

MEMORANDUM OF AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, as represented by the Minister of Sustainable Resource
Management

("the Province")

AND:

THE SNUNEYMUXW FIRST NATION, as represented by Chief and Council

("Snuneymuxw First Nation")

(Collectively, the "Parties")

WHEREAS:

- A. The Nanaimo Port Authority administers certain provincial foreshore and submerged lands within the Nanaimo Estuary pursuant to an Indenture dated November 1, 1962, and modified by Agreement dated May 4, 1979 (the "Existing Head Lease").
- B. The Province may issue a replacement head lease to the Nanaimo Port Authority prior to October 31, 2002, the date the Existing Head Lease expires.
- C. On June 14, 2001, the Snuneymuxw First Nation commenced an action in the British Columbia Supreme Court against the Province, British Columbia Assets and Land Corporation, Canada and the Nanaimo Port Authority in *Snuneymuxw First Nation et al v. HMQBC et al* (Vancouver Registry No. S013336).
- D. The Parties have been working co-operatively on an Estuary Management Planning Process for the Nanaimo Estuary, along with federal agencies including the Nanaimo Port Authority, with a view to addressing the concerns of the Snuneymuxw First Nation in relation to log boom storage and the proposed grant of a replacement headlease to the Nanaimo Port Authority.
- E. The Estuary Management Planning Process continues through October 2002.
- F. The Snuneymuxw First Nation asserts that it has Douglas Treaty rights to fish as formerly in the Nanaimo Estuary.

NOW THEREFORE, the Province and the Snuneymuxw First Nation **AGREE AS FOLLOWS**:

Definitions

1. In this Memorandum of Agreement (the "Agreement"):
 - (a) "Action" means the proceeding commenced by the Snuneymuxw First Nation against the Province, British Columbia Assets and Land Corporation, Canada and the Nanaimo Port Authority on June 14, 2001, in the British Columbia Supreme Court in *Snuneymuxw First Nation et al v. HMQBC et al* (Vancouver Registry No. S013336);
 - (b) "EMPP" means the Nanaimo Estuary Management Planning Process, which began in January, 2001 and is being led jointly by the Ministry of Sustainable Resource Management and the Snuneymuxw First Nation;
 - (c) "Head Lease" means the lease referred to in section 2 of this Agreement;
 - (d) "Head Lease Area" means a portion of the Nanaimo Estuary, marked 'proposed modifications' and shaded in blue on the map attached as Schedule A to this Agreement;
 - (e) "Industry Users Group" means all the holders of log storage tenures granted by the Nanaimo Port Authority within the Head Lease Area under authority of the Head Lease;
 - (f) "MSRM" means the Ministry of Sustainable Resource Management;
 - (g) "Nanaimo Estuary" means the area outlined in blue on the map attached as Schedule B to this Agreement; and
 - (h) "NPA" means the Nanaimo Port Authority, an agency of the Government of Canada incorporated pursuant to the *Canada Marine Act*, and having offices at 104 Front Street, Nanaimo BC V9R 5H7.

Replacement Head Lease

2. If the Province grants a lease to the NPA, the lease will have a maximum term of twenty years and will include:
 - (a) A requirement that every five years, commencing on the fifth, tenth and fifteenth anniversary of the date that the lease is granted, the Province will review tenure activity authorized by the NPA under the lease and will:

- i. consider in its review, any information, analysis or recommendations provided by the Snuneymuxw First Nation pursuant to the monitoring program described in sections 3 to 10 of this Agreement;
 - ii. decide at the end of each review, how much of the Head Lease Area is required to support saw mills within the vicinity of Nanaimo and southern Vancouver Island; and
 - iii. further decide at the end of each review, taking into account the information provided under subsections (i) and (ii), to what extent require the NPA to reduce the size or size and location of specific log storage tenures granted by the NPA under authority of the lease;
- (b) A provision to the effect that the Province will be under no obligation to renew the lease upon its expiration in twenty years;
- (c) A requirement that the NPA will:
 - i. terminate log storage tenures over the lots referred to and depicted as Lots 101 and 102 on the map attached as Schedule A to this Agreement as soon as possible and, in any event, no later than the first anniversary of the date that the lease is granted; and
 - ii. only issue subleases of the lease for log storage over the areas referred to as lots 103, 104, 105 and 106 and 213 and depicted in blue shading on the map attached as Schedule A to this Agreement. The approximate area for log storage within each lot will be as follows: lot 103, 28.99 hectares; lot 104, 9.75 hectares; lot 105, 84.23 hectares; lot 106, 17.75 hectares; lot 213, 21.43 hectares; for a total log storage area of 162.15 hectares;
 - iii. require all Industry User Groups to provide information necessary to allow monitoring under sections 3 to 10 of this Agreement.

Monitoring Program

- 3. The Province will provide funding to the Snuneymuxw First Nation in the amount of \$10,000 per year for a period of five years so that the Snuneymuxw First Nation can monitor log storage in the Nanaimo Estuary.
- 4. The first payment required under section 3 will be paid to the Snuneymuxw First Nation within thirty days of execution of this Agreement by the Parties. For the next 4 years thereafter, the payment will be made within thirty days of the anniversary date of this Agreement.

5. Working with staff from the MSRM, the Snuneymuxw First Nation will use the funding provided under sections 3 and 4 to collect data from the Industry Users Groups on:
 - (a) the source of logs coming into the Head Lease Area for storage within a site tenured by the NPA under the Head Lease;
 - (b) the destination to which the logs go once they leave the Nanaimo Estuary; and
 - (c) the volume of logs coming in from each source and going out to each destination.
 - (d) monitor the location of logs stored during the tenure term and compare the actual log storage with the sub tenures issued by the NPA.
6. At the end of the five year period referred to in section 3, the Province, in consultation with the Snuneymuxw First Nation, will review the provincial funding that has been provided to the Snuneymuxw First Nation to monitor log storage subleases in the Nanaimo Estuary.
7. The purpose of the review under section 6 will be to determine whether it is cost-effective to continue to monitor the log storage subleases.
8. Regardless of whether the Province continues to provide funding to the Snuneymuxw First Nation after the end of the five year period referred to in section 3, Industry User Groups will be required to continue to provide information to the Snuneymuxw First Nation under section 2(c)(iii) of this Agreement, and the Province will continue to take into account any information, analysis or recommendations provided by the Snuneymuxw First Nation in accordance with section 2(a)(iii).
9. Nothing in sections 6, 7 or 8 of this Agreement will be interpreted as imposing an obligation on the Province to continue to provide funding to the Snuneymuxw First Nation beyond the end of the five year period referred to in section 3.
10. Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Snuneymuxw First Nation under this Agreement is subject to:
 - (a) there being sufficient monies available for the payment in an appropriation, as defined in the *Financial Administration Act*, in any fiscal year or part thereof when the payment of money by the Province falls due; and
 - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation referred to in the preceding paragraph.

Shellfish Aquaculture

11. Upon the completion of the EMPP or, in any event, within one year of the date that this Agreement is signed by the Parties, the Province will designate, based on mutual agreement of the Parties, an appropriate portion of the Nanaimo Estuary outside the Head Lease Area within the area identified in the map attached as Schedule B for shellfish harvesting by the Snuneymuxw First Nation, and reserve the designated area from disposition under section 16 of the *Land Act*.

Termination of Litigation

12. In consideration of the terms set out in this Agreement:
 - (a) The Snuneymuxw First Nation will file a notice of discontinuance of the Action and will provide a copy of that notice to the Province within thirty days of execution of this Agreement by the Parties; and
 - (b) The Snuneymuxw First Nation will not, for the duration of this Agreement, in any proceedings against the Province or the NPA before any Court, board, commission or other tribunal, seek to set aside or obtain injunctive relief with respect to the Head Lease or any authorizations granted under authority of the Head Lease respecting log boom storage and related activities in or near the Nanaimo Estuary. For greater certainty, nothing in this Agreement will prevent the Snuneymuxw First Nation from seeking, at any time, through the courts, specific claims or other processes, compensation for alleged infringements of aboriginal or Douglas treaty rights relating to log boom storage or related activities in or near the Nanaimo Estuary, regardless of whether the infringement occurred before or after the date the notice of discontinuance is filed.
13. No party will rely on the passage of time from the effective date of this Agreement to the termination of this Agreement as a basis for any legal or equitable defence in any proceeding in which the Snuneymuxw First Nation seeks to set aside or obtain injunctive relief with respect to the Head Lease or any authorizations granted under authority of the Head Lease for log boom storage and related activities in or near the Nanaimo River Estuary.

Interpretation

14. Nothing in this Agreement is intended or is to be interpreted as creating, granting, authorizing or recognizing any rights of occupation to lands referred to in this Agreement or its schedules.

15. Except as otherwise provided for in this Agreement, this Agreement is without prejudice to any aboriginal and Douglas treaty rights of the Snuneymuxw First Nation, to any positions the Snuneymuxw First Nation may take in Treaty or other negotiations, and to the merits of any claims that the Snuneymuxw First Nation may make in other future proceedings. For greater certainty, the Province will not rely on this Agreement in court to allege or assert that, by signing this Agreement, the Snuneymuxw First Nation has agreed to extinguish any aboriginal or Douglas Treaty rights or has agreed to adversely affect, suspend or forego the exercise of any aboriginal or Douglas Treaty rights, except to the extent provided for in this Agreement and only for the term of this Agreement.
16. This Agreement is without prejudice to the merits of any position the Province has taken or may take in any proceedings, consistent with the terms of or after the expiry of this Agreement.
17. Nothing in this Agreement will prevent the Snuneymuxw First Nation from defending or responding to, or intervening in, other proceedings commenced by persons other than the Parties, in order to protect the title, rights, claims or interests of the Snuneymuxw First Nation.
18. Nothing in this Agreement will prevent the Province from defending or responding to, or intervening in, other proceedings commenced by persons other than the Parties, in order to protect the title, rights or interests of the Province from competing or adverse claims made in those other proceedings.
19. In this Agreement, the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the extent or intent of any part of this Agreement.

Term of Agreement

20. The term of this Agreement is from the date it is signed by both Parties until the earlier of:
 - (a) the termination of the Head Lease;
 - (b) a breach of a term of this Agreement by any one Party; or
 - (c) 20 years from the date that the Head Lease is granted.

Notices

21. Any notice given by either party to the other will be deemed to be given if in writing and mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province:

Land and Water British Columbia Incorporated.
2080-A Labieux Road
Nanaimo BC V9T 6J9

to Snuneymuxw First Nation:

Snuneymuxw First Nation
668 Centre Street
Nanaimo BC V9R 4Z4

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

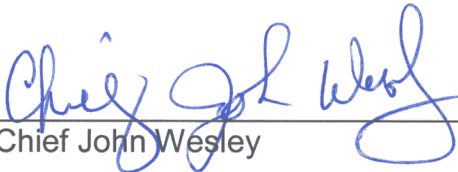
22. To expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided for in section 21.

Amendment

23. Amendments to this Agreement must be in writing and signed by authorized representatives of the Snuneymuxw First Nation and the Province.

SIGNED BY THE PARTIES ON THE DATES SET OUT BELOW.

SIGNED on behalf of the SNUNEYMUXW)
FIRST NATION, as represented by its)
Chief and Band Councillors, for and on)
behalf of the Snuneymuxw First Nation)
and the Snuneymuxw Band Council, on)
the date below:)



Chief John Wesley

March 11, 2002
Date

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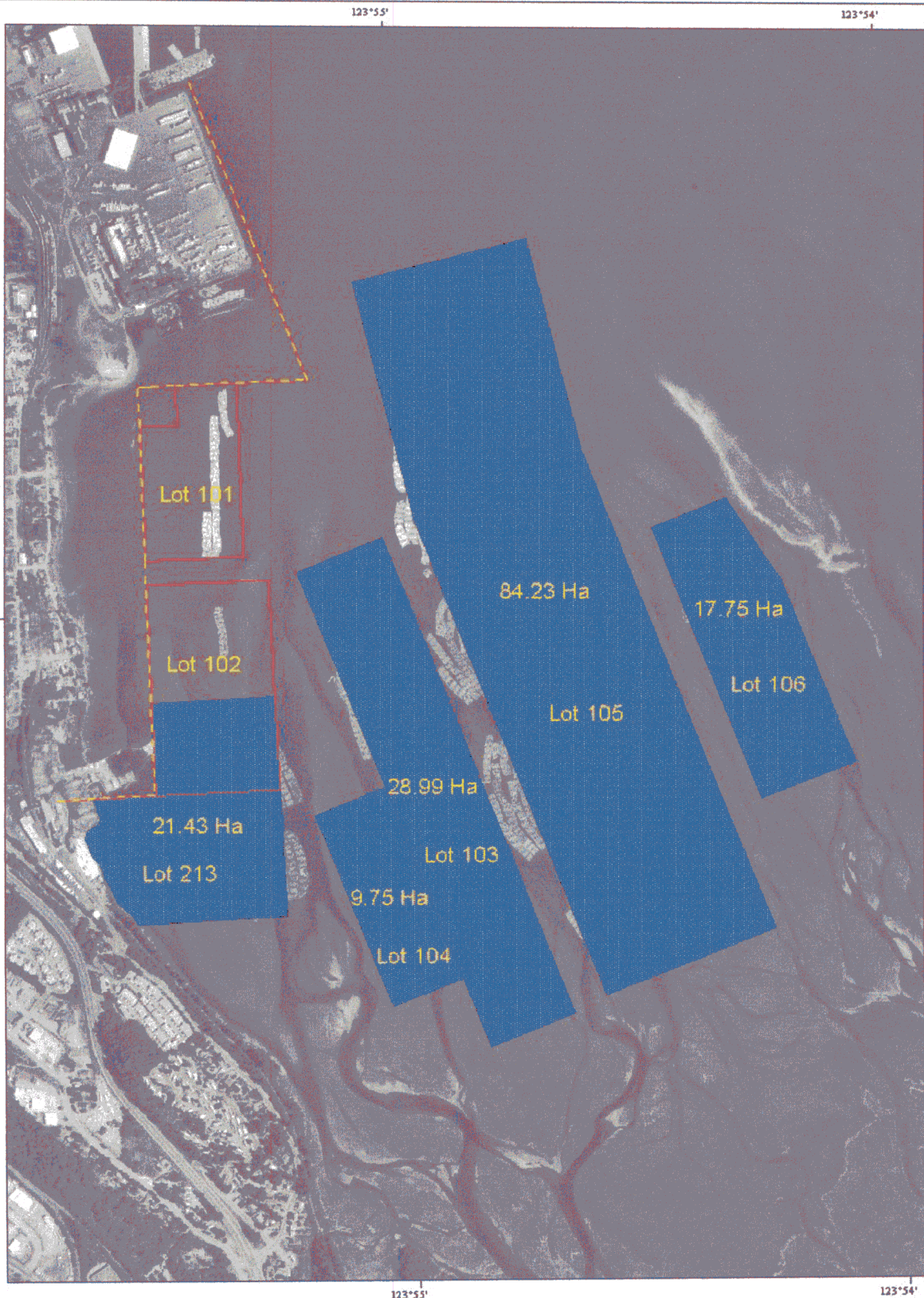
SIGNED on behalf of HER MAJESTY THE)
QUEEN IN RIGHT OF THE PROVINCE)
OF BRITISH COLUMBIA by the Minister of)
Sustainable Resource Management:)

March 11, 2002
Date



The Honourable Stanley B. Hagen

Schedule A: Modified Lease Areas



1:10,000



-  Harbor Boundary
-  Existing Lease
-  Proposed Modified Areas

Nanaimo Estuary

New Lease Area is 162.15 Ha



Brian Cavanagh
 Ministry of Sustainable
 Resource Management
 "Vancouver Island Region"
 March 2002



Schedule B

Shellfish Area Memorandum of Understanding



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Ministry of Sustainable
Resource Management
"Vancouver Island Region"
March 8, 2002

