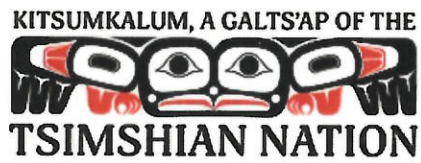


march 27, 2019

KITSUMKALUM LNG BENEFITS AGREEMENT



KITSUMKALUM FIRST NATION LNG BENEFITS AGREEMENT

This Agreement is dated for reference March 27, 2019

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Energy, Mines and Petroleum Resources and the Minister of Indigenous Relations and Reconciliation

(the "Province")

AND:

Kitsumkalum First Nation, on behalf of itself and its Members, as represented by the Chief and Council

("Kitsumkalum")

(collectively the "Parties" and individually a "Party")

WHEREAS:

- A. The Province is committed to developing a liquefied natural gas (LNG) industry in British Columbia;
- B. LNG Canada is a joint venture company lead by Shell Canada Energy that proposes to build an LNG export facility in the Douglas Channel near Kitimat B.C. (the "LNG Canada Project");
- C. There are proposals for Other LNG Projects in the Other LNG Project Area (as hereinafter defined);
- D. Kitsumkalum has indicated that it is supportive of the LNG Canada Project and that it is also generally supportive of the Other LNG Projects provided that its interests are met, including addressing issues related to Aboriginal Rights and the cumulative impacts of such development; and
- E. Kitsumkalum and the Province wish to enter into this Agreement to confirm their respective commitments in relation to the LNG Canada Project and the Other LNG Projects.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

“Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Agreement” means this Kitsumkalum First Nation LNG Benefits Agreement, including the Schedules, and any agreement, document or instrument executed or delivered pursuant thereto;

“Annual Payment Date” means the date in each BC Fiscal Year that is 60 days after the date that Kitsumkalum has provided the Province with the reports required under sections 4.1 a), b), and c) regarding the use of the land and economic development fund, the community development fund and the legacy fund, provided that if that date falls on a weekend or statutory holiday in British Columbia it means the next day that is not on a weekend or statutory holiday in British Columbia;

“Associated Infrastructure” means any infrastructure project reasonably necessary for the LNG Canada Project or an Other LNG Project for electricity, transportation and other utility corridor rights of way, including related facilities, power generation facilities, plant equipment and other infrastructure easements and rights of way as well as matters reasonably necessary for the construction, operation and maintenance of the LNG Canada Project or an Other LNG Project, including related lay down areas and work camps, but does not include any natural gas transmission line;

“BC Fiscal Year” means a period beginning on April 1st of a calendar year and ending on March 31st of the next calendar year;

“Chief” has the same meaning as the term “chief” within the meaning of the *Indian Act*;

“Commencement of Construction” means the date on which the proponent of an Other LNG Project issues a notice or notices to proceed to its EPC Contractor in respect of all material engineering, procurement and construction contracts for the project, excluding other site assessment or exploration work;

“Council” and **“Band Council”** mean, in respect of Kitsumkalum, the elected “council” within the meaning of the *Indian Act*;

“Effective Date” means the date on which this Agreement is executed and delivered by the Parties;

“EPC Contractor” means the engineering, procurement and construction contractor for the LNG Canada Project or an Other LNG Project;

“FID” or “Final Investment Decision” means a final and unconditional decision of an Other LNG Project proponent to proceed with the construction of an Other LNG Project which, for certainty, includes that proponent having obtained:

- a) an environmental assessment certificate issued by the provincial Minister of Environment under section 17(3) of the *Environmental Assessment Act* and a decision statement by the federal Minister of Environment under section 54 of the *Canadian Environmental Assessment Act, 2012*;
- b) a National Energy Board natural gas export licence that remains valid and effective for the project;
- c) the financial resources and a funding plan in place for the project; and
- d) all necessary internal and shareholder and investor approvals;

“Funds” means the payments to be made by the Province to Kitsumkalum in accordance with section 3.1;

“Governmental Action” means any provincial or federal approval, decision, process, agreement, authorization or action of any kind whatsoever, including approvals, decisions, processes, agreements, authorizations or actions of a provincial or federal agency or Crown corporation, relating to the planning, approval, construction, development, operation, reclamation or closure of the LNG Canada Project and its Associated Infrastructure or an Other LNG Project and its Associated Infrastructure;

“GST” means the goods and services tax imposed under the *Excise Tax Act* (Canada);

“Incremental Project Funding Notice” has the same meaning as in the Kitsumkalum Coastal Fund Agreement;

“Kitselas LNG Benefits Agreement Lands” means those provincial Crown lands shown for illustrative purposes in Schedule D as the “Kitselas LNG Benefits Land” to be transferred by the Province to a company designated by Kitselas First Nation;

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

“Kitsumkalum Coastal Fund Agreement” means the “Kitsumkalum LNG Coastal Fund Agreement” entered into by the Parties concurrently with this Agreement;

“Lax Kw’alaams LNG Benefits Agreement Lands” means those provincial Crown lands shown for illustrative purposes in Schedule B as the “Lax Kw’alaams LNG Benefit Agreement Lands” to be transferred by the Province to a company designated by Lax Kw’alaams First Nation;

“LNG” means natural gas in a liquid state or at a temperature below its boiling point;

“LNG Canada Project” means the description of the project referred to in recital B as set out in the application made by LNG Canada Development Inc. to the British Columbia Environmental Assessment Office and the Canadian Environmental Assessment Agency for a natural gas receiving and LNG production and export facility that, at full build out, will produce 26 million tons of LNG per annum, including a marine terminal, material offload facility, supporting infrastructure, and related shipping activities, as approved in the British Columbia Environmental Assessment Office *Environmental Assessment Certificate # E15-01*, as amended or replaced from time to time, and in the Decision Statement, dated June 17, 2015, issued under section 54 of the *Canadian Environmental Assessment Act, 2012*, as amended or replaced from time to time;

“Metlakatla LNG Benefit Agreement Lands” means those provincial Crown lands shown for illustrative purposes in Schedule C as the “Metlakatla LNG Benefit Agreement Lands” to be transferred by the Province to a company designated by Metlakatla First Nation;

“Members” means any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, of Kitsumkalum;

“Other LNG Project” means any project proposed within the Other LNG Project Area to produce and export LNG that is a “reviewable project” within the meaning of the *Environmental Assessment Act*, as that LNG project is described in the applicable application made to the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office, subject to any modifications to that description that may be required in the course of securing environmental and regulatory approvals; but does not include:

- a) the LNG Canada Project; or

- b) any LNG project that may be proposed within the Other LNG Project Area after four LNG projects, not including the LNG Canada Project, that are “reviewable projects” within the meaning of the *Environmental Assessment Act* located within the Other LNG Project Area have made a FID;

“**Other LNG Project Area**” means those lands and waters within and adjacent to Douglas Channel shown as the “Other LNG Project Area” in Schedule A;

“**Province**” means Her Majesty the Queen in right of the Province of British Columbia;

“**Provincial Official**” means

- a) any minister, public official, employee, contractor or agent of the Province;
- b) any government corporation or any director, officer, employee, contractor or agent of a government corporation; or
- c) any person acting as a decision maker under any enactment of the Province.

“**Specified Date**” means, in relation to an LNG project, the date on which Kitsumkalum provides the Province an Incremental Project Funding Notice in respect of that LNG project.

1.2 **Interpretation.** For purposes of this Agreement:

- a) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- b) the headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- c) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- d) 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;
- e) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;

- f) any reference to the delivery on Closing of an agreement, document or instrument “in the form” of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- g) each and every release, covenant and other agreement given, and action to be taken, by Kitsumkalum under this Agreement means Kitsumkalum acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by Kitsumkalum on its own behalf, and for and on behalf of its Members; and
- h) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

1.3 Impact Benefit Agreement Negotiations with Other LNG Project Proponents. Nothing in this Agreement is intended to:

- a) limit or prevent Kitsumkalum from negotiating and attempting to reach an agreement with the proponent of the LNG Canada Project or an Other LNG Project on financial or other benefits associated with the approval, construction and operation of the LNG Canada Project or an Other LNG Project and its Associated Infrastructure, or receiving benefits in accordance with any such agreement; or
- b) limit or diminish the obligations, if any, of the proponent of an Other LNG Project to negotiate a benefits agreement with Kitsumkalum as a result of the impact or potential impact of an Other LNG Project on Kitsumkalum’s Aboriginal Rights.

1.4 Schedules. The following are the Schedules to this Agreement:

Schedule A	Map of the Other LNG Project Area
Schedule B	Lax Kw’alaams LNG Benefits Agreement Lands
Schedule C	Metlakatla LNG Benefits Agreement Lands
Schedule D	Kitselas LNG Benefits Agreement Lands

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.1 Kitsumkalum Representations. Kitsumkalum represents and warrants to the Province, with the intent and understanding that the Province will rely on those representations in entering into this Agreement, that:

- a) it enters into this Agreement for, and on behalf of, its Members; and

- b) it, as represented by the individuals named in the resolution provided to the Province in accordance with section 4.2 a), has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of Kitsumkalum and its Members.

2.2 **Provincial Representations.** The Province represents and warrants to Kitsumkalum, with the intent and understanding that Kitsumkalum will rely on those representations in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement; and
- b) subject to the terms and conditions of this Agreement, it has the legal power, capacity and authority to carry out its obligations under this Agreement.

ARTICLE 3 – FINANCIAL BENEFITS

3.1 **Payment of Funds to Kitsumkalum.** Subject to the terms and conditions of this Agreement, including the satisfaction of applicable conditions precedent, the Province will provide Kitsumkalum with:

- a) a \$15 million payment for use as a land and economic development fund in accordance with section 3.2 a), payable as follows:
 - i. \$5 million as soon as practicable after the Effective Date,
 - ii. \$5 million on the Annual Payment Date within the BC Fiscal Year immediately following the Effective Date, and
 - iii. \$5 million on the Annual Payment Date within the BC Fiscal Year immediately following payment made in accordance with subsection ii);
- b) a \$2.25 million payment for use as a community development fund in accordance with section 3.2 b), payable as follows:
 - i. \$250,000 as soon as practicable after the Effective Date,
 - ii. \$1 million on the Annual Payment Date within the BC Fiscal Year immediately following the Effective Date, and
 - iii. \$1 million on the Annual Payment Date within the BC Fiscal Year immediately following payment made in accordance with subsection ii); and

- c) a \$2.35 million payment for use as a legacy fund in accordance with section 3.2 c) payable as follows:
 - i. \$350,000 as soon as practicable after the Effective Date,
 - ii. \$1 million on the Annual Payment Date within the BC Fiscal Year immediately following the Effective Date, and
 - iii. \$1 million on the Annual Payment Date within the BC Fiscal Year immediately following payment made in accordance with subsection ii).

3.2 Use of Funds. Kitsumkalum will use the Funds provided under section 3.1 as follows:

- a) the land and economic development fund provided under section 3.1 a) will be used to purchase fee simple lands within the Kitsumkalum traditional territory or for other economic development purposes;
- b) the community development fund provided under section 3.1 b) will be used for Kitsumkalum community development projects and social initiatives to benefit Kitsumkalum Members;
- c) the legacy fund provided under section 3.1 c) will be used for education and skills training to facilitate Kitsumkalum Members participation in business or employment opportunities, particularly opportunities created by LNG projects.

ARTICLE 4 – CONDITIONS PRECEDENT

4.1 Conditions Precedent to Funding. The obligation of the Province to provide Kitsumkalum:

- a) the land and economic development fund payments under subsections 3.1a) ii) and iii) are subject to the Province having received a report from Kitsumkalum, satisfactory to the Province acting reasonably, detailing how the land and economic development fund payments received in the prior BC Fiscal Year were expended on purposes for which they were provided for in accordance with section 3.2 a);
- b) the community development fund payments under subsections 3.1b) ii) and iii) are subject to the Province having received a report from Kitsumkalum, satisfactory to the Province acting reasonably, detailing how the community development fund payments received in the prior BC Fiscal Year were expended on purposes for which they were provided for in accordance with section 3.2 b); and

- c) the legacy fund payments under subsections 3.1c) ii) and iii) are subject to the Province having received a report from Kitsumkalum, satisfactory to the Province acting reasonably, detailing how the legacy fund payments received in the prior BC Fiscal Year were expended on purposes for which they were provided for in accordance with section 3.2 c).

4.2 Other Conditions Precedent to Province's Obligations. In addition to section 4.1, the Province's obligations under this Agreement are subject to:

- a) Kitsumkalum delivering to the Province a Band Council Resolution approving this Agreement and authorizing Kitsumkalum's representatives named in the resolution to execute and deliver this Agreement on behalf of Kitsumkalum;
- b) the Province having obtained all required approvals, including Cabinet and Treasury Board approval;
- c) Kitsumkalum being in compliance with all of its material obligations under this Agreement; and
- d) Kitsumkalum representations and warranties under this Agreement being true and correct on the Effective Date.

4.3 Waiver of Conditions Precedent. The conditions precedent set out in section 4.1 and 4.2 are for the sole benefit of the Province and may be waived by the Province on written notice to Kitsumkalum.

4.4 Reporting Requirements. Kitsumkalum will maintain proper books and records in accordance with generally accepted accounting practices showing the receipt and expenditure of funds provided to it under this Agreement and, if requested to do so, will provide the Province with copies of paid invoices detailing the expenditure of funds as part of its reporting requirements under section 4.1.

ARTICLE 5 – KITSUMKALUM ASSURANCES

5.1 LNG Canada Project Assurances. Provided that the Province is not in breach of its material obligations under this Agreement, Kitsumkalum will:

- a) indicate in writing that it is supportive of the LNG Canada Project, its Associated Infrastructure and any related Governmental Action, if so requested by the Province;
- b) continue to participate in the LNG Canada Project environmental assessment and regulatory processes in a timely manner;

- c) confirm that it is being consulted and accommodated in respect of the LNG Canada Project, its Associated Infrastructure and any related Governmental Action;
- d) not initiate or participate, directly or indirectly, in any legal action or proceeding that challenges, directly or indirectly, the LNG Canada Project, its Associated Infrastructure or any related Governmental Action on the basis that Kitsumkalum has not been adequately consulted or accommodated or that the LNG Canada Project, its Associated Infrastructure or any related Governmental Action constitutes an infringement of its Aboriginal Rights;
- e) not initiate, support or participate, directly or indirectly, in any action that would interfere with, delay, hinder or otherwise oppose the LNG Canada Project, its Associated Infrastructure or any Governmental Action;
- f) not support actions of any kind whatsoever by a Member of Kitsumkalum or a member of any other First Nation that would interfere with, delay, hinder or otherwise oppose the LNG Canada Project, its Associated Infrastructure or any Governmental Action;
- g) as of the Effective Date, release and discharge the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the LNG Canada Project, its Associated Infrastructure and any related Governmental Action;
- h) as of the Effective date, release and discharge the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of the LNG Canada Project, its Associated Infrastructure and any related Governmental Action; and
- i) acknowledge that the Province has fulfilled all obligations it may have to provide Kitsumkalum with financial or economic accommodation, economic or other benefits including lands, capacity funding, and payments or compensation of any kind whatsoever that may be required with respect to the LNG Canada Project, its Associated Infrastructure, and any related Governmental Action.

5.2 Environmental Assessment and Regulatory Processes. Nothing in this Agreement precludes Kitsumkalum from identifying concerns about potential impacts of the LNG Canada Project and its Associated Infrastructure or any Other LNG Projects and its Associated Infrastructure in the applicable environmental assessment or regulatory process, and either Party may seek to resolve those concerns as part of the applicable environmental assessment or regulatory process.

5.3 LNG Proponent Breach of Licences, Permits and Approvals. Nothing in this Agreement precludes Kitsumkalum from taking any necessary steps in accordance with applicable federal and provincial law with respect to concerns it may have as a result of the LNG Canada Project proponent or the Other LNG Project proponent being in breach of its obligations under its licenses, permits and approvals.

5.4 Assurances of Kitsumkalum in relation to the Other LNG Projects. Provided that the Province is not in breach of its material obligations under this Agreement, Kitsumkalum will:

- a) support the Other LNG Projects generally, provided that they are developed in a manner that is environmentally and socially responsible and respectful of Kitsumkalum' Aboriginal Rights;
- b) participate in good faith in all environment assessment and regulatory processes for each of the Other LNG Projects;
- c) not initiate, support or participate, directly or indirectly, in any activity that would physically interfere with so as to delay, hinder or impede the development of an Other LNG Project, its Associated Infrastructure or any related Governmental Action;
- d) not support actions of any kind whatsoever by a Member of Kitsumkalum or a member of any other First Nation that would physically interfere with so as to delay, hinder or impede the development of an Other LNG Project, its Associated Infrastructure or any related Governmental Action;
- e) acknowledge and agree that the Province has fulfilled all obligations it may have to provide Kitsumkalum with financial or economic accommodation, economic or other benefits including lands, capacity funding, and payments or compensation of any kind whatsoever with respect to each of the Other LNG Projects, its Associated Infrastructure and any related Governmental Action; and
- f) as of the Effective Date, release and discharge the Province and Provincial Officials from all claims for financial or economic accommodation, economic or other benefits including lands, monetary damages, or other payments or compensation of any kind whatsoever associated with:
 - i) the Province's obligation to consult, and where appropriate, accommodate in respect of each of the Other LNG Projects, its Associated Infrastructure and any related Governmental Action, and

- ii) any infringement of Kitsumkalum' Aboriginal Rights in respect of each of the Other LNG Projects, its Associated Infrastructure and any related Governmental Action.

5.5 Releases in respect of Other LNG Projects. Upon the Commencement of Construction of an Other LNG Project, Kitsumkalum will:

- a) not initiate or participate in or support any legal action or proceeding that challenges, directly or indirectly, that Other LNG Project, its Associated Infrastructure or any related Governmental Action on the basis that Kitsumkalum has not been adequately consulted on that Other LNG Project, its Associated Infrastructure or any related Governmental Action or that Other LNG Project, its Associated Infrastructure or any related Governmental Action constitutes an unjustified infringement of its Aboriginal Rights;
- b) release and discharge the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult, and where appropriate, accommodate, in respect of that Other LNG Project, its Associated Infrastructure and any related Governmental Action;
- c) release and discharge the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of that Other LNG Project, its Associated Infrastructure and any related Governmental Action;

provided that notwithstanding subsections a), b) and c), if Kitsumkalum has not delivered an Incremental Project Funding Notice and thereby elected to obtain Incremental Project Funding in respect of an Other LNG Project prior to the Province issuing an LNG facility permit under the *Oil and Gas Activities Act* in respect of the Other LNG Project, the covenants and releases under subsections a), b) and c) will be suspended and the Province will not seek to enforce or rely on subsections a), b) and c) until such time as Kitsumkalum provides an Incremental Project Funding Notice in respect of the Other LNG Project.

5.6 Assurances in relation to the Lax Kw'alaams LNG Benefits Agreement Lands. Upon the Effective Date, Kitsumkalum:

- a) releases and discharges the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the transfer of the Lax Kw'alaams LNG Benefits Agreement Lands;
- b) releases and discharges the Province and all Provincial Officials from all claims of infringement of Aboriginal Rights in respect of the Lax Kw'alaams LNG Benefits Agreement Lands; and

- c) acknowledges that the Province has fulfilled all obligations it may have to provide Kitsumkalum any financial or economic accommodation, economic or other benefits including land, capacity funding, and payments or compensation of any kind whatsoever, that may be required with respect to the transfer of the Lax Kw'alaams LNG Benefits Agreement Lands.

5.7 Assurances in relation to the Metlakatla LNG Benefit Agreement Lands.

Upon the Effective Date, Kitsumkalum:

- a) releases and discharges the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the transfer of the Metlakatla LNG Benefit Agreement Lands;
- b) releases and discharges the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of the Metlakatla LNG Benefit Agreement Lands; and
- c) acknowledges that the Province has fulfilled all obligations it may have to provide Kitsumkalum with financial or economic accommodation, economic or other benefits including lands, capacity funding, and payments or compensation of any kind whatsoever that may be required with respect to the Metlakatla LNG Benefit Agreement Lands.

5.8 Assurances in relation to the Kitselas LNG Benefits Agreement Lands.

Upon the Effective Date, Kitsumkalum:

- a) releases and discharges the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the transfer of the Kitselas LNG Benefits Agreement Lands;
- b) releases and discharges the Province and all Provincial Officials from all claims of infringement of Aboriginal Rights in respect of the Kitselas LNG Benefits Agreement Lands; and
- c) acknowledges that the Province has fulfilled all obligations it may have to provide Kitsumkalum any financial or economic accommodation, economic or other benefits including land, capacity funding, and payments or compensation of any kind whatsoever, that may be required with respect to the transfer of the Kitsumkalum LNG Benefits Agreement Lands.

ARTICLE 6 - DISPUTE RESOLUTION

- 6.1 **Representatives.** If a dispute arises between the Province and Kitsumkalum regarding the interpretation of a provision of this Agreement, representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.
- 6.2 **Senior Representatives.** If the representatives of the Parties are unable to resolve differences at the appropriate level, the dispute will be raised to more senior levels of the Province and Kitsumkalum.
- 6.3 **Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the dispute.

ARTICLE 7 - NOTICES

- 7.1 **Notices.** 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, e-mail or facsimile copier, when received as follows:

if to the Province:

Deputy Minister
Ministry of Energy, Mines and Petroleum Resources
P.O. Box 9319 Stn. Prov. Gvt.
Victoria, B.C. V8W 9B1

Fax: 250 952-0269

And to:

Deputy Minister
Ministry of Indigenous Relations and Reconciliation
P.O. Box 9100 Stn. Prov. Gvt.
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to Kitsumkalum:

Kitsumkalum First Nation
P.O. Box 544
Terrace, BC V8G 4B5

Fax: (250) 635-4622

Attention: Chief Councillor and Band Manager

- 7.2 **Change of Address.** Either Party may, from time to time, give written or e-mail 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 8 - COMING INTO EFFECT, SUSPENSION OF PROVINCIAL
OBLIGATIONS, TERMINATION AND SURVIVAL**

- 8.1 **Coming into Effect.** This Agreement comes into effect when it has been executed and delivered by the Parties.
- 8.2 **Suspension of Provincial Obligations.** Notwithstanding any other provision in this Agreement, if:
- a) Kitsumkalum fails to perform or is in breach of any of its material obligations under this Agreement;
 - b) any representation or warranty made by Kitsumkalum in this Agreement is not true or incorrect;
 - c) Kitsumkalum initiates, participates in or supports any legal action or proceeding that challenges, directly or indirectly, the LNG Canada Project, its Associated Infrastructure or any related Governmental Action, or an Other LNG Project, its Associated Infrastructure or any related Governmental Action, on the basis that Kitsumkalum has not been adequately consulted or accommodated or that the LNG Canada Project, its Associated Infrastructure or any related Governmental Action, or an Other LNG Project, its Associated Infrastructure or any related Governmental Action constitutes an unjustified infringement of Kitsumkalum' Aboriginal Rights;

- d) Kitsumkalum initiates, participates or supports, directly or indirectly in any activity that would physically interfere with so as to delay, hinder or otherwise oppose the LNG Canada Project, its Associated Infrastructure or any related Governmental Action, or an Other LNG Project, its Associated Infrastructure or any related Governmental Action; or
- e) Kitsumkalum supports actions of any kind whatsoever by a Member of Kitsumkalum or a member of any other First Nation that would interfere with so as to delay, hinder or oppose the LNG Canada Project, its Associated Infrastructure or any related Governmental Action, or an Other LNG Project, its Associated Infrastructure or any related Governmental Action;

then the Province may, by written notice to Kitsumkalum suspend the payment of any funds under this Agreement that have not yet been made to Kitsumkalum under this Agreement.

- 8.3 **Notice of Proposed Suspension.** Prior to taking any action under section 8.2, the Province will notify Kitsumkalum of the proposed action and the Parties will meet within 30 days to discuss and attempt to resolve the matter.
- 8.4 **Province may Terminate on Breach.** Subject to sections 8.5 and 8.7, the Province may, by written notice to Kitsumkalum, terminate this Agreement if Kitsumkalum is in breach of any of its obligations set out in Article 5 – Assurances.
- 8.5 **Notice of Proposed Termination.** Prior to terminating this Agreement under section 8.4, the Province will notify Kitsumkalum of the proposed termination and the Parties will meet within 30 days to discuss and attempt to resolve the matter.
- 8.6 **No Meeting or Resolution of Outstanding Matter.** For certainty, nothing in section 8.5 limits the ability of the Province to take any action if Kitsumkalum does not meet with the Province or the Parties are not able to resolve the matter as a result of meeting in accordance with section 8.5.
- 8.7 **Suspension prior to Termination.** The Province may not provide a notice to terminate this Agreement under section 8.5, unless it has firstly provided a notice of suspension of obligations in accordance with section 8.3 and the 30 day time period for the Parties to meet and attempt to resolve the matter under section 8.3 has expired.
- 8.8 **Survival of Terms and Conditions.** Subject to the Province being in compliance with its material obligations under this Agreement, Article 5 – Kitsumkalum Assurances survives the termination of this Agreement.

ARTICLE 9 - CONSULTATION AGREEMENT

- 9.1 **Consultation Agreement Negotiations.** The Parties will negotiate and attempt to reach agreement on a consultation agreement, with the intent of finalizing the agreement by March 31, 2020, that will:
- a) establish a consultation process for agreed-to provincial government referrals to Kitsumkalum related to natural resource development decisions within the Kitsumkalum traditional territory which may adversely affect Kitsumkalum's Aboriginal Rights;
 - b) provide agreed-to funding for processing referrals referenced in a); and
 - c) be reviewed prior to the effective date of the Kitsumkalum Treaty to determine whether it should be amended or terminated as a result of the Kitsumkalum Treaty.

ARTICLE 10 - GENERAL

- 10.1 **Financial Administration Act.** Notwithstanding any other provision of this Agreement, the Province's obligations set out in this Agreement are subject to 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, and Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited any expenditure that is necessary under any required appropriation.
- 10.2 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.
- 10.3 **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 whatsoever for the better and absolute performance of the terms and conditions of this Agreement.
- 10.4 **No Implied Waiver.** Any waiver of:
- a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) a default by a Party of an obligation under this Agreement,

will be in writing and signed by the Party giving the waiver and will not constitute a waiver of any other provision, obligation or subsequent default.

10.5 **Successors.** This Agreement will enure to the benefit of and be binding on Kitsumkalum and its successors.

10.6 **No Admissions.** Nothing in this Agreement will be construed:

- a) as an admission by the Province of the validity of any claim by Kitsumkalum to a specific treaty right or an Aboriginal Right;
- b) as an acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to Kitsumkalum;
- c) to preclude or limit the Province from relying on the provision of any benefit provided to Kitsumkalum under this Agreement in any legal proceeding with respect to the adequacy of financial accommodation or compensation for any alleged infringement of Kitsumkalum's Aboriginal Rights in relation to the LNG Canada Project or any Other LNG Project; or
- d) to limit or prevent Kitsumkalum from participating in any revenue sharing arrangements that the Province may establish for eligible First Nations in relation to any revenues generated from provincial Crown land dispositions associated with the Other LNG Projects.

10.7 **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 Right or any responsibilities of the Parties except as set out in this Agreement.

10.8 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

10.9 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.


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

10.11 **Assignment.** This Agreement may not be assigned by Kitsumkalum without the express written consent of the Province.

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

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

Signed on behalf of Kitsumkalum by its authorized signatories



Chief Counsellor, Don Roberts
Sim'oogit Wiidildaldil Na'algyax Gaax



Alex Bolton, Sim'oogit Łagaax



Witness to Kitsumkalum authorized signatories

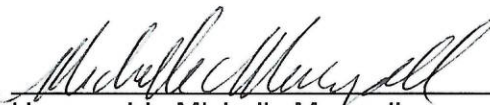
Gerald Wesley

Printed name of witness

march 27, 2019

Date

Signed on behalf of Her Majesty the Queen In Right of the Province of British Columbia by its authorized signatories



Honourable Michelle Mungall
Minister of Energy, Mines and Petroleum Resources



Honourable Scott Fraser
Minister of Indigenous Relations and Reconciliation

march 27, 2019

Date

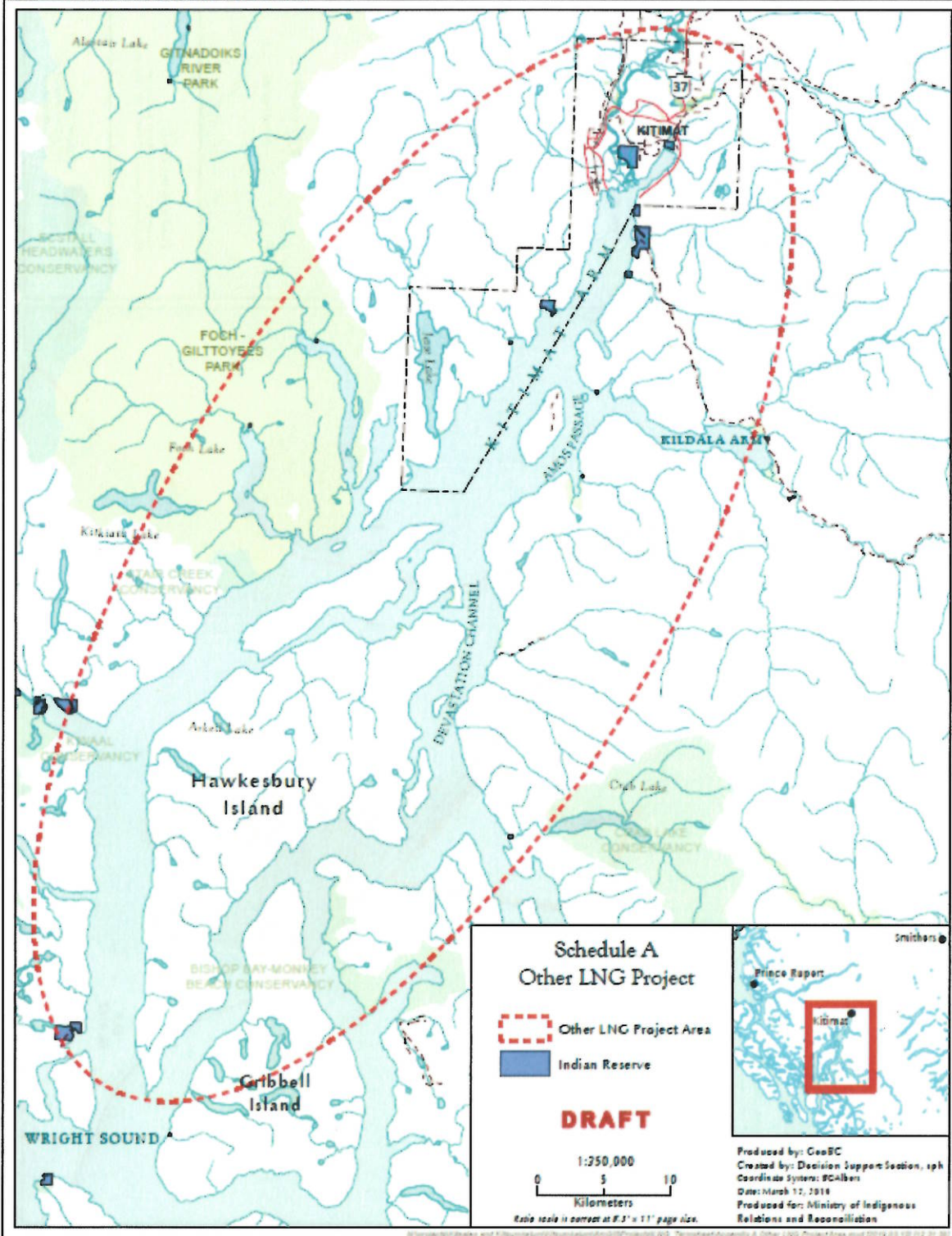
march 27, 2019

Date

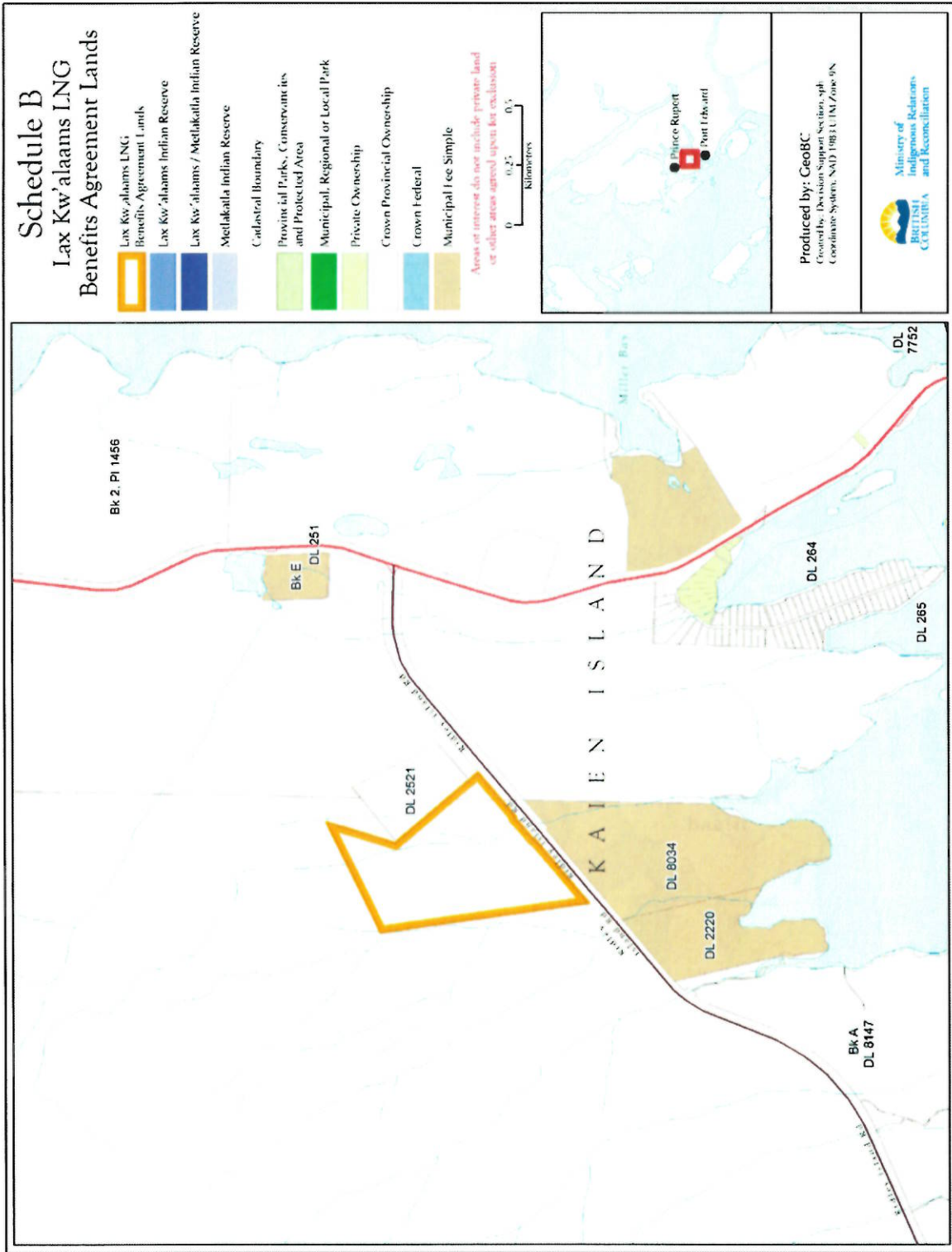
Schedule A – Map of Other LNG Project Area

Confidential For consultation purposes only. Do not distribute.

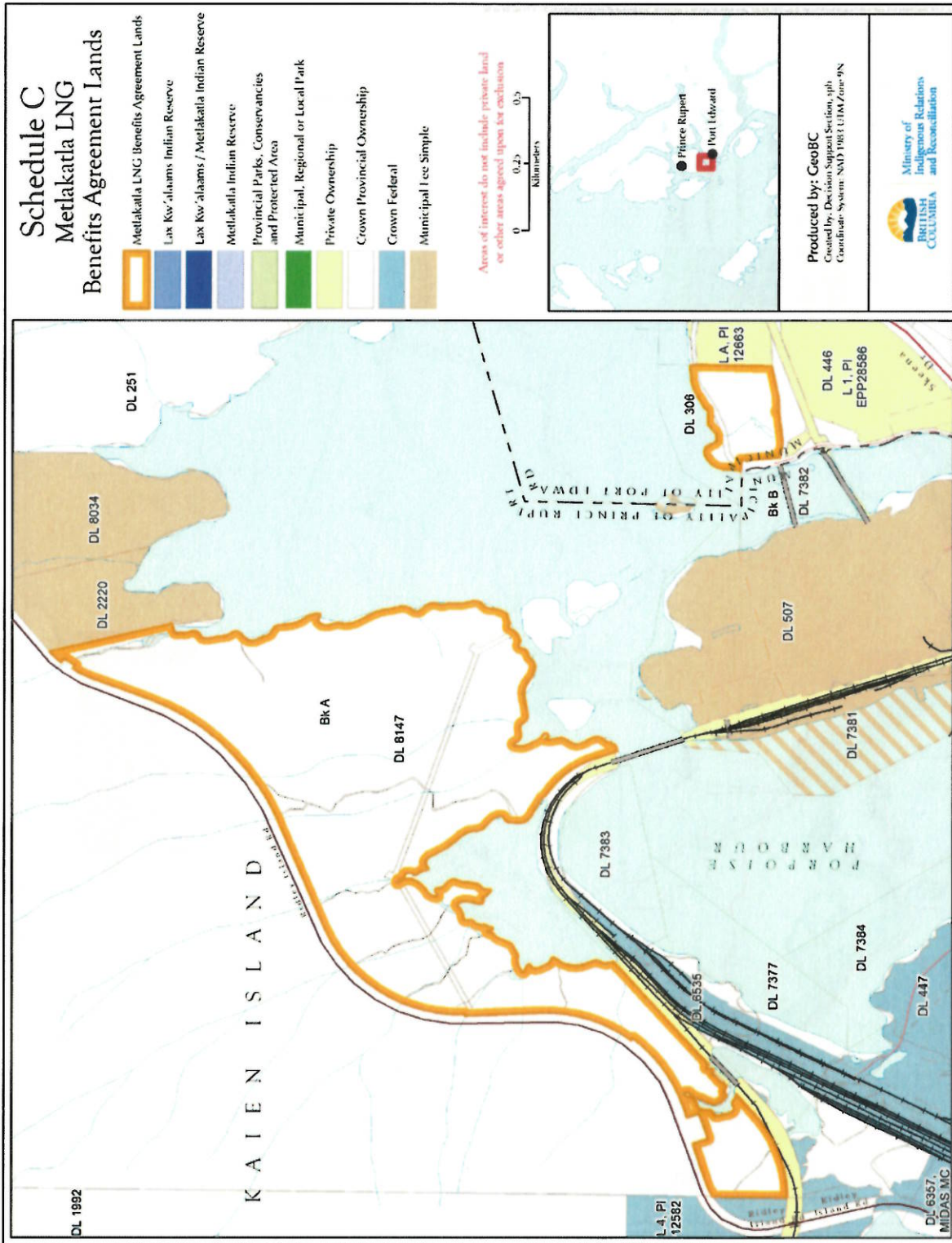
Date: March 12, 2018



Schedule B – Lax Kw’alaams LNG Benefits Agreement Lands



Schedule C – Metlakatla LNG Benefits Agreement Lands



Schedule D – Kitselas LNG Benefits Agreement Lands

