





GayGahlda

"CHANGING TIDE"

Framework for Reconciliation

This Agreement is dated this 13th day of August 2021.

AMONG:

HAIDA NATION, as represented by the Council of the Haida Nation ("Haida Nation")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Crown-Indigenous Relations ("Canada")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Indigenous Relations and Reconciliation ("British Columbia")

(Collectively, the "Parties")

WHEREAS:

- **A.** The Parties intend to foster a new nation-to-nation relationship based on the recognition of Haida Title and Rights, through cooperation, partnership, and reconciliation;
- **B.** Haida Gwaii is the homeland of the Haida Nation and, in accordance with Haida laws and ways of life, the Haida Nation has governed and vigorously protected its interests in respect of Haida Gwaii, Haida Title and Rights, and Haida culture from colonial exploitation;
- C. The Haida Nation has never ceded, sold, released, surrendered or transferred title to Haida Gwaii;

- **D.** On June 21, 2021, Canada enacted the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act*. This Act provides a path forward for Canada to work together with Indigenous peoples, including the Haida Nation, to fully implement UNDRIP;
- E. In November 2019, British Columbia enacted the *Declaration on the Rights of Indigenous Peoples Act* to create a path forward that respects the human rights of Indigenous peoples, including the Haida Nation;
- F. The Haida Nation, Canada and British Columbia have initiated reconciliation through the *Gwaii Haanas Agreement*, the *Gwaii Haanas Marine Agreement*, the *Kunst'aa Guu–Kunst'aayah Reconciliation Protocol*, and the *SGaan Kinghlas Memorandum of Understanding*, laying the groundwork for further reconciliation and collaboration; and
- G. While the Parties plan to resolve the issues in the Litigation through the negotiations and Reconciliation Agreement(s), the Parties recognize that some issues may need to proceed to trial and if so, will do so in a manner that is respectful of their relationship now and into the future.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1 PURPOSE

- 1.1 This Agreement sets out the process for the Parties to embark on negotiations that, among other things, will reconcile pre-existing Haida sovereignty with assumed Crown sovereignty and will be capable of evolving over time based on the co-existence of Crown and Haida Nation governments and the ongoing process of reconciliation.
- 1.2 The first step is to establish and implement Good Faith Measures and negotiate the terms and agenda for Reconciliation Agreement(s) that will include priority topics, identified in section 6.2, with negotiation of further agreements on specific topics.

2 **DEFINITIONS**

- 2.1 "Agreement" means this 'GayGahlda Changing Tide' Framework Agreement between the Haida Nation, Canada, and British Columbia.
- 2.2 "Chief Negotiator" means a person appointed by a Party as its chief negotiator and includes a person designated by a Chief Negotiator to act in place of the Chief Negotiator for negotiations.
- 2.3 "Dispute" means: (a) a disagreement about the interpretation or implementation of this Agreement; or (b) an impasse in negotiations of a topic for negotiation listed in section 6

- which, in the view of a Chief Negotiator, constitutes a barrier to achieving a negotiated resolution; but does not refer to disagreements arising under any other agreement which includes its own dispute resolution process.
- 2.4 "Good Faith Measures" means any legally binding agreement that implements a good faith measure negotiated pursuant to subsection 6.1.
- 2.5 "Haida Gwaii" is the territory identified in the map attached as Schedule "A" and includes Haida Gwaii Marine and Haida Gwaii Terrestrial.
- 2.6 "Haida Gwaii Marine" is the marine area of Haida Gwaii, and includes the intertidal area.
- 2.7 "Haida Gwaii Terrestrial" is the land area of Haida Gwaii, and does not include Haida Gwaii Marine.
- 2.8 "Island Community" refers to the collective of people in the villages, towns and rural settings of Haida Gwaii.
- 2.9 "Litigation" means the legal action *The Council of the Haida Nation et al v. HMTQ BC and AGC*, BCSC Action L020662.
- 2.10 "Protected Areas" means those lands and waters identified as "Protected Areas" in the map attached as Schedule "B."
- 2.11 "Reconciliation Agreement(s)" means any agreement(s), including any final agreement or schedule, that is negotiated pursuant to this Agreement and which sets out the constitutional relationship between the Parties, and defines their respective powers, authorities, jurisdictions and duties in relation to each other and Haida Gwaii.

3 PRINCIPLES

In negotiating the Reconciliation Agreement(s), the Parties will be guided by the following principles:

- 3.1 The Haida Nation asserts its inherent Title throughout and Rights with respect to Haida Gwaii.
- 3.2 British Columbia recognizes that the Haida Nation has inherent Title throughout and Rights with respect to Haida Gwaii Terrestrial, including the inherent right of self-government.
- 3.3 Canada recognizes inherent Haida Title and Rights throughout Haida Gwaii Terrestrial, including the inherent right to self-government.
- 3.4 The Parties agree to negotiate in good faith with respect to the application of inherent

- Haida Title and Rights through the Reconciliation Agreement(s) and Good Faith Measures.
- 3.5 The Council of the Haida Nation is the principal governing body of the Haida Nation under the *Constitution of the Haida Nation* and "Haida citizens" are as defined in the *Constitution of the Haida Nation*.
- 3.6 The Parties share the common objective that the Reconciliation Agreement(s) will benefit and improve the quality of life for the Island Community.
- 3.7 The Parties recognize that inherent Haida Title and Rights include the right to make laws and to manage lands and resources in Haida Gwaii Terrestrial.
- 3.8 The Parties will negotiate in good faith to reconcile their respective interests, including with respect to laws and management of resources in Haida Gwaii Marine.
- 3.9 The Reconciliation Agreement(s) will further clarify and harmonize each Party's responsibilities, jurisdiction and management of Haida Gwaii through practical, innovative and unique arrangements, including consideration of concurrent laws and titles, cooperative measures, and weighted authorities.
- 3.10 The Parties undertake to achieve reconciliation through an orderly process that provides for the continuing and routine delivery of services, including but not limited to health, education, transportation and municipal affairs.
- 3.11 Consistent with previous undertakings, the Haida Nation reaffirms that island residents will not be dispossessed of lands and property.
- 3.12 Private lands, except those lands acquired by the Haida Nation, will remain under exclusive provincial jurisdiction, except as provided through negotiated Reconciliation Agreement(s).
- 3.13 Any acquisition of private lands by the Haida Nation will be on a willing seller-willing buyer basis.
- 3.14 The Parties agree that existing local municipalities will continue to be incorporated and operated under provincial jurisdiction and that any sale of public lands within municipalities will be subject to the approval of the Haida Nation and British Columbia.
- 3.15 The Haida Nation and British Columbia will review and may, by agreement, amend the boundaries of municipalities.
- 3.16 Unless otherwise agreed to by the Haida Nation and British Columbia, the development of any non-renewable resources on Haida Gwaii will be subject to mutual agreement.
- 3.17 The Parties intend that the negotiations may result in Reconciliation Agreement(s) that

- will be protected under the Constitution Act, 1982 and the Constitution of the Haida Nation.
- 3.18 This Agreement, subsequent agreements, and their negotiation will meet the standards of and protect all rights of the Haida Nation as recognized in the *United Nations Declaration on the Rights of Indigenous Peoples*.

4 CO-DEVELOPMENT OF MANDATES

- 4.1 The Parties will co-develop mandates sufficient to address the matters set out below in section 6: Agenda for Negotiations, and those mandates are to be consistent with the purpose and principles of this Agreement.
- 4.2 Notwithstanding subsection 4.1, the Parties acknowledge that they will each have to seek approval for Good Faith Measures and final ratification of the Reconciliation Agreement(s).
- 4.3 Consistent with subsection 4.1, the Parties may raise any issue that they view as significant to reconciliation and the cooperative relationship between the Parties, including longstanding issues previously raised by the Haida Nation that are not covered by Canada or British Columbia's existing mandates. Mandates will be sought, if needed, to settle these issues.
- 4.4 In preparing submissions to their principals, the Parties will work collaboratively to ensure all perspectives are brought forward and considered in seeking approvals of mandates and the Reconciliation Agreement(s).
- 4.5 It is recognized that Canada may have obligations under public international law that may affect federal or provincial mandates. Canada may identify such obligations it believes relevant to the negotiations.

5 NEGOTIATION AND LITIGATION

- 5.1 The Parties are currently the parties to the Litigation.
- 5.2 Trial of the action will not commence while the Parties are engaged in good faith negotiations.
- 5.3 The Parties will ask the Court to fix a trial date for the Litigation that reflects the time frame required for the negotiations under this Agreement.
- 5.4 While making best efforts through the negotiation processes set out in this Agreement to seek agreement on subject matters in the Litigation, the Parties will continue preparations for trial under case management which may include but are not limited to bringing and

- responding to applications, conducting depositions, completion of document production, conducting examinations for discoveries, and preparation and service of expert reports.
- 5.5 The Parties acknowledge that resolution of subject matters through negotiations may be incremental.
- 5.6 Where agreement is reached through the negotiations on one or more of the subject matters in the Litigation, the Parties' litigation counsel will discuss whether it is appropriate to reflect such agreement(s) in the Litigation.
- 5.7 Without agreement of the Parties, subsection 7.1 applies to these reconciliation negotiations undertaken pursuant to this Agreement which are privileged and may not be disclosed or relied upon in the Litigation except to the extent and in the manner set out in subsections 5.6, 5.8, 5.9 and 5.10.
- 5.8 Where the Parties agree under subsection 5.6 to reflect in the Litigation a negotiated agreement, litigation counsel will attempt to come to agreement on an appropriate mechanism to do so, which could include but is not limited to admissions, amendment of pleadings, or a consent order.
- 5.9 If all Parties agree to do so, the Parties' litigation counsel may seek the input of the case management judge on the appropriate mechanism to be used under subsection 5.6.
- 5.10 Where the Parties' litigation counsel do not reach agreement under subsection 5.6 on the appropriate mechanism to be used, they will consider dispute resolution options to try to reach such agreement, including but not limited to those available under the Rules of Court, such as judicial mediation by a judge other than the case management judge, or a dispute resolution process adopted under section 9 of this Agreement.
- 5.11 At any time, but no less than one year before the scheduled trial date, the Parties will make an assessment of their progress and determine: a) whether there is sufficient progress in the negotiations to support a decision to enter into an abeyance agreement of the Litigation in whole or in part; or b) adjourn the Litigation for an additional period of time; or c) whether all or parts of the Litigation should proceed to trial as scheduled.

6 AGENDA FOR NEGOTIATIONS

6.1 **Good Faith Measures**

(a) As first negotiation priorities, Canada and British Columbia, in collaboration with the Haida Nation, will each identify and seek the required authorities, and a level of resources in support of Good Faith Measures. The Parties will make best efforts to complete the approval of the resources required for these Good Faith Measures.

- (b) Good Faith Measures are in support of priorities as identified by the Haida Nation, which could include:
 - 1. transfer of certain forested lands to the Haida Nation such as the lands within the boundaries of Tree Farm Licence 60;
 - 2. acquisition on a willing seller-willing buyer basis of:
 - i. forest tenures,
 - ii. privately managed forest lands,
 - iii. other lands of economic importance to the Haida Nation, or
 - iv. specific existing commercial enterprises;
 - 3. an interim agreement regarding BC Timber Sales on Haida Gwaii;
 - 4. interim support for Haida Nation governance capacity in order to further develop Haida governance referenced in subsection 6.2(b)(1);
 - 5. support for social and cultural measures, such as longhouses, amenities, and language;
 - 6. support for the pursuit and implementation of priority business opportunities; and
 - 7. support to create a socio-economic development plan for the Haida Nation.
- (c) Canada and the Haida Nation will address fisheries and marine matters, including:
 - 1. maintaining a closure of the commercial sea cucumber fishery on Haida Gwaii until a cooperatively developed and endorsed management plan is complete;
 - 2. initiating work to cooperatively develop a sea cucumber management plan, including stock assessment for Haida Gwaii, making best efforts to complete the plan within three years;
 - 3. addressing access to any future commercial sea cucumber fishery on Haida Gwaii; and
 - 4. other commitments made through Agreements described in subsections 6.1(d) and 6.2(c).
- (d) The Parties acknowledge there are ongoing negotiations between the Haida Nation and Canada with respect to fisheries and marine resources, including the *Fisheries Resources Reconciliation Agreement* among the Haida Nation, Coastal First Nations and Canada which confirms commercial fisheries access for the Haida Nation before addressing rights, provides for community-based fisheries, and establishes a collaborative governance structure and process. The results of these negotiations may be integrated into and built upon in Good Faith Measures or Reconciliation Agreement(s).

6.2 **Priority Topics for Negotiation**

- (a) In addition to the Good Faith Measures under subsection 6.1, the Parties recognize the utility of identifying Priority Topics for negotiation. The Parties acknowledge that negotiations can begin immediately on Priority Topics but it is understood that due to their overall complexity, some items may require additional time.
- (b) The Parties intend to address the following Priority Topics under subsection 6.2(a):

- 1. Haida governance, including:
 - i. adjustment to a post reconciliation agreement cooperative governance system;
 - ii. ongoing fiscal relationships with Canada and British Columbia to support Haida governance, including institutions;
 - iii. seeking mandates to implement the details of how Canada and British Columbia will recognize the Haida Nation as a distinct order of government;
 - iv. determining divisions and relationships of jurisdictional and management powers over Haida Gwaii; and
 - v. without prejudice to this long-term goal, and in aid of achieving it, various incremental agreements may be negotiated as stepping-stones.
- 2. the Haida Nation will continue to formalize agreements with neighbouring First Nations as to their respective territorial boundaries with Haida Gwaii;
- 3. the development of an integrated and collaborative approach for the planning and management of Protected Areas on Haida Gwaii, to achieve the longer-term goal of Haida Nation jurisdiction and management;
- 4. the Parties will define each Party's responsibilities, jurisdiction and management of Haida Gwaii Terrestrial through practical, innovative and unique arrangements, including:
 - i. delineating private lands on Haida Gwaii and public lands within municipalities;
 - ii. repatriation of lands; and
 - iii. Haida land status and the mechanism for holding Haida land;
- 5. Taking into account spatial considerations and limitations related to jurisdiction, international and constitutional legal obligations, and other matters, the Parties will define each Party's roles and responsibilities in the management of Haida Gwaii Marine through practical, innovative and unique arrangements, including:
 - i. pursuant to 6.2(b)(5)(i), development and implementation of strategies for the management of fisheries and marine matters, including through implementation of the *Fisheries Resources Reconciliation Agreement* and the *Reconciliation Framework Agreement for Bio Regional Ocean Management and Protection*, where applicable;
 - ii. identification of fish habitat restoration and enhancement priorities and resources for restoration and enhancement activities;
 - iii. cooperative work to apply principles of stewardship and respect to fisheries management on Haida Gwaii, including reviewing and identifying ways to address potential gaps in existing policies or measures through implementation of the *Fisheries Resources Reconciliation Agreement* or other means; and
 - iv. other commitments made through Agreements described in subsections 6.1(d) and 6.2 (c);
- 6. addressing the Haida Nation's right to redress, including just, fair and equitable compensation, consistent with Article 28 of the *United Nations Declaration on the Rights of Indigenous Peoples*. For greater clarity, where there have been and continue to be third parties who have been granted rights and privileges by the

- Crown, the Crown alone will bear responsibility for redress and compensation to the Haida Nation; and
- 7. the overall fiscal framework for the negotiation and implementation of the Reconciliation Agreement(s).
- (c) The Parties will identify and coordinate efforts across existing processes between the Haida Nation, Canada and British Columbia with respect to marine resources, ocean protection, and marine management. This includes, but is not limited to, the implementation of the *Reconciliation Framework Agreement for Bio Regional Ocean Management and Protection*. The results of these processes may be integrated into and built upon in Good Faith Measures or Reconciliation Agreement(s).
- (d) Reconciliation of provincial, federal and Haida laws will be discussed as part of the negotiation of each of the priority topics described above and long-term agenda items described below.

6.3 Long-term Agenda for Negotiations

- (a) The Parties intend to address the following issues in the long-term including, but not limited to:
 - 1. Environmental Issues:
 - i. climate change;
 - ii. carbon sequestration;
 - iii. low carbon economy and lifestyle;
 - iv. fish enhancement:
 - v. fish habitat restoration:
 - vi. wildlife habitat restoration; and
 - vii. migratory birds.
 - 2. Social and Community Health and Wellbeing:
 - i. education:
 - ii. health, medical and wellbeing;
 - iii. amenities for children, Elders and youth; and
 - iv. language, heritage and other culture measures.
 - 3. Economic Wellbeing:
 - i. commercial fisheries;
 - ii. food security and food production;
 - iii. renewable resources:
 - iv. non-renewable resources;
 - v. economic investment and opportunities;
 - vi. carbon credits; and
 - vii. gaming.
- (b) The Parties also intend to address access to, generation and sharing of, information and data relevant to negotiation and implementation of Reconciliation Agreement(s).

(c) The subject matters identified above are not intended to be exhaustive and may be amended from time to time.

7 GENERAL PROVISIONS

- 7.1 This Agreement describes the intention of the Parties and is not legally binding. Subject to section 5, this Agreement and any related negotiations are without prejudice and cannot be used, construed or relied on by any Party in any proceeding as evidence or admission of the nature, scope or content or geographic extent of Haida Nation's Aboriginal rights, including title, or of Crown interests.
- 7.2 The fiscal resources for the Good Faith Measures provided by Canada that are described in 6.1(b), with the exception of 6.1(b)(4), will be considered an advance section 35 rights settlement payment. Subject to terms and conditions to be negotiated between the Haida Nation and Canada, the agreed-to economic value of Good Faith Measures that are described in 6.1(c) and 6.1(d), with the exception of 6.1(c)(2), will be considered an advance section 35 rights settlement payment. The advance section 35 rights settlement payments referred to in this section and payments under any Reconciliation Agreement(s) will be offset against any amount that Canada pays under a final negotiated section 35 rights settlement or must pay under a court award. For greater certainty, any funding from federal programs of general application for which the Haida Nation may be eligible will not be considered an advance section 35 rights settlement payment under this section.
- 7.3 The fiscal resources or economic value of the Good Faith Measures provided by British Columbia and described in 6.1, with the exception of 6.1(b)(4), will be considered an advance section 35 rights settlement payment. Subject to a negotiated agreement, the fiscal resources or economic value will be offset against any amount that British Columbia either agrees to pay under a negotiated Reconciliation Agreement or must pay under a court award. For greater certainty, any provincial program funding for which the Haida Nation may be eligible will not be considered an advance section 35 rights settlement payment under this section.
- 7.4 This Agreement is not a treaty or land claims agreement within the meaning of sections 25 or 35 of the *Constitution Act*, 1982, but is intended to lead to Reconciliation Agreement(s), which will be protected under the *Constitution of the Haida Nation* and the *Constitution Act*, 1982.
- 7.5 This Agreement, upon execution by the Parties, will replace the *Haida Nation Framework Agreement* dated for reference January 28, 2009.
- 7.6 Nothing in this Agreement will be construed as affirming, recognizing, altering, abrogating or derogating from any title or rights of the Parties.

8 NEGOTIATING PROCESS

- 8.1 The process for recording and ratifying results of negotiations is as follows:
 - (a) the Parties will record the results of each negotiation of a substantive issue in a Schedule;
 - (b) the Parties will signify their agreement on a substantive issue by initialling a Schedule; and
 - (c) once an agenda item has been approved by all the Parties, each Party will seek ratification of the Schedule.

9 DISPUTE RESOLUTION

- 9.1 The Parties are committed to resolving disputes arising in the course of negotiations undertaken pursuant to this Agreement. The Parties may utilize any dispute resolution mechanism as agreed, including mediation and/or hybrid processes and principles for dispute resolution derived from Crown and Haida Nation laws.
- 9.2 Without limiting the generality of subsection 9.1, to address disputes which arise at the table of these negotiations, the Parties agree to work together in a collaborative, respectful and transparent way taking into consideration the Purpose and Principles set out in sections 1 and 3, and to take the following steps to address Disputes:
 - (a) Chief Negotiators Forum
 - 1. If a Chief Negotiator determines that there is a Dispute, that Chief Negotiator shall provide written notice to the Chief Negotiators of the other Parties.
 - 2. When the Chief Negotiators receive written notice of a Dispute pursuant to subsection 9.2(a)(1), the Chief Negotiators, or their designates shall, within 10 business days, meet or provide a written response including a brief statement of their understanding of the Dispute and possible solutions.
 - 3. If the Dispute involves only two Parties, the third Party may choose to not participate. If a Party chooses not to participate, it will be deemed to have accepted the outcome of the process.
 - 4. The Chief Negotiators of the Parties to the Dispute will have 30 business days from the date of delivery of responses under subsections 9.2(a)(2) and (3) above, to attempt to resolve the Dispute and may use any process or approach they consider appropriate to fully explore the Dispute and potential solutions including a Haida law process.
 - 5. Each Chief Negotiator may invite additional Party representatives to participate in the process identified under subsection 9.2(a)(4) above, including Haida law and knowledge keepers, counsel, other experts and facilitators.
 - 6. The Chief Negotiators may take all steps as are necessary to resolve the dispute by agreement, including recommending to their Principals any measure for

- consideration including amendments to this Agreement or a new more specific agreement relevant to resolving the dispute.
- 7. Each Chief Negotiator shall seek timely direction as required.
- 8. Timelines under this section may be reduced or extended by agreement of the relevant Chief Negotiators.

(b) The Principals Forum

- 1. For the purpose of this section the Principals are the relevant federal and provincial Deputy Ministers and the executive of CHN, or their designates.
- 2. If a dispute cannot be resolved by the Chief Negotiators, they shall jointly brief the Principals within 15 working days of the dispute process ending under the Chief Negotiators' Forum, including: the relevant facts, the nature of the dispute, each Party's position, and possible solutions.
- 3. The Principals shall make all reasonable efforts to resolve the dispute within 30 business days of receiving the notice and may use any process to resolve the Dispute. Without limiting the generality of this provision, any Party to the dispute may bring in other representatives to help resolve the Dispute.
- 4. The Principals may agree to seek to resolve the Dispute through facilitated dispute resolution, including mediation, in which case they will refer the Dispute to a mutually agreed-upon facilitator or mediator. Each Party shall pay its own costs and cover an equal portion of any common costs.
- 5. Timelines under this section may be reduced or extended by agreement of the relevant Principals.

(c) Ministers/ President of CHN

1. If the Principals are unable to resolve the dispute, a meeting will take place at a date set by the Parties, between the Ministers and the President of CHN.

10 SUSPENSION OF NEGOTIATIONS

- 10.1 If a Party wishes to suspend its participation in the negotiations contemplated by this Agreement, that Party will provide a minimum of 30 days' written notice to the other Parties. The notice will set out the reasons for the suspension and the date on which it is to commence.
- 10.2 Where a Party provides notice under subsection 10.1:
 - (a) before the suspension takes effect, the Parties will meet and make reasonable efforts to resolve the dispute or issue(s) that lead to the notice of suspension; and
 - (b) if the issue(s) are not resolved by the suspension date, the Parties will continue to make reasonable efforts to resolve the dispute or issue(s) for a further 60 days, or longer if agreed by the Parties, including using dispute resolution pursuant to section 9. Where possible, these efforts will be made prior to the suspension; otherwise efforts will be made as soon as practicable after the suspension.

11 TERMINATION OF NEGOTIATIONS

11.1 If the negotiations have been suspended and have not been resolved after undertaking dispute resolution or after the time period contemplated by 10.2(b), a Party may terminate this Agreement by providing 30 days written notice to the other.

IN WITNESS WHEREOF the Parties hereby execute this Agreement as of the date first written above.

SIGNED ON BEHALF OF THE HAIDA NATION, as represented by the Council of the Haida Nation

Gaagwiis Jason Alsop, President of the Haida Nation

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The Honourable Murray Rankin

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Schedule A



