2019 HAIDA NATION INDIGENOUS ATMOSPHERIC BENEFIT AGREEMENT

BETWEEN

BRITISH COLUMBIA

AND

HAIDA NATION

2019 INDIGENOUS ATMOSPHERIC BENEFIT AGREEMENT

THIS AGREEMENT made the 16 day of April, 2019

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented jointly by the Minister of Indigenous Relations and Reconciliation, and the Minister of Forests, Lands and Natural Resource Operations

("British Columbia")

AND

Haida Nation, as represented by the Council of the Haida Nation

("Haida Nation")

(Each a "Party" and collectively, the "Parties")

WHEREAS:

A. In December 2006 leadership of Haida Nation and other coastal First Nations passed a resolution to explore and work to realize revenues and other benefits related to the increased carbon sequestration that would occur as a result of their land and resource planning initiatives on Haida Gwaii;

B. On December 12, 2007, British Columbia and Haida Nation entered into a Strategic Land Use Agreement which committed the parties to implement land use and ecosystem based management objectives and protected areas on Haida Gwaii ("Land Use Objectives Agreements");

C. The Parties entered into the KUNST'AA GUU – KUNST'AAYAH Reconciliation Protocol, dated December 11, 2009, and amended on January 22, 2016, which amongst other things, established commitments related to the analysis and sharing of forest carbon offsets arising from land use decisions;

D. The Parties are of the view that the implementation of the Land Use Objectives Agreements will continue to increase the amount of carbon sequestration and

reduce carbon emissions that occurs on forested land in the Haida Gwaii Project Area and will result in greenhouse gas reductions that are capable of being recognized as carbon emission offsets;

E. The Parties utilized a spatial timber supply model to assess the timber supply implications of implementing Land Use Objectives Agreements in the Haida Gwaii Project Area;

F. Based on the spatial timber supply model, the Parties have utilized an appropriate and credible model for estimating the forest carbon offsets in the Haida Gwaii Project Area;

G. The Parties entered into the Original Agreement to establish the specific arrangements to utilize atmospheric benefits to achieve progress toward management objectives and satisfy the terms of the KUNST'AA GUU – KUNST'AAYAH Reconciliation Protocol;

H. On February 22nd, 2017, British Columbia and the Great Bear Carbon Credit Limited Partnership entered into the Registration Agreement to support the registration of 100% of the Offset Units for Haida Gwaii and the North and Central-Mid Coast Great Bear Forest Carbon Project; and

I. The Parties wish to enter into this Agreement to replace the Original Agreement.

Now therefore in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

1.0 DEFINITIONS

In this Agreement:

"Agreement" means this Agreement between Haida Nation and British Columbia and all Appendices to this Agreement;

"Director" means the employee appointed under the *Public Service Act* who is designated as the director for the purposes of the *Greenhous Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

"Haida Gwaii Project Area" means Haida Gwaii shown as the Project Area on the map attached as Appendix 1:

"Haida Gwaii Offset" means an emission offset unit derived from the atmospheric benefits related to the Haida Gwaii Project Area that are:

a) validated and verified in accordance with the Registration Agreement; and;

b) approved by the Director for issuance and credit for that Vintage Year;

"Haida Nation Offset" means a Haida Gwaii Offset distributed to Haida Nation in accordance with section 3.2 of this Agreement;

"Emission Offsets Regulation" has the meaning prescribed to it under the Greenhouse Gas Industrial Reporting and Control Act, SBC 2014 c 29;

"Intentional Reversal" means a Reversal caused by activities undertaken or authorized jointly by the Parties, or undertaken pursuant to a disposition of an interest in land by the Parties;

"Non-Intentional Reversal" means a Reversal caused by factors not within the direct control of the Parties, including trespass or natural causes such as fire, wind, disease or drought;

"Offset Units" has the meaning prescribed to it under the *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

"Original Agreement" means the Atmospheric Benefit Sharing Agreement dated the 23rd day of March 2012, entered into by Haida Nation and British Columbia;

"Project" means actions described in preamble E, F, and G;

"Provincial Buffer Pool" means a pool that British Columbia may use at its discretion that consists of a portion of atmospheric benefits or Offset Units, other than Haida Nation Offsets or Offset Units distributed under an atmospheric benefits sharing agreement, and may also include:

a) enhancements of carbon gas removal and reduction of greenhouse gas emissions, associated with other projects, similar to the Project; and

b) Offset Units derived from enhancements or reductions referred to in subsection (a);

"Reconciliation Protocol" means the KUNST'AAGUU – KUNST'AAYAH Reconciliation Protocol signed by the Parties on December 11, 2009, amended on January 22, 2016 and as amended from time to time;

"Registration Agreement" means the Atmospheric Benefits Program Registration Agreement dated February 22nd, 2017 between British Columbia and the Great Bear Carbon Credit Limited Partnership;

"Registry Administrator" means the registry administrator referred to in section 6 of the *Greenhouse Gas Emission Control Regulation*, B.C. Reg. 205/2015, and appointed under section 15 of the *Greenhouse Gas Industrial Reporting and Control Act*;

"Reversal" means emissions to the atmosphere of carbon previously sequestered where the emission reverses the reductions in the atmospheric carbon that:

a) has been quantified in accordance with the project plans validated in accordance with the *Emission Offsets Regulation*, B.C. Reg. 393/2008, or any regulations or laws that replace the *Emission Offsets Regulation*, and

b) that may be or was previously recognized as a Haida Gwaii Offset, including a Haida Nation Offset;

"Vintage Year" means the calendar year to which the verification statement applies and the claimed Offset Units are established.

2.0 PURPOSE OF AGREEMENT

2.1 This Agreement defines the amended understanding between the Parties regarding the sharing of offsets derived from atmospheric benefits for the Haida Gwaii Project Area as outlined in the Reconciliation Protocol.

2.2 Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that no provision of this Agreement shall prejudice, limit, or derogate from any Aboriginal title, treaty or other Aboriginal rights. Further, nothing in this Agreement is intended to create or modify any Aboriginal title, treaty or other Aboriginal rights.

3.0 ATMOSPHERIC BENEFITS

3.1 Throughout this Agreement, the Haida Nation has ownership and the right to sell Distributed Atmospheric Benefits.

3.2 The Parties agree that 80% of the Haida Gwaii Offsets shall be distributed to the Haida Nation and 20% of the Haida Gwaii Offsets shall be distributed to British Columbia, as follows:

a) for the 2016, 2017 and 2018 Vintage Years, after they become available;

b) for each subsequent Vintage Year during which this Agreement is in effect, by March 31 of the calendar year following that Vintage Year, or, if the Haida Gwaii Offsets are not available by such date, after they become available.

3.3 The Parties agree that costs allocated to the registration and issuance of Haida Nation Offsets will be borne by Haida Nation.

3.4 British Columbia will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in, nor will it assist or support a third party in any such claim to any Haida Nation Offsets.

3.5 Haida Nation will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in the Haida Gwaii Offsets other than Haida Nation Offsets.

4.0 CARBON OFFSET PROJECT DEVELOPMENT, OPERATION AND INFORMATION

4.1 The Parties agree to maintain and update the Forest Carbon Model, or any successor model agreed to by the Parties, on an as required basis to incorporate the latest growth and yield, forest inventory and timber supply analysis and forest carbon budget data available to British Columbia.

4.2 The Parties do not make any representation or warranty regarding the qualification or eligibility of the Haida Gwaii Offsets under any program or market relating to carbon offsets, or the marketability or value of the Haida Gwaii Offsets.

4.3 The Parties acknowledge atmospheric benefits estimated under the Forest Carbon Model, before or after validation, verification or registration, are vulnerable to Reversals and nothing in this Agreement makes either Party liable to any other person for any loss or damages arising from the impact of a Non-Intentional Reversal on Haida Gwaii Offsets.

4.4 Haida Nation will mitigate the impact of:

a) any Non-Intentional Reversal; and

b) any Intentional Reversal resulting from a Haida Nation decision

through the release of Haida Nation Offsets have reserved for the Project in accordance with the plan for the Project that has been validated under the *Emission Offsets Regulation*.

4.5 If Haida Nation Offsets held in reserve for mitigation of Project Reversals are insufficient to address the impact of the Non-Intentional Reversal or the Intentional Reversals that are a result of a Haida decision, the Parties will meet to discuss the options available to address the outstanding impacts.

4.6 This Agreement does not change or affect the positions the Parties have, or may have, regarding their jurisdictions, responsibilities or decision making authority, nor is it to be interpreted in a manner that would unlawfully interfere with that decision making authority.

4.7 Except with respect to representations, commitments, covenants or obligations made by British Columbia under this Agreement, Haida Nation shall indemnify and save harmless British Columbia and its servants, employees, agents, contractors and licensees from any and all liabilities, damages, costs (including legal fees on a solicitor and own client basis), claims, suits or actions arising from any use made by Haida Nation of the Haida Nation Offsets, including the sale, trade, registration or other dealing with the Haida Nation Offsets in any way, with any person.

4.8 Except with respect to representations, commitments, covenants or obligations made by Haida Nation under this Agreement, British Columbia shall indemnify and save harmless Haida Nation and its servants, employees, agents, contractors and licensees from any and all liabilities, damages, costs (including legal fees on a solicitor and own client basis), claims, suits or actions arising from any use made by British Columbia of the Haida Gwaii Offsets that are not Haida Nation Offsets, including the sale, trade, registration or other dealing with the Haida Gwaii Offsets that are not Haida Nation Offsets in any way, with any person.

4.9 If any part of this Agreement is declared or held invalid by a court of competent jurisdiction:

a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and

b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

5.0 COMMUNICATIONS AND INFORMATION EXCHANGE

5.1 Haida Nation and British Columbia will provide to each other notice of intention to make written public communications relating to this Agreement or Haida Gwaii Offsets and provide the other party with an opportunity to review and comment on the communications.

5.2 Haida Nation will use no less than 65% of the funds from the sale of Haida Nation Offsets to seek to achieve objectives set out in the Reconciliation Protocol or other agreements between the Parties.

5.3 Within 60 days of the effective date of this Agreement, the Parties will prepare a Statement of Reconciliation Protocol Priorities that will be appended to this Agreement as Appendix 2 which will identify the objectives referred to in section 5.2.

5.4 On or before June 15, 2023, and every five years thereafter, the Parties will prepare a further Statement of Reconciliation Protocol Priorities that will replace the previous Statement of Reconciliation Priorities for the next five year period.

5.5 The Statement of Reconciliation Protocol Priorities, as referenced in sections 5.3 and 5.4, will be made publicly available by the Parties in a manner that can reasonably be expected to bring the Statement of Reconciliation Priorities to the attention of citizens of the Haida Nation and British Columbia.

6.0 TERM, TERMINATION OR WITHDRAWAL

6.1 This Agreement is in effect from the time that British Columbia and Haida Nation have signed this agreement and continues until March 31, 2041 unless terminated under section 6.2.

6.2 Either Party may terminate the Agreement if either ceases to be a party to the Reconciliation Protocol.

6.3 A Party must provide written notice of intention to terminate under section 6.2 by no later than December 1 of the calendar year in which the termination is to take effect.

6.4 Termination in accordance with section 6.2 is effective December 31 of the year in which the notice in section 6.3 is provided.

6.5 Termination in accordance with section 6.2 does not affect Haida Nation's ownership and right to sell Haida Nation Offsets for the calendar years prior to the termination date or the effective date of withdrawal.

6.6 If a future sales commitment is affected by a termination under section 6.2, the termination may be extended up to five years with agreement of British Columbia.

7.0 REVIEW AND AMENDMENT

7.1 This Agreement may be amended from time to time only with the written consent of all the Parties to the agreement at the time of the amendment.

7.2 At either Party's request, the other Party will provide in a timely manner (agreed upon by the Parties):

a) a summary of the annual total tonnes of Haida Gwaii Offsets sold and gross revenues received for the previous calendar year from the sales of Haida Nation Offsets, to be provided to the other party on a confidential basis;

b) a financial statement confirming the use of proceeds from the sale of Haida Nation Offsets are consistent with the goals and intended outcomes of the Reconciliation Protocol that is attested to by a designated representative of that party; and

c) a copy of any sales agreement that maybe impacted by a termination under section 6.2.

8.0 FURTHER ASSURANCES

8.1 The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

8.2 The Parties are committed to resolving any disputes that may arise in the implementation of this Agreement and may utilize dispute resolution mechanism as agreed to by the Parties including mediation.

8.3 Haida Nation agrees that the provision of the Haida Gwaii Offsets under this agreement and the funding provided under the Reconciliation Protocol fully satisfies the provincial funding and support to the Haida Nation for the Haida Nation's portion of: implementation of the Reconciliation Protocol and the management/stewardship of the Haida Gwaii protected areas.

9.0 ORIGINAL AGREEMENT AND TRANSITION

9.1 Subject to sections 9.2 and 9.3 below, the Original Agreement is terminated as of December 31, 2015.

9.2 The Original Agreement survives and remains in effect with respect to the following matters:

a) section 3.1 regarding Haida Nation's ownership and right to sell Distributed Atmospheric Benefits for the calendar years prior to the termination of the Original Agreement;

b) section 3.2 (a) and the allocation of Atmospheric Benefits to the Haida Nation for the calendar years prior to the termination of the Original Agreement;

c) section 3.3 regarding British Columbia's covenant to not sell any, or claim or cause a claim to be made, in respect of any right, title or interest in, nor assist or support a third party in any such claim to Distributed Atmospheric Benefits for the calendar years prior to the termination of the Original Agreement;

d) section 4.8 regarding the indemnity granted by Haida Nation with respect to any use made by Haida Nation of the Distributed Atmospheric Benefits or Haida Nation Offsets for the calendar years prior to the termination of the Original Agreement;

e) sections 6.1 to 6.3 and their application to provisions of the Original Agreement that survive and remain in effect; and

f) section 7.1 and its application to provisions of the Original Agreement that survive and remain in effect.

9.3 The termination of the Original Agreement does not derogate the ownership and right to sell the Distributed Atmospheric Benefits or Haida Nation Offsets that were provided under the term of the Original Agreement.

9.4 For greater certainty, this Agreement is an Atmospheric Benefit Sharing Agreement as described in the Registration Agreement and the Registration Agreement applies to this Agreement.

10.0 APPROPRIATION

10.1 Notwithstanding any other provision of this Agreement, any distribution under section 3.2 is subject to:

a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when any such distribution is required, to make that distribution; and

b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such distribution.

11.0 INTERPRETATION

11.1 In this Agreement:

a) headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;

b) a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and

c) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

12.0 GOVERNING LAW

12.1 This Agreement will be governed by and construed and interpreted in accordance with the laws within British Columbia.

13.0 ENUREMENT

13.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.

14.0 NO ASSIGNMENT

14.1 This Agreement may not be assigned, either in whole or in part, by any Party.

15.0 NOTICES

15.1 A notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways:

a) delivered personally or by courier;

b) transmitted by facsimile transmission; or

c) mailed by post in Canada in any form which requires a receipt.

15.2 A communication will be considered to have been given or made, and received:

a) if delivered personally or by courier, at 9:00 a.m. on the business day after the day on which it was received by the addressee or a responsible representative of the addressee;

b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at 9:00 a.m. on the next business day after the day on which it was transmitted; or

c) if mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

15.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: British Columbia

Attention:	Minister of Indigenous Relations and Reconciliation
Personal or courier delivery:	Parliament Buildings Victoria, British Columbia
Facsimile transmission:	(250) 387-5594
Postal delivery:	PO Box 9468 STN PROV GOVT Victoria, British Columbia V8W 9E2

For: Council of the Haida Nation

Attention:	President
Facsimile transmission:	(250) 599-8951
Postal delivery:	Box 98 Queen Charlotte Haida Gwaii, British Columbia V0T 1S0

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16.0 EXECUTION IN COUNTERPARTS

16.1 This Agreement may be executed in counterparts and by facsimile. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document.

THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED as of the day and year first above written

Signed on behalf of Her Majesty the Queen in right of the Province of British Columbia, as represented by:

The Ministry of Indigenous Relations and Reconciliation

Minister Scott Fraser

Witness

April 1, 2019
Date

Signed on behalf of the Haida Nation, as represented by the Council of the Haida Nation

Council of the Haida Nation

Gaagwiis
Jason Alsop, President

Witness

March 25, 2019
Date

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Minister Doug Donaldson

Witness

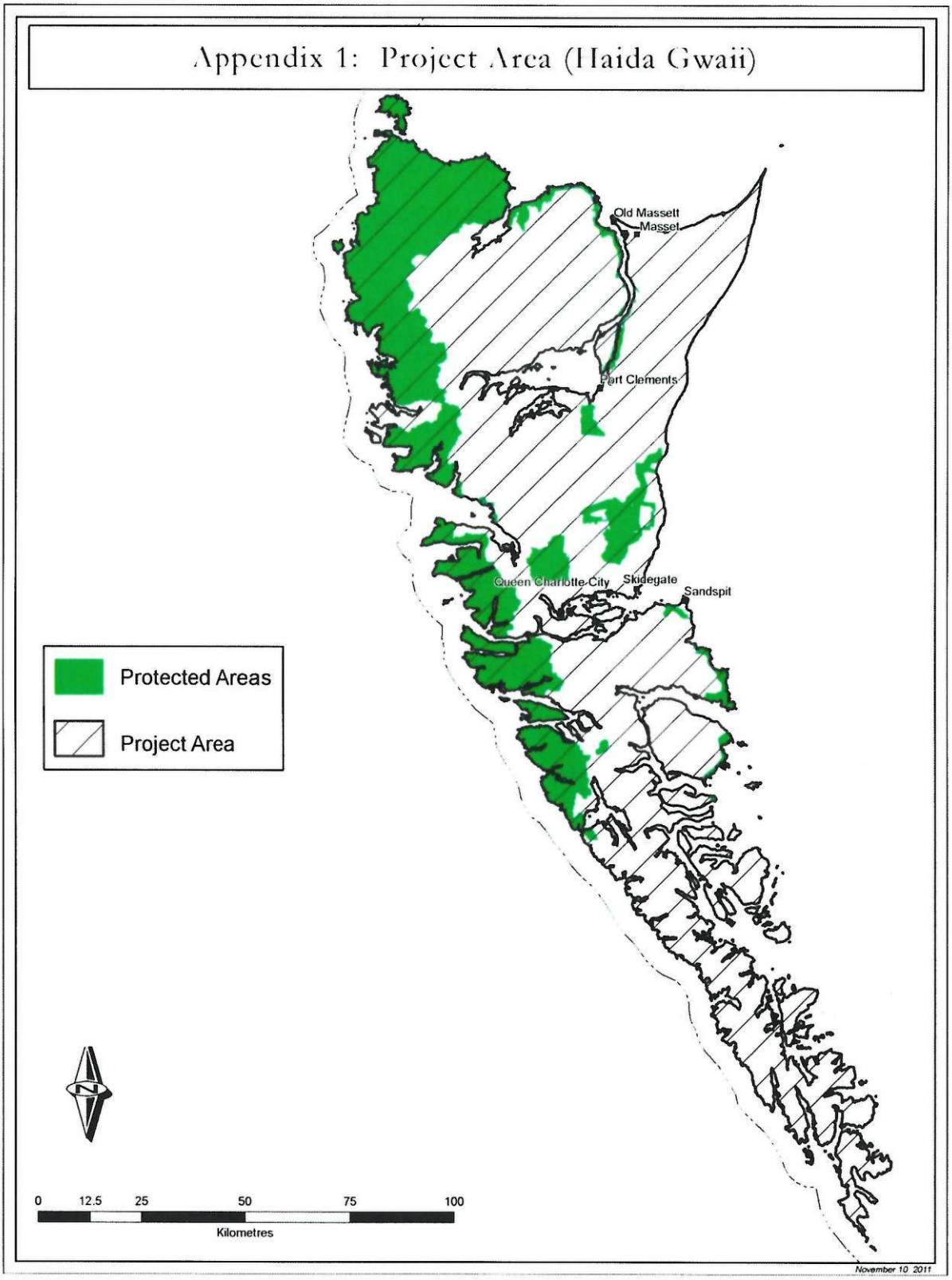
April 16, 2019
Date

Council of the Haida Nation

Ginn wadluu un uula isdaa ayaagang
Trevor Russ, Vice-President

Witness

March 25, 2019
Date


Appendix 1: Project Area (Haida Gwaii)
Old Massett
Masset
Port Clements
Queen Charlotte City
Skidegate
Sandspit
Protected Areas
Project Area
0
12.5
25
50
75
100
Kilometres
November 10, 2011

APPENDIX 2: Statement of Reconciliation Protocol Priorities

Outcomes specific to the Reconciliation Protocol to be achieved by the Parties 2019 through 2024

Reconciliation Protocol Outcomes	Measurement Criteria
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