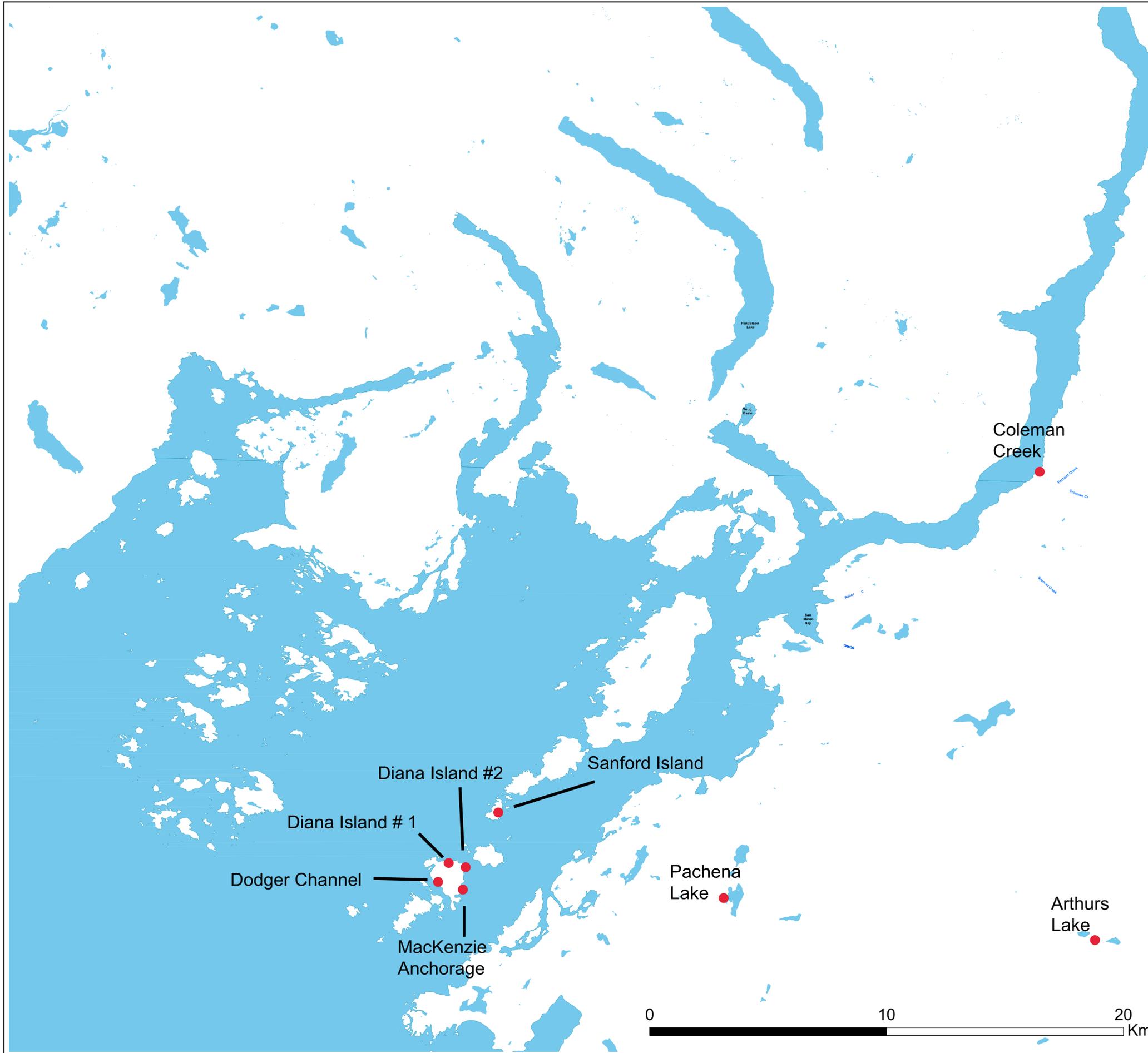


Per: Robert J. Dennis Sr., Elected Chief Councillor

Date Signed: October 8, 2021

Schedule 1: Commercial Recreation Tenure Land Act s 17 Reserves for the Huu-ay-aht First Nations

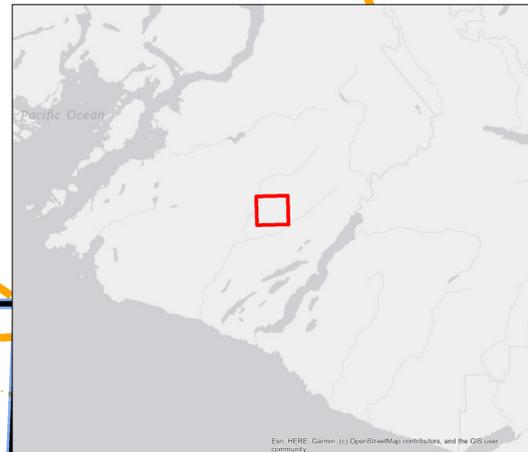
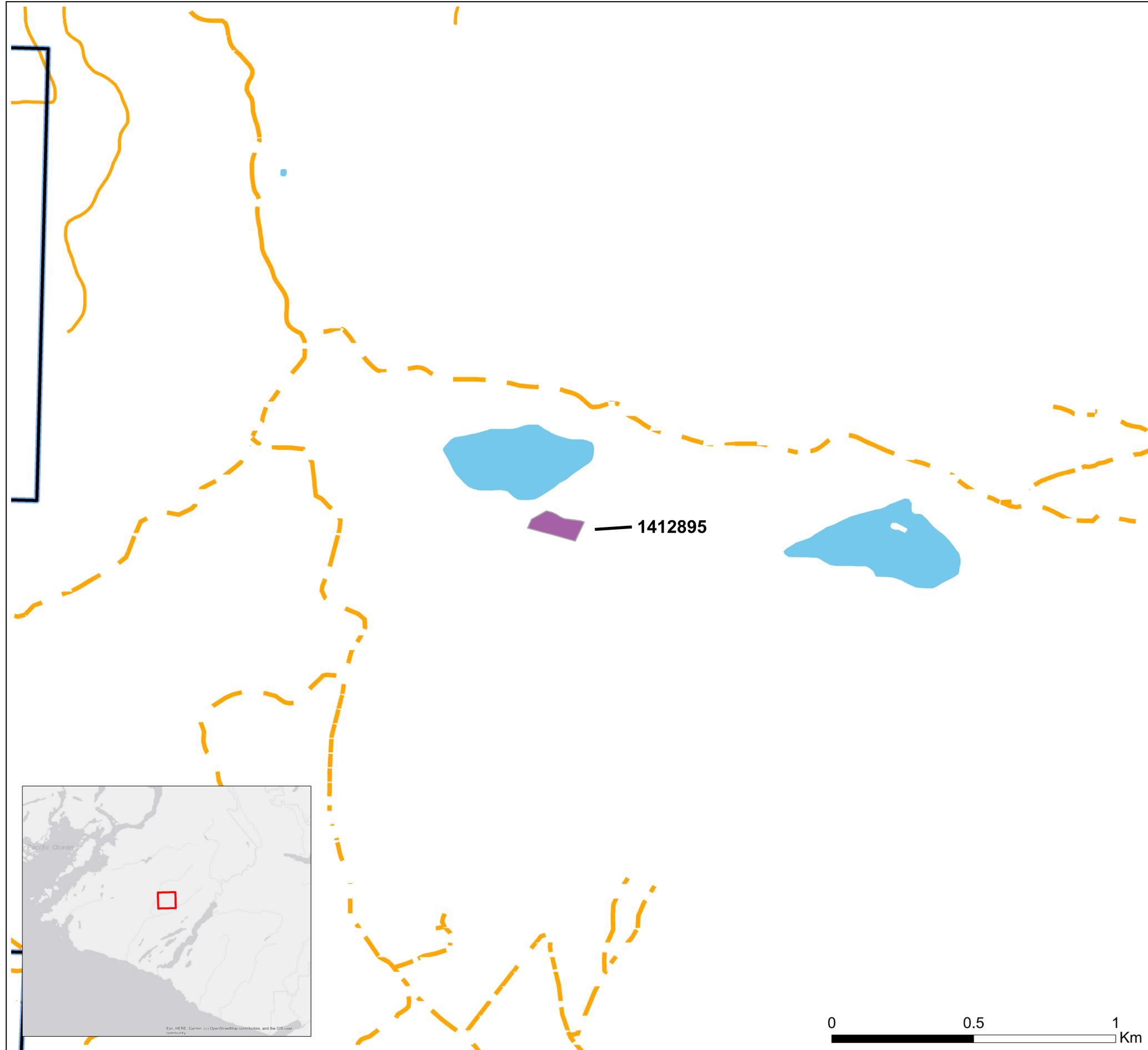
1412895 - Huu-ay-aht Commercial Recreation Sites



● Existing Designations

Scale: 1:60,000

1412895 - Site 1 Arthurs Lake

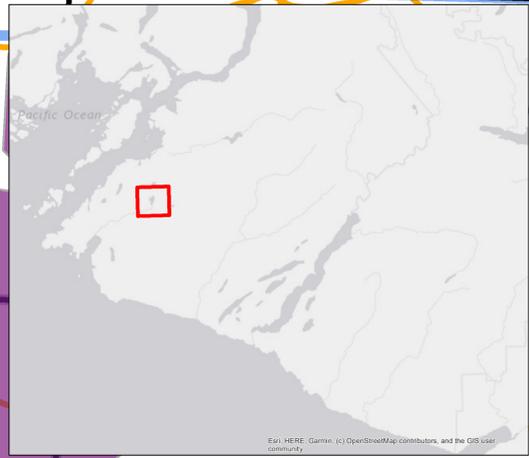
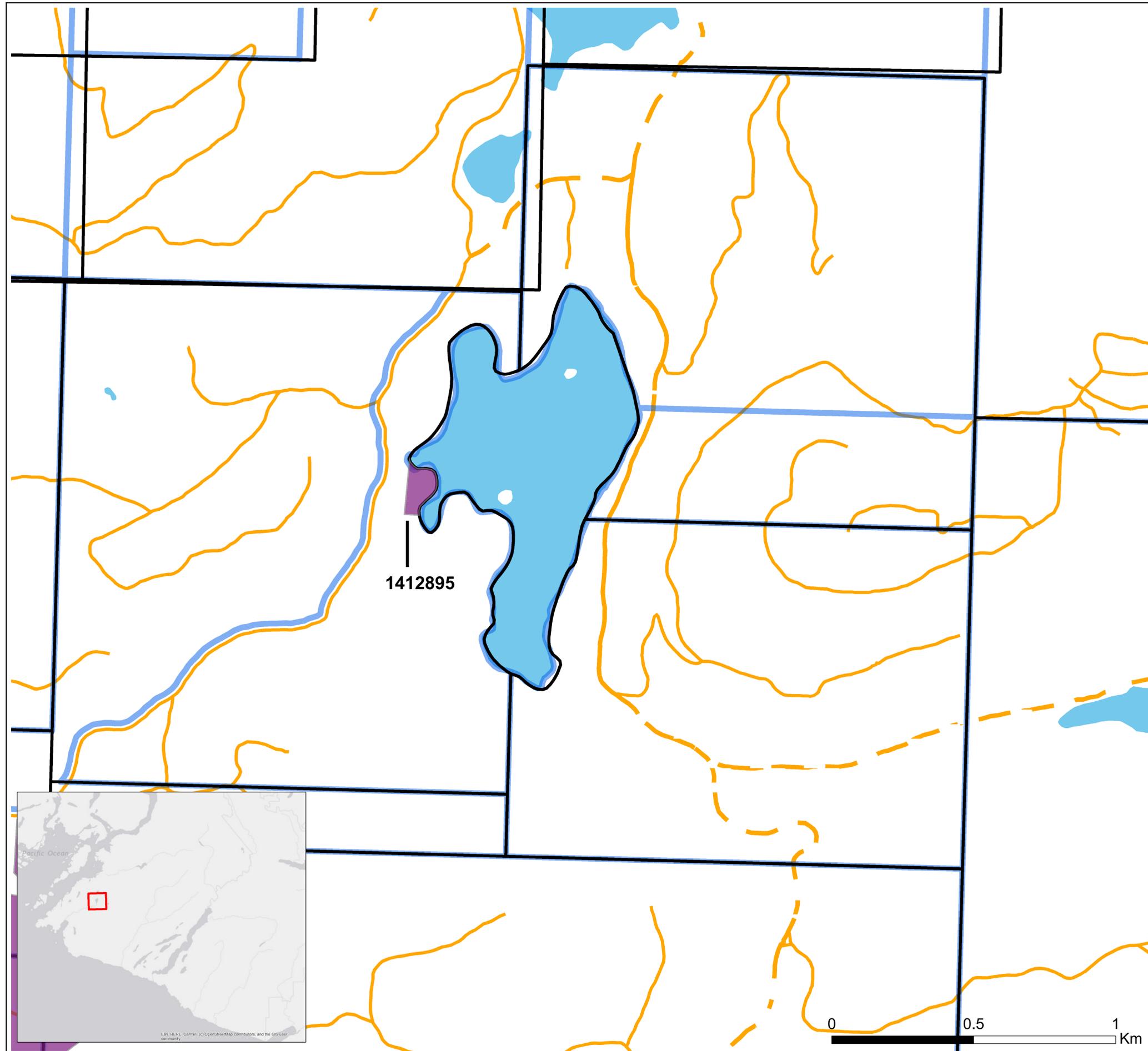


Legend

- Reserve and Notation Tenures
- Primary
- Timber Licence
- Helipad
- Turntable (Railway)
- Toll Gate
- Airfield
- Airport
- Airstrip
- Airport Abandoned
- Ferry Route
- Road
- Road (Gravel Undivided) - 1 Lane
- Road (Gravel Undivided) - 2 Lanes
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- Embankment or Fill (Roadway)
- Retaining Wall
- Snow Shed (Railway)
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- Photo Centre
- Transportation - Airfield - Outlined (1:20,000)
- Water - Ocean - Colour Filled (1:20,000)
- Mine - Tailing Pond
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- Reservoir - Definite
- Canal
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- WHSE_FOREST_TENURE.TEN_ROAD
- WHSE_BASEMAPPING.TRIM_EBM_OCEAN

Scale: 1:5,000

1412895 - Site 2 Pachena Lake



Legend

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Scale: 1:5,000

1412895 - Dodger Channel, Diana Island #1 and #2, Mackenzie Anchorage

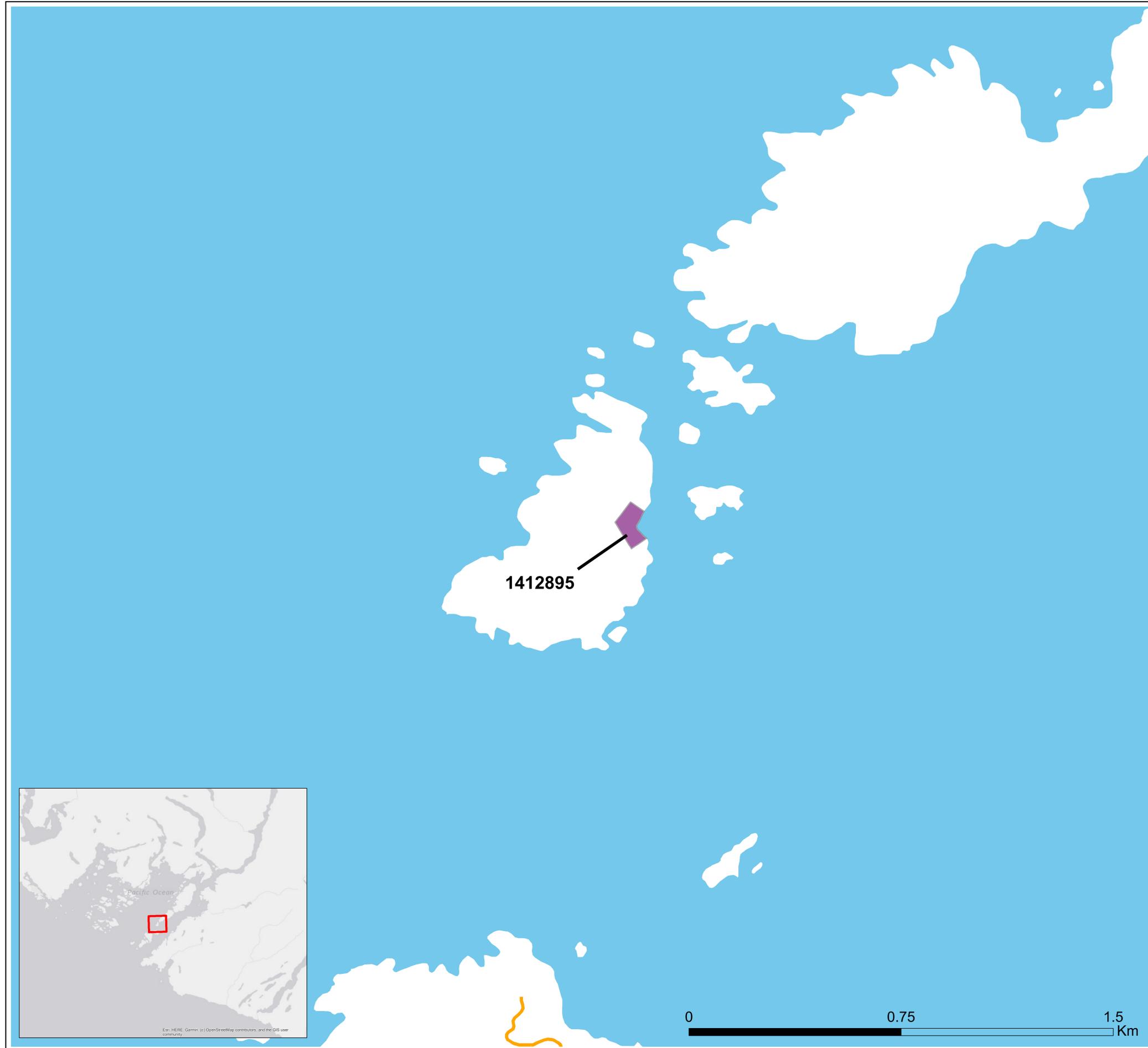


Legend

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Scale: 1:3,000

1412895 - Site 7 Sanford Island

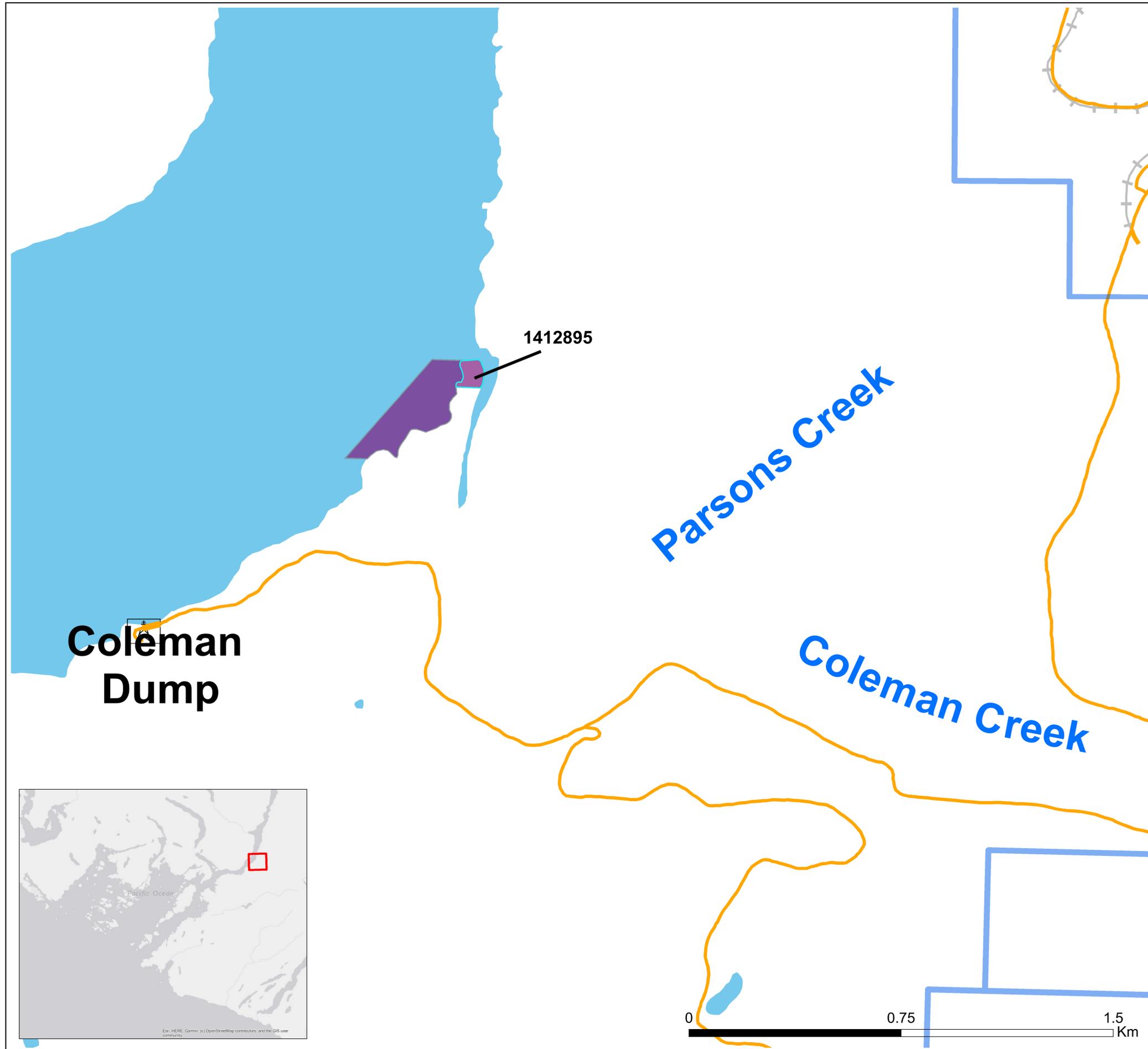


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Scale: 1:5,000

1412895 - Site 8 Coleman Creek



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