


# Kitsumkalum Agreement-in-Principle



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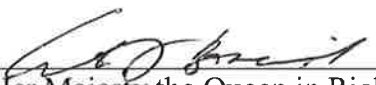
IN WITNESS WHEREOF the parties hereby execute this Agreement-in-Principle this 4  
day of August, 2015, at Kitsumkalum, British Columbia.


**FOR KITSUMKALUM:**

  
Don T. Roberts, Chief Councillor  
Sm'oogit Wiidildal, Waap Lagaax  
Gispudwada, Kitsumkalum

  
Witnessed by: Sm'oogit Hat'axgm Lii Midiik  
Alex Bolton, Treaty Coordinator/Negotiator


**FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA:**

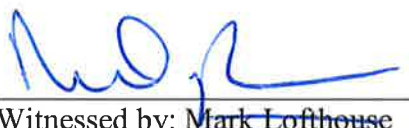
  
Her Majesty the Queen in Right of  
Canada as represented by:

  
Witnessed by: Frank Osendarp  
Chief Federal Negotiator

The Honourable Bernard Valcourt,  
P.C., M.P.  
Minister of Indian Affairs and  
Northern Development

**FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA:**

  
Her Majesty the Queen in Right of  
British Columbia as represented by:

  
Witnessed by: Mark Lofthouse *Neilane mayhew*  
Chief Provincial Negotiator

The Honourable John Rustad,  
Minister of Aboriginal Relations  
And Reconciliation



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## **PREAMBLE**

WHEREAS Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada and the courts have stated that aboriginal rights include aboriginal title;

WHEREAS the courts have stated that reconciliation of the prior presence of aboriginal people and the assertion of sovereignty by the Crown is best achieved through negotiation and agreement rather than through litigation;

WHEREAS the Parties intend that the Final Agreement will set out the right of Kitsumkalum to practice the Tsimshian culture and use the Sm'algyx language in a manner consistent with the Final Agreement;

WHEREAS the Parties intend to negotiate a Final Agreement to provide a basis for this reconciliation and to provide a basis for a new relationship;

WHEREAS the negotiations of this Agreement have been conducted in an atmosphere of mutual respect and openness;

WHEREAS the Parties have negotiated this Agreement under the British Columbia treaty process;

WHEREAS the Parties desire certainty in respect of Kitsumkalum ownership and use of lands and resources, Kitsumkalum law-making authority and the relationship of Federal Law, Provincial Law and Kitsumkalum Law; and

WHEREAS this Agreement sets out the principles agreed to by the Parties as the basis for negotiating a Final Agreement;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:





## CHAPTER 1 – DEFINITIONS

In this Agreement:

**“Administrative Penalty”** means a sanction or monetary penalty assessed and imposed under a statutory regime in which liability for breach of a regulatory requirement and the sanction or quantum of the monetary penalty are determined through an administrative process, rather than through prosecution or through an action in the civil courts.

**“Agreed-Upon Programs and Services”** means those programs and services, that will be set out in a Fiscal Financing Agreement, to be made available by Kitsumkalum, towards which Canada or British Columbia agree to contribute funding.

**“Agreement”** means this Agreement-in-Principle including all Schedules and Appendices to it.

**“Allocation”** means in respect of a right to harvest Wildlife or Migratory Birds:

- a) a defined harvest quantity or quota; or
  - b) a formula defining a harvest quantity or quota,
- if required as a conservation measure.

**“Aquatic Plants”** includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all marine and freshwater flowering plants, ferns and mosses, growing in water or in soils that are saturated during most of the growing season.

**“Archaeological Human Remains”** means human remains that are of aboriginal ancestry and not the subject of a police or coroner investigation.

**“Available Flow”** means the volume of flow of water, determined by British Columbia, to be above that required:

- a) to ensure conservation of Fish and Stream habitats;
  - b) to continue navigability;
  - c) under Water Licences issued before and Water Licences issued under applications made before a date or dates agreed to by the Parties during Final Agreement negotiations,
- and taking into account any applicable requirements under Federal Law and Provincial Law.

**“Band”** has the same meaning as “band” under the *Indian Act*.

**“BC Hydro”** means the British Columbia Hydro and Power Authority and its successors and assigns.

**“BC Hydro Line”** means the existing BC Hydro 138 kV transmission line from the Skeena substation near Terrace, British Columbia to the Aiyansh substation near Aiyansh, British Columbia

**“British Columbia”** means, unless the context otherwise requires, Her Majesty the Queen in right of the Province of British Columbia

**“Canada”** means, unless the context otherwise requires, Her Majesty the Queen in right of Canada

**“Capital Transfer”** means an amount paid by Canada or British Columbia to Kitsumkalum under the Capital Transfer and Negotiation Loan Repayment Chapter.

**“Child”** means an individual under the age of majority under Provincial Law.

**“Child Care”** means the care, supervision, social or educational training, including pre-school education, or physical or mental rehabilitative therapy of children under the age of 13 years, with or without charge, by caregivers other than the child’s parent, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a Kitsumkalum Law under paragraph 106 of the Self-Government Chapter.

**“Child in Care”** means a Child who is in the custody, care or guardianship of a Director or an individual with comparable authority under Kitsumkalum Law.

**“Child in Need of Protection”** has the same meaning as under Provincial Law.

**“Child Protection Service”** means a service that provides for the protection of Children, where the primary objective is the safety and well-being of Children, having due regard for:

- a) the protection from abuse, neglect or harm, or threat of abuse, neglect or harm, and any need for intervention;
- b) Children in Care;
- c) the support of families and caregivers to provide a safe environment and prevent abuse, neglect or harm, or threat of abuse, neglect or harm; and
- d) the support of kinship ties and a Child’s attachment to the extended family.

**“Community Correctional Services”** means:

- a) community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody centre;
- b) preparation of reports for courts, correctional centres, youth custody centres, crown counsel and parole boards;
- c) supervision of diverted offenders and development and operation of diversion programs;
- d) community-based programs and interventions for offenders, including alternative to custody programs;
- e) identification of and referral to appropriate community resources;
- f) programs to meet the needs of youth in conflict with the law; and
- g) other community correctional and community youth justice services as may be delivered by British Columbia or Canada.

**“Conflict”** means an actual conflict in operation or an operational incompatibility.

**“Consult”** and **“Consultation”** mean provision to a Party of:

- a) notice of a matter to be decided;
- b) sufficient information in respect of the matter to permit the Party to prepare its views on the matter;
- c) a reasonable period of time to permit the Party to prepare its views on the matter;
- d) an opportunity for the Party to present its views on the matter; and
- e) a full and fair consideration of any views on the matter so presented by the Party.

**“Contaminated Site”** means a “contaminated site” as defined in the *Environmental Management Act*.

**“Contamination”** has the same meaning as contamination under Provincial Law.

**“Crown”** means Her Majesty the Queen in right of Canada or Her Majesty the Queen in right of British Columbia, as the case may be.

**“Crown Corridor”** means a road, highway or right-of-way, including the road allowance, that is on Crown land and is used for transportation or public utility purposes that are set out in Appendix D.

**“Direct”** has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*.

**“Director”** means a person designated by the Minister under the *Child, Family and Community Service Act* or the *Adoption Act*.

**“Disagreement”** means any dispute or negotiation to which paragraph 7 of the Dispute Resolution Chapter applies.

**“Dispose”** or **“Disposition”** means, except in Chapter 20 Taxation, to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divert, release, and to agree to do any of those things.

**“Domestic Purposes”** means food, social and ceremonial purposes.

**“Effective Date”** means the date on which the Final Agreement takes effect.

**“Eligibility Criteria”** means the criteria established in accordance with paragraph 2 of the Eligibility and Enrolment Chapter.

**“Enrolment Appeal Board”** means the appeal board established in accordance with paragraph 21 of the Eligibility and Enrolment Chapter.

**“Enrolment Committee”** means the committee established in accordance with paragraph 13 of the Eligibility and Enrolment Chapter.

**“Enrolment Register”** means the register established under subparagraph 15.c) of the Eligibility and Enrolment Chapter.

**“Environment”** means the components of the Earth and includes:

- a) air, land, and water including all layers of the atmosphere;
- b) all organic and inorganic matter and living organisms; and
- c) the interacting natural systems that include components referred to in (a) and (b).

**“Environmental Assessment”** means an assessment of the environmental effects of a project.

**“Environmental Emergency”** means an uncontrolled, unplanned, or accidental release, or release in contravention of Federal Law, Provincial Law or Kitsumkalum Law, of a substance into the Environment or the reasonable likelihood of such a release into the Environment, that:

- a) has or may have an immediate or long-term harmful effect on the Environment;
- b) constitutes or may constitute a danger to the Environment on which human life depends;  
or
- c) constitutes or may constitute a danger to human life or health.

**“Federal Expropriating Authority”** means the Government of Canada or any other Person authorized under federal legislation to expropriate land or an interest in land.

**“Federal Law”** includes federal statutes, regulations, ordinances, Orders-in-Council and the common law.

**“Federal Project”** means a “project” on federal lands or “designated project”, as defined in the *Canadian Environmental Assessment Act, 2012*, that is subject to an Environmental Assessment under the Act.

**“Federal Settlement Legislation”** means the Act of Parliament that gives effect to the Final Agreement.

**“Final Agreement”** means the agreement among Kitsumkalum, Canada and British Columbia which will be negotiated based on this Agreement.

**“First Nation Government in British Columbia”** means the government of a First Nation in British Columbia which has a treaty or a lands claims agreement in effect with Canada and British Columbia.

**“Fiscal Financing Agreement”** means an agreement negotiated among the Parties in accordance with the Fiscal Relations Chapter of the Final Agreement.

**“Fish”** means:

- a) fish, shellfish, crustaceans and marine animals excluding whales;
- b) the parts of fish, shellfish, crustaceans, and marine animals excluding whales; and
- c) the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals excluding whales.

**“Forest Practices”** means Timber harvesting, road construction, road maintenance, road use, road deactivation, silviculture treatments, including grazing for the purposes of brushing, botanical forest products collecting, and fire use, but does not include Timber marking or scaling, manufacture of Timber, or export of Timber.

**“Forest Resources”** means all Timber Resources and Non-Timber Resources, including all biota, but does not include Wildlife, Migratory Birds, water, Fish or Aquatic Plants.

**“Former Federal Lands”** means any lands which are transferred to Kitsumkalum on the Effective Date which were under the ownership, administration or control of Canada immediately before the Effective Date.

**“Former Kitsumkalum Indian Reserves”** means the lands identified in Appendix B-2.

**“Gathering Area”** means the areas to be set out in Appendix F to the Final Agreement, but does not include lands that are administered or occupied by the Minister of National Defence or areas

temporarily being used for military training from the time that notice has been given to Kitsumkalum until the temporary use is completed.

**“Geothermal Resources”** means the natural heat of the Earth and all substances that derive an added value from it, including steam, water and water vapour heated by the natural heat of the Earth and all substances dissolved in the steam, water or water vapour obtained from a well, but does not include:

- a) water that has a temperature less than 80°C at the point where it reaches the surface; or
- b) hydrocarbons.

**“Groundwater”** means water below the surface of the ground.

**“Harvest Area”** means the areas to be set out in Appendix F to the Final Agreement, but does not include lands that are administered or occupied by federal departments or agencies or areas temporarily being used for military training from the time that notice has been given to Kitsumkalum until the temporary use is completed.

**“Heritage Site”** means a site of archaeological, historical or cultural significance including graves and burial sites.

**“Implementation Plan”** means the plan described under the Implementation Chapter of the Final Agreement.

**“Indian”** has the same meaning as “Indian” in the *Indian Act*.

**“Indian Reserve”** has the same meaning as “reserve” in the *Indian Act*.

**“Initial Enrolment Period”** means the period of time during which the Enrolment Committee operates, to be determined in the Final Agreement.

**“Intellectual Property”** means any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including, but not limited to, any rights relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights.

**“Kitsumkalum”** means the collectivity that comprises all Kitsumkalum individuals.

**“Kitsumkalum Archaeological Human Remains”** means Archaeological Human Remains that are determined to be of Kitsumkalum ancestry.

**“Kitsumkalum Area”** means the area to be set out in Appendix A to the Final Agreement.

**“Kitsumkalum Artifact”** means any object created by, traded to, commissioned by, or given as a gift to a Kitsumkalum individual or the Kitsumkalum community, or that originated from the Kitsumkalum community, and that has past and ongoing importance to Kitsumkalum culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to another aboriginal group or Person.

**“Kitsumkalum Capital”** means all land, cash and other assets transferred to Kitsumkalum, or recognized as owned by Kitsumkalum, under the Final Agreement.

**“Kitsumkalum Certificate”** means a certificate of the Kitsumkalum Government as described under subparagraph 7(b) of the Land Title Chapter.

**“Kitsumkalum Child”** means a Child who is a Kitsumkalum Member.

**“Kitsumkalum Constitution”** means the constitution of Kitsumkalum as provided for and ratified in accordance with the Final Agreement.

**“Kitsumkalum Corporation”** means a corporation that is incorporated under Federal Law or Provincial Law, all of the shares of which, except any qualifying shares that directors are required to own under Federal Law or Provincial Law, are owned legally and beneficially by:

- a) Kitsumkalum;
- b) one or more Kitsumkalum settlement trusts;
- c) one or more corporations where each such corporation is itself a Kitsumkalum Corporation; or
- d) any combination of Persons set out in (a), (b) and (c).

**“Kitsumkalum Family”** means a family where one or both parents or guardians live together with one or more Children and:

- a) at least one of the parents or guardians is a Kitsumkalum Member; or
- b) at least one of the Children is a Kitsumkalum Child.

**“Kitsumkalum Government”** means the government of Kitsumkalum.

**“Kitsumkalum Institution”** means the Kitsumkalum Government or a Kitsumkalum Public Institution.

**“Kitsumkalum Lands”** means those lands identified in Appendix B.

**“Kitsumkalum Law”** means a law made pursuant to Kitsumkalum law-making authority set out in the Final Agreement and includes the Kitsumkalum Constitution.

**“Kitsumkalum Member”** means an individual who is enrolled under the Final Agreement in accordance with the Eligibility and Enrolment Chapter.

**“Kitsumkalum Private Lands”** means those Kitsumkalum Lands that have been designated as Kitsumkalum Private Lands.

**“Kitsumkalum Project”** means a project on Kitsumkalum Lands that is subject to an Environmental Assessment under Kitsumkalum Law but does not include a Provincial Project.

**“Kitsumkalum Public Institution”** means a body, board, commission or any other similar entity established under Kitsumkalum Law, including a school board or health board, but for greater certainty does not include the Kitsumkalum Government.

**“Kitsumkalum Public Lands”** means Kitsumkalum Lands other than Kitsumkalum Private Lands.

**“Kitsumkalum Public Officer”** means:

- a) a member, commissioner, director, or trustee of a Kitsumkalum Public Institution;
- b) a director, officer or employee of a Kitsumkalum Corporation whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or municipal governments, rather than to engage in commercial activities;
- c) an officer or employee of the Kitsumkalum Government or a Kitsumkalum Institution;
- d) an election official within the meaning of a Kitsumkalum Law; or
- e) a volunteer who participates in the delivery of services by Kitsumkalum, a Kitsumkalum Institution, or a body referred to in (b), under the supervision of an officer or employee

of Kitsumkalum, a Kitsumkalum Institution, or a body referred to a body referred to in (b).

**“Kitsumkalum Right to Gather Plants”** means the right of Kitsumkalum to gather Plants under the Final Agreement.

**“Kitsumkalum Right to Harvest Migratory Birds”** means the right of Kitsumkalum to harvest Migratory Birds under the Final Agreement.

**“Kitsumkalum Right to Harvest Wildlife”** means the right of Kitsumkalum to harvest Wildlife under the Final Agreement.

**“Kitsumkalum Road”** means any road on Kitsumkalum Lands under the administration and control of Kitsumkalum, including any road set out in Appendix B to the Final Agreement.

**“Kitsumkalum Section 35 Rights”** means the rights, anywhere in Canada, of Kitsumkalum, that are recognized or affirmed by section 35 of the *Constitution Act, 1982*.

**“Local Government”** has the same meaning as “local government” in the *Local Government Act*.

**“Logs”** means logs of all species of wood which are controlled under Canada’s Export Control List, Group 5, Item number 5101, pursuant to section 3(1)(e) of the *Export and Import Permits Act*.

**“Member”** means an individual who is enrolled and entitled to benefits under the Final Agreement.

**“Migratory Birds”** means “migratory birds” as defined under Federal Law enacted further to international conventions that are binding on British Columbia, and for greater certainty, includes their eggs and inedible by-products such as feathers and down.

**“Mineral”** means an ore of metal, or natural substance that can be mined, and includes rock, dimension stone, and other materials from mine tailings, dumps and previously mined deposits of minerals.

**“Minister”** means the federal or provincial minister having responsibility for the exercise of powers in relation to the matter in question and any person with authority to act in respect of the matter in question.

**“National Marine Conservation Area”** means lands and water areas named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law and includes a national marine conservation area reserve.

**“National Park”** means the lands and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law and includes a national park reserve.

**“Natural Gas”** means all fluid hydrocarbons that are not defined as Petroleum, and includes coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well.

**“NAV CANADA”** means the “Corporation” as that term is defined in the *Civil Air Navigation Services Commercialization Act*.

**“Neutral”** means an individual appointed to assist the Parties to resolve a Disagreement and, except in subparagraph 24.d) of the Dispute Resolution Chapter and Appendix J, includes an arbitrator.

**“Neutral Appointing Authority”** means the British Columbia International Commercial Arbitration Centre, or if the centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties.

**“Non-Member Resident”** means an individual who has reached the age of majority under Provincial Law, is ordinarily resident on Kitsumkalum Lands and is not a Kitsumkalum Member.

**“Non-Timber Resources”** means all Forest Resources, other than Timber Resources, including medicinal plants, fungi, branches, bark, cones, bushes, roots, moss, mushrooms, ferns, floral greens, herbs, berries, spices, seeds and plants associated with grazing.

**“NTL Project”** means the BC Hydro NTL Project, generally consisting of the construction of a nominal 287 kV AC transmission line from the Skeena substation near Terrace, British Columbia, to a new substation to be constructed at Bob Quinn Lake, British Columbia following the proposed western route, which BC Hydro proposes to undertake to enhance and expand the transmission system in the northwest region of British Columbia, all as more fully described in BC Hydro’s application for an Environmental Assessment Certificate, together with any changes agreed to by BC Hydro.

**“Parties”** means Kitsumkalum, Canada and British Columbia and **“Party”** means any one of them.

**“Periodic Review Date”** means the 15th anniversary of the Effective Date or a date that occurs every 15 years after that date.

**“Person”** includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity, or a government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives.

**“Petroleum”** means crude petroleum and all other hydrocarbons, regardless of specific gravity, that are or can be recovered in liquid form from a pool or that are or can be recovered from oil sand or oil shale.

**“Placer Mineral”** means ore of metal and every natural substance that can be mined and that is either loose, or found in fragmentary or broken rock that is not talus rock and occurs in loose earth, gravel and sand, and includes rock or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals.

**“Plants”** means all flora and fungi, but does not include Aquatic Plants or Timber Resources except for the bark, boughs, burls and roots of Timber Resources.

**“Private Lands”** means, for the purposes of the Forest Resources Chapter, lands that are not Crown lands.

**“Provincial Expropriating Authority”** means a provincial ministry or agency or any person with the authority to expropriate land or an interest in land under provincial legislation.

**“Provincial Law”** includes provincial statutes, regulations, ordinances, Orders-in-Council, by-laws and the common law.

**“Provincial Project”** means a “reviewable project” as defined in the British Columbia *Environmental Assessment Act* and that is subject to an Environmental Assessment under that Act.

**“Provincial Protected Area”** means provincial Crown land established or designated as a provincial park, ecological reserve, conservancy or protected area under Provincial Law.

**“Provincial Road”** means a road under the administration and control of British Columbia.

**“Provincial Settlement Legislation”** means the Act of Legislature that gives effect to the Final Agreement.

**“Public Planning Process”** means a planning process established by British Columbia to develop:



- a) plans, objectives or guidelines for land, marine or resource use, at any of a variety of scales from the regional to the landscape level; and
- b) plans, objectives or guidelines for specific land, marine and resource use sectors, such as commercial recreation, but not operational plans concerning specific land, marine and resource use proposals.

**“Public Utility”** means:

- a) A Person, or the Person’s lessee, trustee, receiver or liquidator who owns or operates in British Columbia equipment or facilities for the:
  - i) production, gathering processing, storage, transmission, sale, supply, distribution or delivery of petroleum, or petroleum products or by-products;
  - ii) production, generation, gathering, processing, storage, transmission, sale, supply, distribution or delivery of gas (including natural gas, natural gas liquids, propane, and coal bed methane), electricity, steam or water or any other agent for the production of light, heat, cold or power;
  - iii) emission, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation; or
- b) a local or regional authority providing services in connection with air quality, dikes, water, sewage, solid waste disposal and wastewater treatment,

but for the purposes of this definition, Person does not include a Person engaged in the petroleum industry who is not otherwise a Public Utility.

**“Railway”** means a company, established under Provincial Law or Federal Law, authorized to construct, own or operate a railway, including:

- a) all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels, or other structures connected with the railway, and
- b) communications or signalling systems and related facilities and equipment used for railway purposes.

**“Railway Corridors”** means any lands identified as “Railway Corridor” in the Appendices to the Final Agreement.

**“Range Practices”** means:

- a) grazing of livestock;
- b) cutting of hay;
- c) activities related to grazing of livestock or cutting of hay; or
- d) activities related to constructing, modifying, or maintaining a structure, an excavation, a livestock trail, or an improvement to forage quality or quantity for purposes of range development.

**“Range Resources”** means those plant communities that are associated with grazing.

**“Ratification Committee”** means the committee established in accordance with paragraph 3 of the Ratification of the Final Agreement Chapter.

**“Registrar”** means the “registrar” as defined in the *Land Title Act*.

**“Responsible Person”** means a “responsible person” as defined in the *Environmental Management Act*.

**“Review Period”** means a time period beginning on a Periodic Review Date, and ending on a date six months later, or another date as the Parties may agree.

**“Right of Way”** means an interest in a defined area of land on which a grant is given for a specified use, including use for a road, Public Utility or Railway.

**“Safety and Well-Being of Children”** includes those guiding principles under section 2 of the *Child, Family and Community Service Act*.

**“Settlement Legislation”** means Federal Settlement Legislation and Provincial Settlement Legislation.

**“Site Profile”** means “site profile” as defined in the *Environmental Management Act*.

**“Species at Risk”** means a species that is identified by federal legislation as an extirpated, endangered or threatened species or a species of special concern.

**“Specific Claims Policy”** means the policy described in the Specific Claims Policy and Process Guide (2009).

**“Stream”** means a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch, but does not include Groundwater.

**“Submerged Lands”** means lands below the “natural boundary” as defined in the *Land Act*.

**“Subsurface Resources”** means:

- a) earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- b) slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash and rock;
- c) minerals, including Placer Minerals;
- d) coal, Petroleum and Natural Gas;
- e) Geothermal Resources; and
- f) fossils.

**“Subsurface Tenures”** means those tenures to be listed in Appendix C-3 of the Final Agreement.

**“Surveyor General’s Guidelines”** means guidelines published by the British Columbia Surveyor General which instruct a British Columbia Land Surveyor as to a specific methodology to follow in undertaking a particular component(s) of the field survey and/or preparation of a survey plan required by the Final Agreement.

**“Tenured Subsurface Resources”** means those Subsurface Resources subject to Subsurface Tenures.

**“Timber”** or **“Timber Resources”** means trees, whether living, standing, dead, fallen, limbed, bucked or peeled.

**“Trade and Barter”** does not include sale.

**“Water Licence”** means a licence, approval or other authorization under Provincial Law for the storage, diversion, extraction or use of water and for the construction, maintenance and operation of works.

**“Wildfire Suppression Agreement”** means an agreement entered into by British Columbia, Canada, and Kitsumkalum in accordance with paragraph 17 of the Forest Resources Chapter.

**“Wildlife”** means:

- a) all vertebrate and invertebrate animals, including mammals, birds, reptiles, and amphibians; and
- b) the eggs, juvenile states, and adult stages of all vertebrate and invertebrate animals, but does not include Fish or Migratory Birds.

**“Wildlife Management Area”** means provincial Crown land established as a Wildlife management area under Provincial Law.



## CHAPTER 2 - GENERAL PROVISIONS

### **Nature of this Agreement**

1. The Parties acknowledge and agree that this Agreement and any of its provisions are not legally binding on any of the Parties and are without prejudice to the respective legal positions of the Parties before the Effective Date and neither this Agreement nor any related communications over the course of these negotiations will be used against any of the Parties in any court proceeding or any other forum, including international fora, or be construed as creating, abrogating, negating, denying, recognizing, defining, or amending any rights or obligations of any of the Parties except as expressly provided for in the Final Agreement only upon the Effective Date.
2. Based upon this Agreement, the Parties will begin as soon as practicable to negotiate a Final Agreement.
3. Before the conclusion of a Final Agreement, the Parties will address fisheries matters and make changes to any other parts of the Final Agreement, including the certainty provisions, that may be affected, and the Final Agreement will reflect the agreement of the Parties.

### **Nature of the Final Agreement**

4. The Final Agreement, once ratified by the Parties, will be legally binding and can be relied on by all Parties and all persons.
5. Upon ratification of the Final Agreement by the Parties, the Final Agreement will be a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
6. Canada and British Columbia will recommend to Parliament and the Legislature, respectively, Settlement Legislation to bring into effect the Final Agreement.
7. Ratification of the Final Agreement by the Parties in accordance with the Ratification Chapter is a condition precedent to the validity of the Final Agreement and, unless so ratified, the Final Agreement is of no force or effect.

### **Assurances**

8. Kitsumkalum will represent and warrant to Canada and British Columbia in the Final Agreement that, in respect of the matters dealt with in the Final Agreement, it has the authority to enter into the Final Agreement on behalf of all persons who through Kitsumkalum have or may exercise any aboriginal rights, including aboriginal title, in Canada, or who may make any claims to such rights.
9. Canada and British Columbia represent and warrant to Kitsumkalum that, in relation to the matters dealt with in the Final Agreement, they have the authority to enter into the Final Agreement within their respective authorities.

### **Constitution of Canada**

10. The Final Agreement will not alter the Constitution of Canada, including:
  - a) the distribution of powers between Canada and British Columbia;
  - b) the identity of Kitsumkalum as aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c) sections 25 and 35 of the *Constitution Act, 1982*.
11. The Final Agreement will provide that the *Canadian Charter of Rights and Freedoms*, including section 25, applies to the Kitsumkalum Government in respect of all matters within its authority.

### **Character of Kitsumkalum Lands and Other Kitsumkalum Lands**

12. After the Effective Date, there will be no “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for Kitsumkalum and there will be no Indian Reserves for the use and benefit of Kitsumkalum and, for greater certainty, Kitsumkalum Lands are not “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1876*, and is not an Indian Reserve.

### **Application of Federal Law and Provincial Law**

13. Any licence, permit or other authorization to be issued by Canada or British Columbia under the Final Agreement will be issued under Federal Law or Provincial Law and will not be part of the Final Agreement, and the Final Agreement will prevail to the extent of any Conflict or inconsistency with the licence, permit or other authorization.
14. Federal Law and Provincial Law will apply to Kitsumkalum, Kitsumkalum Members, Kitsumkalum Institutions, Kitsumkalum Corporations, and on Kitsumkalum Lands.
15. The Final Agreement will confirm that Federal Settlement Legislation enacted to bring into effect the Final Agreement will prevail over other Federal Law to the extent of any Conflict, and Provincial Settlement Legislation enacted to bring into effect the Final Agreement will prevail over other Provincial Law to the extent of any Conflict.
16. The Final Agreement will prevail to the extent of any Conflict or inconsistency with a Federal Law or Provincial Law.

### **Relationship of Laws**

17. Notwithstanding any other rule of priority in the Final Agreement, if the Kitsumkalum Law has an incidental impact on, or if one of the aspects of the Kitsumkalum Law is with respect to, a subject matter over which:
  - a) the Kitsumkalum Government will not have law-making authority under the Final Agreement; or
  - b) the Kitsumkalum Government will have law-making authority under the Final Agreement but for which Federal Law and Provincial Law prevail to the extent of a conflict,

and if the Kitsumkalum Law is in Conflict with a Federal Law or Provincial Law, then the Federal Law or Provincial Law will prevail to the extent of the Conflict.

18. Notwithstanding any other rule of priority in the Final Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, and the protection of the health and safety of all Canadians, or other matters of overriding national importance will prevail in the event of any Conflict with Kitsumkalum Law.
19. Canada will recommend to Parliament that Federal Settlement Legislation enacted to bring into effect the Final Agreement make Provincial Law apply to Kitsumkalum, Kitsumkalum Institutions, Kitsumkalum Members, Kitsumkalum Lands and other Kitsumkalum lands if those Provincial Laws do not apply of their own force.
20. Unless otherwise provided in the Final Agreement, Kitsumkalum Law will not apply to Canada or British Columbia.
21. Any Kitsumkalum Law that is inconsistent or in Conflict with the Final Agreement will be of no force or effect to the extent of the inconsistency or Conflict.
22. The Final Agreement will provide for the consistency of Kitsumkalum Law and other exercises of power with Canada's international legal obligations.
23. For greater certainty, Kitsumkalum law-making authorities set out in the Final Agreement do not extend to criminal law and procedure, Intellectual Property, official languages of Canada, aeronautics, navigation, shipping, and labour relations and working conditions.

#### **Application of the *Indian Act***

24. Except for the purposes of determining whether an individual is an Indian, and subject to the Indian Act Transition and the Taxation Chapters, the *Indian Act* will have no application to Kitsumkalum, Kitsumkalum Members, Kitsumkalum Institutions or Kitsumkalum Lands as of the Effective Date.

#### **Other Rights, Benefits and Programs**

25. The Final Agreement will not affect the ability of Kitsumkalum Members to enjoy rights and benefits for which they would be eligible as Canadian citizens or permanent residents of Canada.
26. Subject to paragraph 27, nothing in the Final Agreement will affect the ability of Kitsumkalum, Kitsumkalum Institutions or Kitsumkalum Members to participate in, or benefit from, federal or provincial programs for aboriginal people, registered Indians or other Indians, in accordance with general criteria established for those programs from time to time.
27. Kitsumkalum Members will be eligible to participate in programs established by Canada or British Columbia and to receive public services from Canada or British Columbia, in accordance with general criteria established for those programs or services from time to time, to the extent that Kitsumkalum has not assumed responsibility for those programs or public services under the Fiscal Financing Agreement.

#### **Court Decisions**

28. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines any provision of the Final Agreement is invalid or unenforceable:
  - a) the Parties will make best efforts to amend the Final Agreement to remedy or replace the provision; and

- b) the provision will be severable from the Final Agreement to the extent of the invalidity or unenforceability, and the remainder of the Final Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.
29. No Party will challenge, or support a challenge to, the validity of any provision of the Final Agreement.
30. A breach of the Final Agreement by a Party does not relieve any Party from its obligations under the Final Agreement.

### **Certainty**

#### ***Full and Final Settlement***

31. The Final Agreement will constitute the full and final settlement in respect of any aboriginal rights, including aboriginal title, in Canada that Kitsumkalum may have.

#### ***Exhaustively Set Out Rights***

32. The Final Agreement will exhaustively set out Kitsumkalum Section 35 Rights, the attributes and the geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed, and those rights will be:
- a) any aboriginal rights, including aboriginal title, modified as a result of the Final Agreement and the Settlement Legislation, of Kitsumkalum in and to its Kitsumkalum Lands and other lands and resources in Canada;
  - b) the jurisdictions, authorities and rights of Kitsumkalum and the Kitsumkalum Government; and,
  - c) the other Kitsumkalum Section 35 Rights.

#### ***Modification and Continuation***

33. Notwithstanding the common law, as a result of the Final Agreement and the Settlement Legislation, any aboriginal rights, including any aboriginal title, of Kitsumkalum, as they may have existed anywhere in Canada before the Effective Date, including the attributes and geographic extent of those rights, are modified, and continue as modified, as set out in the Final Agreement.
34. For greater certainty, any aboriginal title of Kitsumkalum anywhere that it may have existed in Canada before the Effective Date, including its attributes and geographic extent will be modified and continue as the estates in fee simple to those areas identified in the Final Agreement as Kitsumkalum Lands.

#### ***Purpose of Modification***

35. The purpose of the modification referred to in paragraph 32, will be to ensure that as of the Effective Date:
- a) Kitsumkalum has, and can exercise, its Kitsumkalum Section 35 Rights set out in the Final Agreement, including the attributes and geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed;
  - b) Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with the Final Agreement; and



- c) Canada, British Columbia and all other persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, that Kitsumkalum may have to the extent that those rights, including title, might be in any way other than or different in attributes or geographic extent from, the Kitsumkalum Section 35 Rights set out in the Final Agreement.

***Rights Not Extinguished***

- 36. For greater certainty, any aboriginal rights including aboriginal title that Kitsumkalum may have will not be extinguished but will be modified and continue as modified as set out in the Final Agreement.

***Release of Past Claims***

- 37. The Final Agreement will provide that Kitsumkalum will release Canada, British Columbia and all other persons from all suits, claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that Kitsumkalum ever had, now has or may have in the future, relating to or arising from any act or omission before the Effective Date that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of Kitsumkalum as it may have existed anywhere in Canada before the Effective Date.

***Indemnities***

- 38. The Final Agreement will provide that Kitsumkalum will indemnify and forever save harmless Canada or British Columbia, as they case may be, from any and all damages, costs, excluding fees and disbursements of solicitors and other professional advisors, losses or liabilities, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, cause of action, claim, proceeding or demand before or after the Effective Date relating to or arising from:
  - a) the existence of an aboriginal right, including aboriginal title, of Kitsumkalum that is determined to be other than, or different in attributes or geographical extent from, the Kitsumkalum Section 35 Rights set out in the Final Agreement; or
  - b) any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of Kitsumkalum as it may have existed anywhere in Canada before the Effective Date.
- 39. The Final Agreement will provide that a Party who is the subject of a suit, claim, demand, action or proceeding that may give rise to a requirement to provide payment to that Party pursuant to an indemnity under the Final Agreement:
  - a) will vigorously defend the suit, claim, demand, action or proceeding; and
  - b) will not settle or compromise the suit, claim, demand, action or proceeding except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

***Specific Claims***

- 40. Notwithstanding any other provision of the Final Agreement, nothing in the Final Agreement will preclude Kitsumkalum from pursuing any claims that fall within the scope of Canada's Specific Claims Policy, in accordance with that policy, the *Specific Claims Tribunal Act*, or in court.

41. For greater certainty, if Kitsumkalum pursues a specific claim in court, Canada reserves the right to plead all defences available to it including limitation periods, the doctrine of laches, and lack of admissible evidence, and Kitsumkalum reserves the right to make all possible counter arguments available to it.
42. Claims referred to in paragraph 40 will not result in any land being declared to be, or being set aside as, “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for Kitsumkalum or an Indian Reserve for the use and benefit of Kitsumkalum.

### **Other Aboriginal Peoples**

43. The Final Agreement will not affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than Kitsumkalum.
44. If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than Kitsumkalum, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of this Agreement:
  - a) that provision will operate and have effect to the extent it does not adversely affect that right; and
  - b) if the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend this Agreement to remedy or replace that provision.
45. The Final Agreement will provide that if Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with any other aboriginal people and that treaty or land claims agreement adversely affects a Kitsumkalum Section 35 Right as set out in the Final Agreement:
  - a) Canada or British Columbia, or both, as the case may be, will provide Kitsumkalum with additional or replacement rights or other appropriate remedies; and
  - b) at the request of Kitsumkalum, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies.

### **Periodic Review**

46. The Parties recognize and acknowledge that the Final Agreement will provide a foundation for an ongoing relationship amongst the Parties and commit to conducting a periodic review of the Final Agreement in accordance with paragraphs 47 to 53.
47. At least sixty days before each Periodic Review Date, each Party will provide the other Parties with written notice if the Party wishes to discuss a matter contemplated by paragraph 48, and if no notice is provided by any Party, the Parties will forego engaging in a review for that Review Period.
48. The purpose of the periodic review is to provide an opportunity for the Parties to meet and discuss:
  - a) practicability of the harmonization of the Kitsumkalum legal and administrative systems, including law-making authorities that are being exercised by Kitsumkalum under the Final Agreement, with those of British Columbia and Canada;
  - b) practicability of processes established by the Parties in accordance with the Final Agreement; and

- c) other matters with respect to the implementation of the provisions of the Final Agreement as the Parties may agree in writing.
49. Unless the Parties agree otherwise, the discussion under paragraph 48 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period, and within 60 days of the end of that discussion each Party will provide the other Parties with its written response on any matter discussed during that Review Period.
50. The periodic review contemplated by paragraphs 46 to 53 and all discussions and information relating to the matter of the periodic review are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done with respect to a periodic review, including the discussions or the responses provided by the Parties, except for any amendments made pursuant to paragraph 52, creates any legally binding rights or obligations.
51. Except for the Parties' commitment to meet and provide written responses as set out in paragraph 49, neither the periodic review process contemplated by paragraphs 46 to 53, nor the decisions and actions of the Parties relating in any way to the periodic review process are:
- a) subject to the process set out in the Dispute Resolution Chapter; or
  - b) reviewable by a court or in any other forum.
52. For greater certainty:
- a) none of the Parties are required to agree to amend the Final Agreement or any agreement contemplated by the Final Agreement as a result of the periodic review contemplated by paragraphs 46 to 53;
  - b) if the Parties agree to amend the Final Agreement any such amendment will be made in accordance with paragraphs 54 to 58; and
  - c) if the Parties agree to amend an agreement contemplated by the Final Agreement, the agreement will be amended in accordance with its terms.
53. Each of the Parties will be responsible for its own costs in relation to the periodic review process.

### **Amendment Provisions**

54. The Final Agreement will only be amended with the agreement of the Parties.
55. Any one or more of the Parties may propose an amendment to the Final Agreement.
56. In the event of a proposal pursuant to paragraph 55, the Parties agree that, before they proceed with amending the Final Agreement they may attempt to find other means of satisfying the interests of the Party or Parties proposing the amendment.
57. The processes for ratifying amendments to the Final Agreement after the Effective Date will be set out in the Final Agreement.
58. The Parties agree to take the necessary steps to implement amended provisions of the Final Agreement as soon as possible after the amendment has been ratified by all of the Parties.

## Interpretation

59. To the extent of any inconsistency, the provisions in the General Provisions Chapter of the Final Agreement will prevail over the provisions in the other chapters of the Final Agreement.
60. The terms of the Final Agreement will not be presumed to be interpreted in favour of any Party.
61. No agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by the Final Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by the Final Agreement is:
- a) part of the Final Agreement; or
  - b) a treaty or land claims agreement, or recognizes or affirms aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
62. In this Agreement:
- a) a reference to a statute will include every amendment to it, every regulation made under it, and any law enacted in substitution for, or in replacement of it;
  - b) a reference to “Canada’s international legal obligations” will include those which are in effect on, or after, the Effective Date;
  - c) unless it is otherwise clear from the context, the use of the singular will include the plural, and the use of the plural will include the singular;
  - d) “or” is used in its inclusive sense, meaning X or Y, or both X and Y;
  - e) “and” is used in its joint sense, meaning X and Y, but not either alone;
  - f) “will” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
  - g) “may” is to be construed as permissive, but the use of the words “may not” are to be construed as disempowering;
  - h) “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”;
  - i) “harvest” includes an attempt to harvest;
  - j) unless it is otherwise clear from the context, a reference in a chapter of this Agreement to a “paragraph”, “subparagraph” or “Schedule” means a paragraph, subparagraph or schedule of that chapter, and
  - k) headings and subheadings 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.
63. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to the Final Agreement, including the execution of the Final Agreement.
64. The Final Agreement may set out other provisions concerning interpretation of the Final Agreement.

### **Consultation**

65. The Final Agreement will provide that neither Canada nor British Columbia has any obligation to consult with Kitsumkalum except:
- a) as provided for in the Final Agreement;
  - b) as provided for in federal or provincial legislation;
  - c) as provided for in other agreements with Kitsumkalum; and
  - d) as may be required at common law in relationship to an infringement of a Kitsumkalum Section 35 Right.
66. Nothing in the Final Agreement, nor any action or authority taken, exercised or carried out by Canada or British Columbia in accordance with the Final Agreement is, or will be interpreted as an infringement of a Kitsumkalum Section 35 Right.

### **Information and Privacy**

67. For the purposes of federal and provincial access to information and privacy legislation, information that the Kitsumkalum Government provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
68. If the Kitsumkalum Government requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province for disclosure of that information, but Canada and British Columbia are not required to disclose to the Kitsumkalum Government information that is only available to a particular province or particular provinces or that is not available to any provinces.
69. The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information in accordance with any applicable legislation, including federal and provincial access to information and privacy legislation.
70. Canada or British Columbia may provide information to the Kitsumkalum Government in confidence if Kitsumkalum has made a law or has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
71. Notwithstanding any other provision of this Agreement:
- a) Canada and British Columbia are not required to disclose any information that they are required to or authorized to withhold under any Federal Law or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
  - b) if federal or provincial legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied; and
  - c) the Parties are not required to disclose any information that may be withheld under a privilege at law.

### **Entire Agreement**

72. The Schedules and Appendices to the Final Agreement will form part of the Final Agreement.

73. The Final Agreement will be the entire agreement among the Parties in relation to the subject matter of the Final Agreement and, except as set out in the Final Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting the Final Agreement.

#### **No Implied Waiver**

74. Any waiver of:
- a) a provision of the Final Agreement;
  - b) the performance by a Party of an obligation under the Final Agreement; or
  - c) a default by a Party of an obligation under the Final Agreement,
- will be in writing and signed by the Party or Parties giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

#### **Obligation to Negotiate**

75. Whenever the Parties are obliged under any provision of the Final Agreement to negotiate and attempt to reach agreement, all Parties will participate in the negotiations unless the Parties otherwise agree.
76. Where the Final Agreement provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in the Dispute Resolution Chapter, but none of the Parties are obliged to proceed to arbitration under Stage Three of the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28 of the Dispute Resolution Chapter.

#### **Official Languages**

77. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to the Final Agreement, including the execution of the Final Agreement.

#### **Assignment**

78. Unless the Parties otherwise agree, the Final Agreement may not be assigned, either in whole or in part, by any Party.

#### **Enurement**

79. The Final Agreement will enure to the benefit of and be binding on the Parties and their respective permitted assigns.

#### **Deposit of Final Agreement**

80. The Parties will deposit a copy of the Final Agreement and any amendments to the Final Agreement, including any instruments giving effect to an amendment, in the following locations:
- a) by Canada in:
    - i) the Library of Parliament; and
    - ii) the library of the Department of Indian Affairs and Northern Development in the National Capital Region.
  - b) By British Columbia in:

- i) the Legislative Library of British Columbia; and
- ii) the Office of the Registrar of Land Titles of British Columbia;
- c) by Kitsumkalum in their main office; and
- d) any other locations agreed to by the Parties.

**Notice**

81. In paragraphs 82 to 86, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.
82. Unless otherwise described in this Agreement, a communication between or among the Parties under this Agreement will be in writing and will be:
- a) delivered personally or by courier;
  - b) transmitted by fax or email; or
  - c) mailed by any method for which confirmation of delivery is provided.
83. A communication is considered to have been given, made or delivered, and received:
- a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
  - b) if transmitted by fax or email and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
  - c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
84. The Parties may agree to give, make or deliver a communication by means other than those provided in paragraphs 82 and 83.
85. The Parties will provide to each other addresses for delivery of communications under the Final Agreement, and subject to paragraph 86, will deliver a communication to the address provided by each Party.
86. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address or transmitted to the fax number of, the intended recipient as set out below:

For: Canada

Attention: Minister of Indian Affairs and Northern Development

House of Commons

Room 583, Confederation Building

Ottawa, Ontario

K1A 0A6

Fax Number: (819) 953-4941

For: British Columbia

Attention: Minister of Aboriginal Relations and Reconciliation

Room 310, Parliament Buildings

PO Box 9052 Stn Prov Govt

Victoria, British Columbia

V8W 9E2

Fax Number: (250) 356-6595

For: Kitsumkalum

Attention: Kitsumkalum First Nation

PO Box 544

Terrace, British Columbia

V8G 4B5

Fax Number: (250) 635-4622



## CHAPTER 3 – LANDS

### General

1. On the Effective Date, Kitsumkalum Lands will consist of approximately 45,406.3 hectares, including:
  - a) 597 hectares, more or less, of Former Kitsumkalum Indian Reserves, identified in Appendix B-2;
  - b) 44,809.3 hectares, more or less, of former provincial Crown land, identified in Appendix B-3; and
  - c) other lands identified in Appendix B to the Final Agreement.
2. For greater certainty, the lands identified in Appendix B do not include:
  - a) any fee simple lands held by third parties;
  - b) submerged lands, except where those lands form part of an existing Indian Reserve held on behalf of Kitsumkalum; and
  - c) lands encumbered by Provincial Roads, Rights of Way, gas transmission pipelines, legally established recreation sites and trails or developed gravel pits, as identified in Appendix B to the Final Agreement.
3. For greater certainty, Railway Corridors will not form part of Kitsumkalum Lands.
4. Subject to paragraph 3, the Parties agree that Kitsumkalum may raise further issues or concerns regarding the exclusion of Railway Corridors from Kitsumkalum Lands during Final Agreement negotiations.
5. As soon as practicable after this Agreement is signed, Canada and British Columbia, as appropriate, will seek approval to protect the provincial Crown land referred to in subparagraph 1(b). British Columbia will seek the approval to put in place:
  - a) a Part 13 designation under the *Forest Act*;
  - b) a section 16 map reserve under the *Land Act*; and
  - c) a no staking reserve and no disposition notice under the *Mineral Tenure Act*.
6. As soon as practicable after this Agreement is approved by Kitsumkalum, British Columbia will implement the Kitsumkalum Incremental Treaty Agreement for the transfer of 158 hectares more or less to a company designated by Kitsumkalum.

### Other Kitsumkalum Lands

7. The Parties understand that before the Final Agreement, Kitsumkalum will propose other land for consideration during Final Agreement negotiations, including lands linked with traditional harvest sites in the coastal area.
8. The Final Agreement will provide a process for agreed upon fee simple lands acquired by Kitsumkalum to be included as Kitsumkalum Lands.
9. Kitsumkalum ownership of any lands that may be agreed upon in paragraph 8 will be:

- a) subject to interests identified in Appendix C to the Final Agreement; and
  - b) will not include Subsurface Resources unless the Subsurface Resources were included in the original grant.
10. In the event that Kitsumkalum will be required to issue replacement tenures on lands referred to in paragraph 8, or to assume existing tenures, the terms and conditions of those tenures will be included as part of the Final Agreement.

### **Ownership of Kitsumkalum Lands**

11. On the Effective Date, Kitsumkalum will own Kitsumkalum Lands in fee simple and Kitsumkalum fee simple ownership of Kitsumkalum Lands will not be subject to any condition, proviso, restriction, exception, or reservation set out in the *Land Act*, or any comparable limitation under Federal Law or Provincial Law.
12. In accordance with the Final Agreement, Kitsumkalum Constitution, and Kitsumkalum Law, Kitsumkalum may transfer interests in its Kitsumkalum Lands without the consent of Canada or British Columbia.
13. Except as provided in paragraph 15 of Appendix E, or with the consent of Canada and British Columbia in accordance with paragraph 16, a parcel of Kitsumkalum Lands does not cease to be Kitsumkalum Lands as a result of the disposition of an interest in such parcel.
14. If Kitsumkalum wishes to dispose of a fee simple estate in a parcel of Kitsumkalum Lands it will, before the disposition, register the indefeasible title to that parcel under the *Land Title Act* in accordance with the Final Agreement. For greater certainty, any Kitsumkalum Lands registered under the *Land Title Act* will continue to be Kitsumkalum Lands.
15. If Kitsumkalum transfers the estate in fee simple in a parcel of its Kitsumkalum Lands to any person other than to a:
  - a) Kitsumkalum Member;
  - b) Kitsumkalum Corporation; or
  - c) Kitsumkalum Institution,expropriation by a Provincial Expropriating Authority of such land may occur in accordance with Provincial Law and not subject to the Provincial Expropriation provisions.
16. Kitsumkalum may remove a parcel of land from Kitsumkalum Lands with the consent of Canada and British Columbia.
17. In considering whether to consent to the removal of a parcel of land from Kitsumkalum Lands in accordance with a request under paragraph 16, Canada and British Columbia may consider:
  - a) necessary jurisdictional, administrative and servicing arrangements;
  - b) the views of any affected Local Government or neighbouring First Nation;
  - c) whether the removal of the land will have an impact on fiscal arrangements negotiated between Kitsumkalum and Canada or British Columbia;
  - d) whether the removal of the land will have any legal or financial implications for Canada or British Columbia; or
  - e) any other matter that Canada or British Columbia considers relevant.

18. If Canada and British Columbia consent to the removal of a parcel of land from Kitsumkalum Lands then, upon receipt by Kitsumkalum of Canada and British Columbia's written consent:
  - a) Kitsumkalum will register the parcel of land in the Land Title Office, if it is not registered;
  - b) the parcel will cease to be Kitsumkalum Lands; and
  - c) Appendix B will be amended in accordance with the process set out in the General Provisions Chapter.
19. All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in respect of Kitsumkalum Lands.
20. If, at any time, any parcel of Kitsumkalum Lands, or any estate or interest in a parcel of Kitsumkalum Lands, finally escheats to the Crown, the Crown will transfer, at no charge, that parcel, estate or interest to Kitsumkalum.
21. Before the Final Agreement, the Parties will negotiate provisions regarding the granting of security instruments and enforcement of creditor's remedies for Kitsumkalum Lands not registered in the Land Title Office.

#### **Exterior Boundary Surveys**

22. Before the Final Agreement, the Parties will determine the need for any exterior boundary surveys of Kitsumkalum Lands, and the timing, order and priority of any such surveys. Canada and British Columbia will, as agreed between them, pay the costs of any such exterior boundary surveys of Kitsumkalum Lands.

#### **Cost of Surveys**

23. Unless otherwise agreed by the Parties, neither Canada nor British Columbia is responsible for the costs associated with the survey, registration and transfer of any parcel of land acquired by Kitsumkalum following the Effective Date.

#### **Interests**

24. On the Effective Date, title to Kitsumkalum Lands will be free and clear of all interests, except:
  - a) interests on Former Kitsumkalum Indian Reserves to be replaced on the Effective Date as set out in Appendix C-1;
  - b) Rights of Way in favour of BC Hydro, substantially in the form set out in Appendix C-2, in respect of the existing BC Hydro Line and the proposed NTL Project located on Kitsumkalum Lands, which shall be registered in priority to other charges as hereinafter provided;
  - c) interests on former provincial Crown land to be replaced on the Effective Date as set out in Appendix C-2;
  - d) interests to continue in accordance with Provincial Law as set out in Appendix C-3; and
  - e) interests to be granted or issued by Kitsumkalum on the Effective Date as set out in Appendix C-4.

25. Before the Final Agreement, Kitsumkalum and British Columbia will discuss the matters of property taxes, or grants in lieu of, related to the BC Hydro Right of Way referred to in subparagraph 24.b).
26. Subject to paragraph 24, every interest that before the Effective Date encumbered or applied to Kitsumkalum Lands will cease to exist.
27. On the Effective Date, Kitsumkalum will execute documents granting or issuing to each person named in Appendices to the Final Agreement that person's interest relating to its Kitsumkalum Lands, as described in Appendix C-1, C-2 and C-4.
28. On the Effective Date, Kitsumkalum will grant or issue the Rights of Way in favour of BC Hydro referred to in subparagraph 24.b) relating to its Kitsumkalum Lands.
29. A document executed in accordance with paragraph 27 for an interest listed in Appendix C-1, C-2 and C-4 will be in the applicable form described in Appendix C-5, and in all cases will include any modifications agreed upon in writing before the Effective Date by the Kitsumkalum Indian Band and the person entitled to the interest.
30. A document referred to in paragraphs 27 and 29 is deemed to be:
  - a) delivered by Kitsumkalum on the Effective Date; and
  - b) executed and delivered by the applicable person named in Appendix C-1, C-2 and C-4 on the Effective Date.
31. Kitsumkalum will physically deliver the applicable document:
  - a) to the applicable person named in Appendix C-1, C-2 and C-4; or
  - b) to any other person who, before the Effective Date, was identified by the Parties as the correct interest holder, and the Parties will amend Appendix C-1, C-2 and C-4 in accordance with the amendment provisions in the General Provisions Chapter to reflect the correction.
32. If, following the Effective Date, Canada or British Columbia notifies Kitsumkalum that an interest granted in accordance with paragraph 27:
  - a) is in the name of a person who was not entitled to the interest on the Effective Date; or
  - b) contains a clerical error or a wrong description of a material fact,the appropriate Parties will take reasonable measures to rectify the error.
33. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by Kitsumkalum under the Final Agreement will be legally binding and enforceable notwithstanding that Kitsumkalum Lands to which the right of way relates are not subject to the *Land Title Act*.
34. The interests listed in Appendices C-1 to C-4 are retained by the persons who hold those interests on the Effective Date in accordance with the existing terms and conditions of the interest on the Effective Date, modified where appropriate to reflect ownership of the land by Kitsumkalum and Provincial Law. If such an interest is not renewed or replaced when it expires in accordance with its terms or Provincial Law, that interest ceases to exist.

35. If, after the Effective Date, BC Hydro or Telus is requested by Kitsumkalum, to construct facilities for the provision of electrical or telecommunications services on Kitsumkalum Lands, Kitsumkalum will grant or issue to BC Hydro and Telus an interest for such facilities on terms substantially the same as those to be set out in Appendix C-5 in the Final Agreement regarding a Right of Way.

### **Replacement of Certificates of Possession**

36. On the Effective Date, Kitsumkalum will issue to each person named in Appendix C-1 to the Final Agreement, an interest for the parcel of Kitsumkalum Lands ascribed to that person and described in Appendix C-1 to the Final Agreement.
37. A person to whom Kitsumkalum issues an interest in accordance with paragraph 36 has substantially the same right to possess the described parcel of Kitsumkalum Lands as the person had as the holder of the certificate of possession under the *Indian Act*, immediately before the Effective Date, modified to reflect the law-making authority of the Kitsumkalum Government over such lands and ownership of such lands by Kitsumkalum in accordance with the Final Agreement.

### **Submerged Lands**

38. Subject to paragraph 42, Submerged Lands do not form part of Kitsumkalum Lands and nothing in this Agreement affects British Columbia's ownership of Submerged Lands.
39. British Columbia will notify Kitsumkalum of any proposed disposition of an interest in, or use or occupation of, Submerged Lands that are wholly contained within its Kitsumkalum Lands.
40. British Columbia will not, in respect of Submerged Lands that are wholly contained within Kitsumkalum Lands:
- a) grant an estate in fee simple;
  - b) grant a lease that, with any rights of renewal, may exceed 25 years;
  - c) transfer administration and control for a period that may exceed 25 years; or
  - d) otherwise dispose of an interest in, or authorize the use or occupation of, Submerged Lands if that disposition, use or occupation would adversely affect those Kitsumkalum Lands or the applicable Kitsumkalum interests described in the Final Agreement, without the consent of Kitsumkalum.
41. Paragraphs 39 and 40 do not affect the riparian rights of the upland owners of Kitsumkalum Lands adjacent to Submerged Lands.
42. Submerged Lands which are part of Former Kitsumkalum Indian Reserves form part of the Kitsumkalum Lands.
43. No transfer of Submerged Lands to Kitsumkalum in accordance with the Final Agreement includes the exclusive right to fish, property rights in fish or the right to allocate fish.

### **Accretions to First Nation Lands**

44. Kitsumkalum will own lawful accretions to Kitsumkalum Lands.

45. If Kitsumkalum provides to Canada and British Columbia a certificate issued by the Surveyor General of British Columbia confirming that there has been a lawful accretion, then upon receipt of the certificate by Canada and British Columbia the accreted land will become Kitsumkalum Lands and Appendix B will be amended in accordance with the process set out in paragraphs 54 to 58 of the General Provisions Chapter.

### **Indemnity and Confirmation**

46. British Columbia will indemnify and forever save harmless Kitsumkalum from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Kitsumkalum may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of:
- a) the omission from Appendix C of the name of a person who, immediately before the Effective Date, had an interest in Kitsumkalum Lands that had been granted by British Columbia; or
  - b) the incorrect naming of a person in Appendix C as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in Kitsumkalum Lands that had been granted by British Columbia.

### **Site Remediation on Kitsumkalum Lands**

47. Before the Final Agreement, the Parties will identify any Kitsumkalum Lands in Appendix B to the Final Agreement that may require appropriate remediation in accordance with the *Environmental Management Act*.
48. If, after the Effective Date, Kitsumkalum decides to develop lands set out pursuant to paragraph 47, it will provide notice of such development to British Columbia.
49. After receiving notice in accordance with paragraph 48, British Columbia will inspect the applicable site and if it is determined that site is a Contaminated Site, British Columbia will undertake or cause to be undertaken appropriate remediation of the site in accordance with the *Environmental Management Act* and paragraph 50.
50. In determining whether a site referred to in paragraph 49 is a Contaminated Site and in determining the extent of the appropriate remediation of such site, the use of that site is deemed to be the use to be described in a Schedule of the Final Agreement.
51. British Columbia or any person undertaking the inspection or remediation of a site in accordance with paragraph 49, will provide Kitsumkalum with notice:
- a) before commencing any inspection or remediation; and
  - b) the opportunity to observe any inspection or remediation.
52. Nothing in this Agreement limits the ability of British Columbia to recover costs incurred in inspecting and remediating a site referred to in paragraph 49 from any third party determined to be a Responsible Person in respect of the Contamination of that site.
53. British Columbia is not liable in respect of the Contamination of any site referred to in paragraph 47 which occurs after the Effective Date.
54. The transfer of Former Federal Lands to Kitsumkalum in accordance with this Agreement does not, in and of itself, result in British Columbia being determined to be a Responsible Person in respect of any potential Contamination of any Former Federal Lands.

55. British Columbia is not required to prepare and provide a Site Profile for any lands transferred to Kitsumkalum in accordance with this Agreement.

**Additions to Kitsumkalum Lands**

56. At any time after the Effective Date, at Kitsumkalum's request, and with the agreement of British Columbia, Kitsumkalum may add to Kitsumkalum Lands land that is:
- a) owned in fee simple by Kitsumkalum;
  - b) within the Kitsumkalum Area; and
  - c) outside of municipal boundaries, or within municipal boundaries if the municipality consents.
57. At any time after the Effective Date, with the agreement of Canada, Kitsumkalum may add to Kitsumkalum Lands, land that is:
- a) owned in fee simple by Kitsumkalum;
  - b) within the Kitsumkalum Area; and
  - c) in areas free from overlap with another First Nation unless that First Nation consents;
58. When making a decision pursuant to paragraphs 56 and 57, Canada and British Columbia may take into account other matters that Canada or British Columbia considers relevant.
59. Nothing in paragraph 56 or 57 obligates Canada or British Columbia to pay any costs associated with the purchase or transfer of the land that is added to Kitsumkalum Lands under paragraph 56 or 57 or any other costs related to the addition of the land to Kitsumkalum Lands.
60. Kitsumkalum will own the Subsurface Resources on land that is added to Kitsumkalum Lands under paragraph 56 or 57 if:
- a) the fee simple title includes ownership of the Subsurface Resources; or
  - b) British Columbia owns the Subsurface Resources and British Columbia and Kitsumkalum agree.
61. If Kitsumkalum adds land to Kitsumkalum Lands under paragraph 56 or 57 the land will, if necessary, be surveyed in accordance with the Final Agreement, and the Parties will amend Appendix B, in accordance with the amendment provisions of the General Provisions Chapter, to reflect the addition of the land, and the land will become Kitsumkalum Lands when the amendment takes effect.

***Continuation of Interests***

62. A parcel of land added to Kitsumkalum Lands in accordance with paragraphs 56 to 61 continues to be subject to any interest existing immediately before the parcel of land becomes Kitsumkalum Lands, unless the holder of such interest otherwise agrees in writing.
63. For greater certainty, Kitsumkalum's ownership of Subsurface Resources is subject to any Subsurface Tenures existing immediately before the acquisition of the parcel of land by Kitsumkalum and those Subsurface Tenures continue to be administered by British Columbia in accordance with paragraphs 7 to 14 of the Subsurface Resources Chapter.

## **Expropriation**

### ***Limits on Provincial Expropriation of Kitsumkalum Lands***

64. Before the Final Agreement, BC and Kitsumkalum will agree on the principles and processes in respect of expropriation on Kitsumkalum Lands by a Provincial Expropriating Authority.

### ***Limits on Federal Expropriation of Kitsumkalum Lands***

65. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of Kitsumkalum Lands and, therefore as a general principle interests in Kitsumkalum Lands will not be expropriated.
66. An interest in Kitsumkalum Lands may be expropriated by a Federal Expropriating Authority in accordance with federal legislation, Appendix E and with the consent of the Governor-in-Council.
67. If a Federal Expropriating Authority expropriates Kitsumkalum Lands, only the most limited interest in Kitsumkalum Lands necessary and will be expropriated for the shortest time possible.
68. Nothing in the Final Agreement affects or limits the application of the *Emergencies Act* or any successor legislation and the *Emergencies Act* continues to apply in all aspects to Kitsumkalum Lands.

## **Law-Making**

69. The Kitsumkalum Government may make laws with respect to:
- a) the use of Kitsumkalum Lands, including:
    - i) management;
    - ii) land use planning, zoning and development; and
    - iii) designation, including the designation of Kitsumkalum Public Lands or Kitsumkalum Private Lands;
  - b) the creation, allocation, ownership and disposition of interests or estates in Kitsumkalum Lands including:
    - i) fee simple estates or any lesser estate or interest;
    - ii) mortgages;
    - iii) leases, licences, permits, easements, and Rights of Way, including Rights of Way and covenants similar to those in sections 218 and 219 of the *Land Title Act*; and
    - iv) any conditions or restrictions, including restrictions on alienation, on such estates or interests;
  - c) the establishment and operation of a Kitsumkalum land title or land registry system for Kitsumkalum Lands that are not registered in the Land Title Office; and
  - d) expropriation for public purposes and public works by the Kitsumkalum Government of interests or estates in Kitsumkalum Lands where Kitsumkalum provides fair compensation to the owner of the estate or interest and the expropriation is of the smallest estate or interest necessary for the public purpose or public work.
70. Notwithstanding subparagraph 69.d) Kitsumkalum may not expropriate:



- a) interests or estates, granted or continued on the Effective Date, or thereafter replaced in accordance with the Final Agreement, unless specifically provided for in the Final Agreement;
  - b) interests or estates expropriated or otherwise acquired after Effective Date by a Federal Expropriating Authority or a Provincial Expropriating Authority; and
  - c) any other interests upon which the Parties have agreed to in the Final Agreement.
71. For the purposes of subparagraph 69.b), Kitsumkalum may make laws with respect to estates or interests in Kitsumkalum Lands that are:
- a) not recognized under Federal Law or Provincial Law; or
  - b) recognized under Federal Law or Provincial Law provided that they are consistent with Federal Law or Provincial Law with respect to those estates or interests.
72. For greater certainty, a Kitsumkalum Law under subparagraph 69.b)iv) in respect of an interest granted under paragraph 36 is not inconsistent with common law principles.
73. Subject to paragraph 74, Kitsumkalum Law under paragraph 69 prevails to the extent of a Conflict with Federal Law or Provincial Law.
74. Federal Law or Provincial Law with respect to matrimonial real property prevails to the extent of a Conflict with Kitsumkalum Law made under subparagraphs 69.b) and 69.c).
75. Before the Final Agreement, the Parties will address the issue of Kitsumkalum land use and the continued safe operation of the Terrace Airport, and make any necessary changes to the Final Agreement to reflect the agreement of the Parties.

#### **Agricultural Land Reserve**

76. Before the Final Agreement the Parties will address the question of agricultural land reserve designations on Kitsumkalum Lands.

#### **Commercial Recreation Tenure**

77. Before the Final Agreement, Kitsumkalum and British Columbia will develop management plans for proposed commercial recreation tenures that British Columbia and Kitsumkalum may agree to, which:
- a) set out the recreational activities;
  - b) reflect the environmental values in the defined area;
  - c) set out the boundaries of the operating areas; and
  - d) set out phase-in periods for the operations.
78. After the Effective Date and upon satisfactory application by Kitsumkalum, British Columbia will issue commercial recreation tenures to Kitsumkalum for the operating areas described in the management plans in paragraph 77.
79. During the phase-in period for any commercial recreation tenures to be issued under paragraph 78, British Columbia will not issue other commercial recreation tenures which would directly conflict with the management plans for Kitsumkalum commercial recreation tenures.



## CHAPTER 4 –LAND TITLE

### Federal Title Registration

1. Federal land title and land registry laws, other than laws with respect to the survey and recording of interests or estates that are owned by Canada and are in Kitsumkalum Lands, do not apply to any parcel of Kitsumkalum Lands.

### Land Title System

2. The *Land Title Act* does not apply to a parcel of Kitsumkalum Lands for which:
  - a) no application has been made under the *Land Title Act* in accordance with the Final Agreement for the registration of an indefeasible title;
  - b) an application has been made under the *Land Title Act* in accordance with the Final Agreement for the registration of an indefeasible title and that application has been withdrawn or rejected; or
  - c) the indefeasible title under the *Land Title Act* has been cancelled in accordance with the Final Agreement.
3. If Kitsumkalum applies under the *Land Title Act*, in accordance with the Final Agreement, for the registration of an indefeasible title to a parcel of Kitsumkalum Lands, then, effective from the time of application and until the application has been withdrawn or rejected, or the indefeasible title is cancelled, the *Land Title Act*, but not any Kitsumkalum Law with respect to land title or land registration made pursuant to the Final Agreement, applies to the parcel.

### Application for Registration of Indefeasible Title

4. Only Kitsumkalum may apply under the *Land Title Act* for the initial registration of an indefeasible title to a parcel of Kitsumkalum Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of Kitsumkalum or on behalf of another person.
5. Kitsumkalum will, as soon as practicable after the Effective Date, apply for the registration of indefeasible title under paragraph 4 to those parcels of Kitsumkalum Lands for which no indefeasible title is registered and for which Kitsumkalum has granted a Tenure or replacement Tenure identified in Appendix C-1, C-2 and C-4.

### Land Title Fees

6. If Kitsumkalum applies for the registration of an indefeasible title to a parcel of Kitsumkalum Lands for which no indefeasible title has been registered after the Effective Date, and the proposed registered owner in fee simple is Kitsumkalum, a Kitsumkalum Corporation, or a Kitsumkalum Public Institution, no land title fees are payable with respect to the application by which the proposed registered owner becomes the registered owner.

### Kitsumkalum Certificate

7. Kitsumkalum, when applying for the registration of an indefeasible title to a parcel of Kitsumkalum Lands under paragraph 4, will provide to the Registrar:
  - a) a description of the boundaries of the parcel;

- b) a certificate of the Kitsumkalum Government certifying that, on the date of the Kitsumkalum Certificate, the person named as the owner in fee simple in the Kitsumkalum Certificate is the owner of the estate in fee simple of the parcel, and certifying that the Kitsumkalum Certificate sets out all:
    - i) subsisting conditions, provisos, restrictions, exceptions, and reservations contained in the original or any other conveyance or disposition from Kitsumkalum whether in favour of Kitsumkalum or another person;
    - ii) interests or estates; and
    - iii) charges with respect to a debt owed to Kitsumkalum, to which the estate in fee simple of the parcel is subject; and
  - c) registrable copies of all documents necessary to register all of the items referred to in subparagraph 7(b).
8. A Kitsumkalum Certificate will expire if:
- a) within seven days of the date of the Kitsumkalum Certificate, Kitsumkalum has not made an application for registration of an indefeasible title to the parcel referred to in the Kitsumkalum Certificate; or
  - b) an application under subparagraph 8(a) has been made but that application has been withdrawn or rejected.

### **Registration of Indefeasible Title**

9. If Kitsumkalum makes an application for the registration of indefeasible title to a parcel of Kitsumkalum Lands under paragraph 4, and if the Registrar is satisfied that:
- a) a good safe holding and marketable title in fee simple for the parcel has been established by Kitsumkalum;
  - b) the boundaries of the parcel are sufficiently defined by the description provided by Kitsumkalum;
  - c) all of the estates, interests, and other charges set out in the Kitsumkalum Certificate are registrable under the *Land Title Act*; and
  - d) the Kitsumkalum Certificate has not expired under paragraph 8,
- then the Registrar must:
- e) register the indefeasible title to the parcel;
  - f) make a note on the indefeasible title that the parcel is Kitsumkalum Lands and may be subject to conditions, provisos, restrictions, exceptions, and reservations in favour of Kitsumkalum or another person;
  - g) register as charges the estates and interests set out in subparagraph 7.b)ii) and the other charges set out in subparagraph 7.b)iii); and
  - h) provide a copy of the indefeasible title to Kitsumkalum.
10. The Registrar is entitled to rely on, and is not required to make any inquiries with respect to, the matters certified in the Kitsumkalum Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation, in or to a parcel of Kitsumkalum Lands

as a result of the reliance by the Registrar on the Kitsumkalum Certificate, and the issuance by the Registrar of an indefeasible title based on the Kitsumkalum Certificate, will have no recourse, at law or in equity, against the Registrar, the Assurance Fund established under Part 19.1 of the *Land Title Act* or British Columbia or Canada.

11. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Kitsumkalum Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply with respect to Kitsumkalum Lands.

### **Cancellation of Indefeasible Title**

12. Kitsumkalum, and no other person, may apply under the *Land Title Act* in accordance with this Chapter for cancellation of the registration of an indefeasible title to a parcel of Kitsumkalum Lands.
13. Kitsumkalum, when applying under the *Land Title Act* in accordance with this Chapter for the cancellation of the registration of an indefeasible title to a parcel of Kitsumkalum Lands, will provide to the Registrar an application for cancellation of registration and will deliver to the Registrar any indefeasible title that may have been issued with respect to that parcel.
14. Upon receiving an application from Kitsumkalum for cancellation of the registration of an indefeasible title to a parcel of Kitsumkalum Lands under paragraphs 12 and 13, and if:
  - a) the registered owner of the estate in fee simple to the parcel is Kitsumkalum, a Kitsumkalum Corporation, a Kitsumkalum Public Institution, and consents in writing; and
  - b) the indefeasible title to the parcel is free and clear of all charges, except those in favour of Kitsumkalum,

then the Registrar will cancel the registration of the indefeasible title.



## CHAPTER 5 – SUBSURFACE RESOURCES

### General

1. Kitsumkalum will own Subsurface Resources on or under Kitsumkalum Lands where, before the Effective Date, Canada or British Columbia owns the Subsurface Resources.
2. Kitsumkalum ownership of Subsurface Resources is subject to the Subsurface Tenures listed in Appendix C-3.
3. Subject to paragraph 12, Kitsumkalum, as owner of Subsurface Resources, has authority to set fees, rents, royalties and other charges, except taxes, for exploration, development, extraction and production of Subsurface Resources owned by Kitsumkalum.
4. Nothing in the Final Agreement confers authority on Kitsumkalum to make laws in relation to the exploration for, development, production, use and application of nuclear energy and atomic energy and the production, possession and use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment and prescribed information.
5. Nothing in the Final Agreement confers authority on Kitsumkalum to make laws in respect of:
  - a) spacing and target areas related to Petroleum and Natural Gas and Geothermal Resources, and conservation and allocation of Petroleum and Natural Gas and Geothermal Resources among parties having interests in the same reservoir; and
  - b) Subsurface Tenures listed in Appendix C-3 and related Tenured Subsurface Resources.
6. Before the Final Agreement, British Columbia and Kitsumkalum will address the relationship between Provincial Law with respect to Subsurface Resources and Kitsumkalum Law with respect to land use.

### Tenured Subsurface Resources

7. Subject to paragraph 11, the Subsurface Tenures:
  - a) continue in accordance with Provincial Law and the Final Agreement; and
  - b) will be administered by British Columbia in accordance with Provincial Law and the Final Agreement.
8. Provincial Law applies to any exploration, development, extraction and production of Tenured Subsurface Resources as if the Tenured Subsurface Resources were owned by British Columbia.
9. In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia may grant, as necessary, any related extensions, renewals, continuations, replacements or issue any further rights as the Tenured Subsurface Resources are developed.
10. In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia will notify the Kitsumkalum Government before changing or eliminating any rents or royalties applicable to the Tenured Subsurface Resources.

11. British Columbia will:
  - a) ensure that any rents and royalties applicable to Tenured Subsurface Resources that British Columbia would be entitled to receive after the Effective Date if those Tenured Subsurface Resources were owned by British Columbia, and any interest earned on those rents and royalties, are paid to Kitsumkalum; and
  - b) retain for administrative purposes any fees, charges or other payments applicable to Subsurface Tenures and Tenured Subsurface Resources under Provincial Law.
12. Kitsumkalum does not have the authority to establish fees, rents, royalties or other charges in relation to Subsurface Tenures, or the exploration, development, extraction or production of Tenured Subsurface Resources.
13. Kitsumkalum Lands will be treated as private lands under Provincial Law relating to Subsurface Resources for the purposes of resolving any access issues and compensation rights associated with any proposed entrance, occupation or use of Kitsumkalum Lands by holders of Subsurface Tenures. For greater certainty, a holder of a Subsurface Tenure must obtain the agreement of the owner of Kitsumkalum Lands before entering, occupying or using an area of Kitsumkalum Lands, and any disagreements may be resolved under Provincial Law relating to access and compensation disputes involving Subsurface Resources.
14. If a Subsurface Tenure forfeits, or is abandoned or surrendered, to British Columbia under Provincial Law, the Tenured Subsurface Resources and Kitsumkalum Lands will no longer be subject to that Subsurface Tenure.



## CHAPTER 6 – WATER

### Water Reservation

1. Subject to there being sufficient Available Flow, the Final Agreement will provide for a water reservation under the *Water Act* in favour of Kitsumkalum.
2. The Kitsumkalum water reservation established under the *Water Act* for Kitsumkalum will specify the volume of unrecorded water, the Streams that are subject to the water reservation and the extent to which the water reservation applies to particular streams.
3. Water reserved pursuant to the Kitsumkalum water reservation may be used for domestic, industrial and agricultural purposes and excludes those purposes set out in paragraphs 28 to 32 of this Chapter.
4. The Final Agreement will provide that the Kitsumkalum water reservation will have priority over all Water Licences on that Stream, other than existing Water Licences on that Stream, Water Licences applied for on that Stream before a date to be agreed upon before the Final Agreement, and Water Licences issued from a water reservation established on that Stream before the date to be agreed upon before the Final Agreement.

### Water Licences

5. A person seeking a Water Licence for volumes of water to be applied against the Kitsumkalum water reservation must obtain written consent from Kitsumkalum before submitting that application to British Columbia.
6. If a person applies to British Columbia under paragraph 5 for a Water Licence for volumes of flow to be applied against the Kitsumkalum water reservation and:
  - a) Kitsumkalum has consented to the application;
  - b) the application conforms to provincial regulatory requirements;
  - c) there is sufficient unrecorded volume of flow in the Kitsumkalum water reservation in accordance with paragraph 1;
  - d) where required, the application includes provisions for storage where the monthly Available Flow during periods of low flow is insufficient to meet proposed consumption; and
  - e) the application is for a volume of flow that, together with the total volume of flow licensed for that Stream under the Final Agreement, does not exceed the percentage of monthly Available Flow for that Stream as set out in the Final Agreement,then British Columbia will approve the application and issue the Water Licence.
7. A Water Licence issued to a person for use on Kitsumkalum Lands under paragraph 6 will not be subject to any rentals, fees, or other charges, except taxes, by British Columbia.
8. For greater certainty, a person may apply for Water Licences under paragraph 6 for use of water off Kitsumkalum Lands.

9. The volume of flow approved in a Water Licence issued under paragraph 6 will be deducted from the unrecorded volume of flow in the Kitsumkalum water reservation established under paragraph 1.
10. If a Water Licence issued pursuant to paragraph 6 is cancelled, expires or otherwise terminates, the volume of flow in that Water Licence will be added back to the unrecorded volume of flow in Kitsumkalum's water reservation established under paragraph 1.
11. The total volumes of flow under the Water Licences applied against Kitsumkalum's water reservation established in paragraph 1 for each Stream will not exceed the monthly percentage of the Available Flow of that Stream as listed in a Schedule to the Final Agreement.
12. The Final Agreement will not preclude Kitsumkalum or Kitsumkalum Members from applying for additional Water Licences under Provincial Law not provided for under the water reservation established under paragraph 1.
13. British Columbia will Consult with Kitsumkalum respecting applications for Water Licences made after the Effective Date where the applicant may reasonably require access across or an interest in Kitsumkalum Lands.
14. If a person other than Kitsumkalum, or a Kitsumkalum Public Institution has a Water Licence and reasonably requires access across, or an interest in Kitsumkalum Lands for the construction, maintenance, improvement or operation of works authorized under the Water Licence, Kitsumkalum may not unreasonably withhold consent, and will take reasonable steps, to ensure that access or the granting of that interest, if the licence holder offers fair compensation to the owner of the estate or interest affected.
15. If Kitsumkalum, Kitsumkalum Public Institution, Kitsumkalum Corporation or a Kitsumkalum Member has a Water Licence approved under paragraph 6 and reasonably requires access across, or an interest in, Crown land for the construction, maintenance, improvement or operation of work authorized under the licence, British Columbia or Canada, as the case may be, will grant the access or interest on reasonable terms in accordance with Provincial Law.
16. British Columbia or Kitsumkalum may refer a dispute arising under paragraph 14 to be finally determined by arbitration in accordance with the Dispute Resolution Chapter. For the purposes of this paragraph, British Columbia will act on behalf of the third party on such terms and conditions as they may agree.
17. Sections 27, 28, 29 and 30 of the *Water Act* respecting a licensee's right to expropriate land do not apply on Kitsumkalum Lands.
18. For greater certainty, paragraph 14 does not apply to works, or access to works, on Kitsumkalum Lands which are:
  - a) authorized under the associated Water Licences referred to in Appendix C-3 Part 2 of this Agreement; and
  - b) continue as provincial permits of occupation in accordance with provincial law or are replaced by Kitsumkalum under paragraph 24 of the Lands Chapter.
19. For greater certainty, the provisions of the *Water Act* regarding access for the construction, maintenance, improvement or operation of works across fee simple lands off Kitsumkalum Lands apply with respect to Water Licences issued in accordance with paragraph 6.

20. Storage, diversion, extraction or use of water will be in accordance with Federal Law and Provincial Law.
21. British Columbia may negotiate with Kitsumkalum the role of Kitsumkalum in the management and administration of Water Licences issued under Kitsumkalum's water reservation.

### **Law-Making**

22. The Kitsumkalum Government may make laws in respect of:
  - a) the consent of Kitsumkalum under subparagraph 6(a) to applications; and
  - b) the supply and the use of water from a Water Licence issued in accordance with paragraph 6.
23. A Kitsumkalum Law under subparagraph 22.a) prevails to the extent of a Conflict with a Federal Law or Provincial Law.
24. A Federal Law or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law under subparagraph 22.b).

### **Other**

25. If Federal Law or Provincial Law permits the sale of water, Kitsumkalum may sell water in accordance with those laws.
26. Nothing in the Final Agreement will alter Federal Law or Provincial Law in respect of property in water.
27. Before the Final Agreement the Parties will address the issue of groundwater.

### **Hydro Power Reservation**

28. In addition to the Kitsumkalum water reservation established under paragraph 1, British Columbia will, subject to Available Flow, establish a water reservation of the unrecorded water of specific Streams identified in the Final Agreement in favour of Kitsumkalum after the Effective Date to enable Kitsumkalum to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.
29. If Kitsumkalum applies for a water reservation for hydro power purposes on a Stream subject to the Kitsumkalum hydro power reservation under paragraph 28, British Columbia, after considering the results of any investigation referred to in paragraph 28 and subject to Available Flow, will establish a Kitsumkalum hydro power reservation for hydro power purposes and any related storage purposes on that Stream if it considers that Stream to be suitable for hydro power purposes.
30. If British Columbia establishes a water reservation for hydro power purposes on a Stream under paragraph 29, the Kitsumkalum hydro power reservation under paragraph 28 will terminate in respect of that Stream.
31. If, after British Columbia establishes a water reservation for hydro power purposes under paragraph 29, Kitsumkalum applies for a Water Licence for hydro power purposes and any related storage purposes for a volume of flow from the Stream subject to that water reservation, British Columbia will grant the Water Licence if the proposed hydro power project conforms to Federal Law and Provincial Law, and there is sufficient Available Flow in the Stream.

32. If British Columbia issues a Water Licence under paragraph 31, the water reservation established under paragraph 29
33. will terminate in respect of that Stream.

### **Water Management**

34. Kitsumkalum may participate in water planning processes in the Kitsumkalum Area.
35. With respect to the management of water within the Kitsumkalum Area, Kitsumkalum and Canada or British Columbia may negotiate agreements to:
  - a) define respective roles and responsibilities of the Parties;
  - b) coordinate activities related to:
    - i) flood response and public safety;
    - ii) protection of water quality;
    - iii) water conservation;
    - iv) Groundwater management and regulation;
    - v) resource inventory;
    - vi) monitoring of water quality and quantity;
    - vii) management of and access to information;
    - viii) water management objectives and planning;
    - ix) any other matters as agreed to by the Parties; and
  - c) identify watersheds that require water management planning.
36. If a watershed includes both Kitsumkalum Lands and provincial Crown land, and if Kitsumkalum or British Columbia considers that the watershed is an important source of drinking water, British Columbia and Kitsumkalum may negotiate agreements on the protection of drinking water in the area.

## **CHAPTER 7 - FOREST RESOURCES**

### **Forest Resources on Kitsumkalum Lands**

1. On the Effective Date, Kitsumkalum will own Forest Resources and Range Resources on Kitsumkalum Lands.
2. Kitsumkalum Lands will be treated as Private Lands for the purposes of Provincial Law in respect of Forest Resources, Range Resources, Forest Practices and Range Practices.
3. Kitsumkalum, as owner of Kitsumkalum Lands, will have exclusive authority to determine, collect and administer any fees, rents, or other charges except taxes relating to the harvesting of Forest Resources and Range Resources on Kitsumkalum Lands.

### **Law-Making**

4. The Kitsumkalum Government may make laws in respect of Forest Resources, Range Resources, Forest Practices and Range Practices on Kitsumkalum Lands.
5. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 4.

### **Timber Marking and Scaling**

6. Nothing in the Final Agreement will confer authority on the Kitsumkalum Government to make laws applicable to timber marks, timber marking and scaling.
7. For greater certainty, Provincial Law in respect of timber marks, timber marking and scaling will apply to timber harvested on Kitsumkalum Lands when transported off Kitsumkalum Lands.

### **Manufacture and Export of Timber Resources**

8. Timber harvested from Kitsumkalum Lands will not be subject to any legal requirement under Provincial Law for use or manufacturing in British Columbia.
9. Kitsumkalum, or a person authorized by Kitsumkalum, may export Logs harvested from Kitsumkalum Lands in accordance with Federal Law and federal policy.

### **Forest and Range Health**

10. Kitsumkalum is responsible for the control of insects, diseases, invasive plants, animals or abiotic factors on Kitsumkalum Lands which may affect the health of Forest Resources on Kitsumkalum Lands.
11. If Canada or British Columbia becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Crown lands that may threaten the health of Forest Resources or Range Resources on adjacent Kitsumkalum Lands, British Columbia or Canada, as the case may be, will notify Kitsumkalum.
12. If Kitsumkalum becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Kitsumkalum Lands that may threaten Forest Resources or Range Resources on adjacent provincial or federal Crown lands, it will notify British Columbia or Canada, as the case may be.

13. Following notification under paragraphs 11 and 12, Kitsumkalum and British Columbia will develop an appropriate and reasonable co-operative response to minimize the impacts of such insects, diseases, invasive plants or abiotic factors.
14. Nothing in paragraphs 10, 11 or 12 limits the application of Federal Law or Provincial Law in relation to the health of Forest Resources or Range Resources.
15. The Final Agreement will provide for information sharing in relation to Forest Practices on Kitsumkalum Lands and on provincial Crown lands immediately adjacent to Kitsumkalum Lands.

### **Wildfire Suppression and Control**

16. Subject to the Wildfire Suppression Agreement entered into in accordance with paragraph 17 and subject to paragraphs 18 and 21, Provincial Law with respect to the protection of resources from wildfire and for wildfire prevention and control will apply to Kitsumkalum Lands as Private Lands.
17. On the Effective Date, the Parties will enter into a Wildfire Suppression Agreement that will set out how the costs incurred by British Columbia for wildfire control on the Kitsumkalum Lands for wildfires that originate on such lands, will be shared by British Columbia, Canada and Kitsumkalum.
18. Subject to the limitations on the scope of Kitsumkalum's responsibility to pay wildfire control costs set out in the Wildfire Suppression Agreement, Kitsumkalum will be responsible for one third of the costs incurred by British Columbia for wildfire control on Kitsumkalum Lands for wildfires that originate on Kitsumkalum Lands.
19. If Kitsumkalum caused or contributed to the spread of any wildfire due to its own negligence or wilful misconduct, Kitsumkalum's responsibility for costs is not limited by paragraph 18.
20. For greater certainty, the responsibility of Kitsumkalum under paragraph 17 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off Kitsumkalum Lands.
21. British Columbia will respond to a wildfire originating on Kitsumkalum Lands on the same priority basis as provincial Crown land and in accordance with any priorities as set by the Minister.
22. For the purposes of paragraph 17:
  - a) unless terminated at the written request of Kitsumkalum, the Wildfire Suppression Agreement will remain in effect between Kitsumkalum and British Columbia, on the same terms, subject to those terms which Kitsumkalum and British Columbia agree will be negotiated on a periodic basis; and
  - b) Canada's participation in the Wildfire Suppression Agreement will be limited to assuming a share of costs under that agreement for a period of 10 years commencing on the Effective Date.
23. Subject to any cost-sharing arrangement which may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided pursuant to land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time with respect to Canada's continuing participation in the Wildfire Suppression Agreement following the 10 year period referred to in subparagraph 22.b).

24. Nothing under paragraphs 17 or 18 limits the ability of any Party to pursue legal action against third parties.
25. At the request of Kitsumkalum, or in accordance with Provincial Law, British Columbia may enter on Kitsumkalum Lands and assist in the provision of, or carry out, wildfire control.

**Obligations Existing Before Effective Date**

26. Unless otherwise requested by Kitsumkalum, British Columbia will ensure that any obligation that applies on Kitsumkalum Lands in respect of Forest Practices and Range Practices will be fulfilled in accordance with Provincial Law.
27. Kitsumkalum will provide access to Kitsumkalum Lands at no cost to British Columbia and to any tenure holder whose rights to Forest and Range Resources under paragraph 28 cease to be valid, and to their respective employees, agents, contractors, successors or assigns, so that they may fulfill the obligations referred to in paragraph 26.

**Timber Harvesting Rights Existing Before the Effective Date**

28. British Columbia will ensure that on the Effective Date, any portion of:
  - a) any agreement under the *Forest Act* or *Range Act*; and
  - b) any plan, permit or authorization associated with any agreement under the *Forest Act* or *Range Act* that applies on Kitsumkalum Landsceases to be valid.

**Forest Research Plots**

29. On the Effective Date, Kitsumkalum will grant to British Columbia licences in the applicable form in Appendix C-5, to enter onto Kitsumkalum Lands for the purpose of conducting forestry related studies, tests and experiments, for those research installations and growth and yield sites respectively identified for illustrative purposes as “Growth and Yield Plots” and “Research Installations” in Appendix C-4.

**Other**

30. Before the Final Agreement, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on a long-term forest licence(s) to be held by Kitsumkalum outside of treaty.





## CHAPTER 8 – ACCESS

### General

1. Except as modified by the Final Agreement:
  - a) Kitsumkalum, as owner of Kitsumkalum Lands, has the same rights and obligations with respect to public access to Kitsumkalum Lands as other owners of estates in fee simple have with respect to public access to their land; and
  - b) with respect to unoccupied Kitsumkalum Lands, Kitsumkalum has liabilities and limitations on liabilities similar to those of the provincial Crown with respect to unoccupied provincial Crown land.
2. Nothing in the Final Agreement will affect the public right of navigation on navigable waters.

### Designation of Kitsumkalum Private Lands

3. On the Effective Date, Kitsumkalum Lands identified in Appendix G are designated as Kitsumkalum Private Lands.
4. After the Effective Date, Kitsumkalum may designate portions of Kitsumkalum Lands as Kitsumkalum Private Lands if:
  - a) Kitsumkalum has granted an interest comparable to an interest granted by British Columbia on provincial Crown lands that excludes public access; or
  - b) the Kitsumkalum Lands are used for commercial, cultural, resource development or other uses that are incompatible with public access.
5. If Kitsumkalum intends to designate Kitsumkalum Lands as Kitsumkalum Private Lands in accordance with paragraph 4, Kitsumkalum will:
  - a) provide reasonable notice to British Columbia, Canada and the public of the proposed designation; and
  - b) consider any views advanced by British Columbia, Canada or the public in respect of the proposed designation.
6. If Kitsumkalum intends to change the locations or boundaries of Kitsumkalum Private Land, it will:
  - a) provide reasonable notice to British Columbia, Canada and the public of the proposed changes; and
  - b) consider any views advanced by British Columbia, Canada or the public in respect of the proposed changes.
7. If the designation of Kitsumkalum Lands as Kitsumkalum Private Lands has the effect of preventing public access to an area or location to which there is a public right of access under Federal Law or Provincial Law, such as navigable waters or Crown roads, Kitsumkalum will provide reasonable alternative means of public access to that area or location.

8. For greater certainty, paragraph 7 will not apply where British Columbia and Kitsumkalum agree that a reasonable alternative means of public access to an area or location, to which there is a public right of access under Federal Law or Provincial Law, across provincial Crown land already exists.
9. Kitsumkalum acknowledge that the public continues to have an interest in being able to access, for temporary recreational uses and temporary non-commercial purposes, Kitsumkalum Public Lands.
10. The Final Agreement will contain provisions for maintaining reasonable public access, for temporary recreational uses and temporary non-commercial purposes, to Kitsumkalum Public Lands.

#### **Public Access on Kitsumkalum Lands**

11. Kitsumkalum will allow reasonable public access on Kitsumkalum Public Lands for temporary recreational uses and temporary non-commercial purposes, including reasonable opportunities for the public to hunt and fish on Kitsumkalum Public Lands, but public access does not include:
  - a) harvesting or extracting resources unless authorized by Kitsumkalum or as in accordance with the Final Agreement;
  - b) causing damage to Kitsumkalum Lands or resources on Kitsumkalum Lands;
  - c) causing a nuisance; or
  - d) interfering with other uses authorized by Kitsumkalum or interfering with the ability of Kitsumkalum to authorize uses or dispose of its Kitsumkalum Lands.
12. For greater certainty, public access contemplated by paragraph 11 will be in accordance with Kitsumkalum Law regulating public access to Kitsumkalum Lands.

#### **Access to Interests on and Adjacent to Kitsumkalum Lands**

13. As may be required, the Final Agreement will provide that Kitsumkalum will allow reasonable access across Kitsumkalum Lands, at no cost, to the interests that will be set out in the Final Agreement, consistent with the terms and conditions of those interests.
14. If no other reasonable access exists across Crown land, Kitsumkalum will allow reasonable access, at no cost, across Kitsumkalum Lands to any interest located adjacent or in close proximity to Kitsumkalum Lands, consistent with the terms and conditions of those interests.

#### **Access to Estates in Fee Simple**

15. Kitsumkalum will allow reasonable access, at least as favourable as that which exists immediately before the Effective Date, across its Kitsumkalum Lands at no cost to the estates in fee simple that will be set out in the Final Agreement or any subdivided portions thereof.
16. British Columbia or Kitsumkalum may refer any Disagreement in respect of paragraphs 13 or 15, to be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed to Stages One or Two.
17. For greater certainty, nothing in paragraphs 13 or 15 obligates Kitsumkalum to pay any costs associated with access to a tenure or fee simple estate referred to in those paragraphs.

18. Kitsumkalum will take reasonable measures to notify the public of the terms and conditions respecting public access to Kitsumkalum Public Lands.

### **Law-Making**

19. The Kitsumkalum Government may make laws regulating public access on Kitsumkalum Lands for the purposes of:
  - a) public safety;
  - b) prevention of harvesting or extracting of resources owned by Kitsumkalum;
  - c) prevention of nuisance or damage, including forest fire prevention; and
  - d) protection of sensitive habitat.
20. Kitsumkalum Law made under subparagraph 19.b) prevails to the extent of a Conflict with Federal Law or Provincial Law.
21. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law made under subparagraphs 19.a) 19.c) and 19.d).
22. The Kitsumkalum Government will notify British Columbia and Canada in respect of a Kitsumkalum Law proposed by it that would significantly affect public access on Kitsumkalum Public Lands.

### **Access to Kitsumkalum Lands**

23. Residents and interest holders on Kitsumkalum Lands will have access to their property and ancillary interests, including access on Kitsumkalum Roads, subject to the terms and conditions of their leases, permits and tenures.
24. Agents, employees, contractors, and representatives of Canada, British Columbia, Local Government, Public Utilities, Railways and NAV CANADA, or any other successor entity, and members of the Canadian Armed Forces, or peace officers appointed under Federal Law or Provincial Law, may, in accordance with Federal Law or Provincial Law, enter, cross and stay temporarily on Kitsumkalum Lands at no cost to:
  - a) deliver and manage programs and services;
  - b) carry out inspections;
  - c) enforce law;
  - d) carry out the terms of the Final Agreement;
  - e) respond to emergencies and natural disasters; and
  - f) carry out other duties under Federal Law and Provincial Law.
25. The Final Agreement will not affect the ability of persons acting in an official capacity pursuant to lawful authority to have access to Kitsumkalum Lands.
26. The Final Agreement will not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security on Kitsumkalum Lands, without payment of any fees or other charges to Kitsumkalum except as provided for under Federal Law.

27. Unless otherwise agreed, Canada or British Columbia will provide reasonable notice of entry to Kitsumkalum Lands under paragraphs 24 to 26 to the Kitsumkalum Government:
  - a) before the entry if it is practicable to do so; or
  - b) as soon as practicable after the entry.
28. The requirement to provide reasonable notice under paragraph 27 does not apply to peace officers, investigators or federal and provincial law enforcement officers carrying out duties under Federal Law and Provincial Law.
29. Any person exercising a right of access in accordance with paragraph 24 will act in accordance with Federal Law or Provincial Law, including the payment of compensation for any damage to Kitsumkalum Lands if required by Federal Law or Provincial Law.

### **Kitsumkalum Access to Crown Lands**

30. Agents, employees, contractors, and representatives of the Kitsumkalum Government may, in accordance with Federal Law and Provincial Law and the terms of any uses authorized by the Crown, enter, cross and stay temporarily on Crown land, at no cost to:
  - a) deliver and manage programs and services;
  - b) carry out inspections;
  - c) respond to emergencies and natural disasters;
  - d) enforce Kitsumkalum Law;
  - e) carry out the terms of the Final Agreement; and
  - f) carry out other duties under Kitsumkalum Law.
31. Unless otherwise agreed, the Kitsumkalum Government will provide reasonable notice of entry onto Crown land under paragraph 30 to Canada or British Columbia as the case may be:
  - a) before the entry if it is practicable to do so; or
  - b) as soon as practicable after the entry.
32. Any person exercising a right of access in accordance with paragraph 30 will act in accordance with Federal Law or Provincial Law, including the payment of compensation for any damage if required by Federal Law or Provincial Law.
33. If an authorized use or disposition of provincial Crown land would deny Kitsumkalum reasonable access to Kitsumkalum Lands, British Columbia will provide Kitsumkalum with reasonable alternative means of access to Kitsumkalum Lands.
34. For greater certainty, in addition to the access provisions set out in this Chapter, Kitsumkalum Members will have the same access on provincial Crown land as other residents under Provincial Law.

## CHAPTER 9 – ROADS AND RIGHTS OF WAY

### **Kitsumkalum Roads and Crown Corridors**

1. All Kitsumkalum Roads on Kitsumkalum Lands will be owned by Kitsumkalum.
2. For greater certainty, Crown Corridors set out in Appendix D are not part of Kitsumkalum Lands and are owned by British Columbia. The width of Crown Corridors is 30 metres unless otherwise specified in Appendix D.
3. British Columbia will Consult with Kitsumkalum regarding new uses or major road construction within Crown Corridors adjacent to Kitsumkalum Lands.

### **Crown Corridors No Longer Required**

4. If British Columbia no longer requires any portion of a Crown Corridor identified in Appendix D, it will transfer the estate in fee simple, including the Subsurface Resources if they are owned by the Crown, for that portion of the Crown Corridor to Kitsumkalum.
5. If Kitsumkalum acquires a portion of a Crown Corridor in accordance with paragraph 4, such parcel of land will be added to Kitsumkalum Lands upon Kitsumkalum becoming the owner of such parcel of land and Appendix B is deemed to be amended to reflect such addition to Kitsumkalum Lands, unless Kitsumkalum provides notice to British Columbia and Canada before the date of such transfer that such lands are not to be added to Kitsumkalum Lands.

### **Realignment of Provincial Roads**

6. If British Columbia acquires by agreement or expropriates an estate or interest in a parcel of Kitsumkalum Lands for the purpose of realigning all or a portion of a Provincial Road:
  - a) at the request of Kitsumkalum, British Columbia will transfer to Kitsumkalum that portion of the Provincial Road on or adjacent to Kitsumkalum Lands that is no longer required for road, highway or Public Utility purposes and that land will become Kitsumkalum Lands;
  - b) the estate or interest transferred to or expropriated by British Columbia for the purpose of such realignment will be the same as the estate or interest held by British Columbia in the pre-existing Provincial Road; and
  - c) upon completion of any transfers or expropriation under this paragraph, Appendices B and D will, where appropriate, be amended in accordance with the process set out in the amendment provisions of the General Provisions Chapter.
7. Where Kitsumkalum does not request a transfer under subparagraph 6(a):
  - a) British Columbia will not transfer its interest in the pre-existing Provincial Road to Kitsumkalum;
  - b) Kitsumkalum will transfer any Kitsumkalum Lands between the pre-existing Provincial Road and the new Provincial Road to British Columbia; and
  - c) British Columbia will compensate Kitsumkalum for the value of the estate or interest acquired by British Columbia under subparagraphs 6(b) and 7(b).

### **Entry on Kitsumkalum Lands Outside Crown Corridors**

8. In addition to the provisions of the Access Chapter, British Columbia, a Local Government or a Public Utility and their employees, agents, contractors, or representatives will have access to Kitsumkalum Lands, including Kitsumkalum Roads, at no cost for the purpose of undertaking works, including:
  - a) constructing drainage works;
  - b) carrying out repairs;
  - c) maintaining slope stability;
  - d) removing dangerous Timber or other hazards; or
  - e) carrying out vegetation management,where the work is necessary for constructing, operating, maintaining, repairing, replacing, removing or protecting Crown Corridors, Rights of Way, Public Utility works or other works located on Rights of Way or Public Utility works located on or adjacent to Kitsumkalum Lands.
9. Paragraph 8 is subject to the terms of any grant issued by Kitsumkalum to British Columbia, a Local Government or a Public Utility.
10. Unless otherwise agreed to by Kitsumkalum, Timber removed from Kitsumkalum Lands in accordance with paragraph 8 remain the property of Kitsumkalum.

### **Work Plan**

11. Before commencing any work referred to in paragraph 8, British Columbia, a Local Government or a Public Utility will deliver to Kitsumkalum a written work plan describing the effect and extent of the proposed work on Kitsumkalum Lands.
12. Kitsumkalum will, within 30 days of receiving a work plan under paragraph 11, notify British Columbia, a Local Government or a Public Utility, as the case may be, if it approves the work plan, such approval not to be unreasonably withheld.
13. If Kitsumkalum does not approve a work plan prepared by British Columbia under paragraph 11, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stages One and Two.
14. Notwithstanding paragraphs 11 to 13, BC Hydro's obligations with respect to work plan requirements will only be as set out in the Rights of Way granted to BC Hydro under the Final Agreement and other Rights of Way entered into between BC Hydro and Kitsumkalum from time to time and paragraphs 11 to 13 shall not apply to BC Hydro.

### **Undertaking Works**

15. In undertaking works referred to in paragraph 8, the person undertaking the work will minimize the damage to and time spent on Kitsumkalum Lands, and will pay fair compensation for any interference with or damage to Kitsumkalum Lands that results from work undertaken by or on behalf of the party.
16. If British Columbia or Kitsumkalum do not agree on compensation under paragraph 15 with respect to the works undertaken by British Columbia, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stages One and Two.

### **Emergency Works**

17. Notwithstanding any other provision of the Final Agreement, British Columbia, a Local Government, or a Public Utility may access Kitsumkalum Lands and undertake works and take steps on Kitsumkalum Lands that are urgently required in order to repair or protect works constructed on Crown Corridors or Rights of Way, or to protect individuals or vehicles using Crown Corridors or Rights of Way.
18. A person undertaking works under paragraph 17 will notify Kitsumkalum that it has undertaken works on Kitsumkalum Lands.

### **Public Utilities**

19. Kitsumkalum will issue the Public Utility Rights of Way identified in Appendix C-2, as provided for in paragraphs 24 to 35 of the Lands Chapter.
20. With the prior written approval of Kitsumkalum, a Public Utility may extend or locate and install new distribution works on Kitsumkalum Lands on substantially the same terms and conditions as contained in Appendix C-5 where extended or new works are necessary to meet demand for service on or off Kitsumkalum Lands.
21. With the prior written approval of Kitsumkalum, a Public Utility may extend or locate and install new transmission works on Kitsumkalum Lands on substantially the same terms and conditions as contained in Appendix C-5 where extended or new transmission works are necessary to meet demand for service on Kitsumkalum Lands.
22. Kitsumkalum will not unreasonably withhold approval for works referred to in paragraphs 20 or 21.
23. Nothing in paragraph 20 requires a Public Utility to obtain the approval of Kitsumkalum for usual service extensions or connections to Public Utility works or to deliver and manage service to customers of a Public Utility.
24. Kitsumkalum Law will not apply to the regulation of the business of a Public Utility, nor the planning, development, construction, repair, maintenance, operation or decommissioning of a Public Utility's authorized works.
25. Without limiting the generality of paragraph 24, Kitsumkalum Law and Kitsumkalum's use or occupation of Kitsumkalum Lands will not impair or frustrate:
  - a) a Public Utility's authorized use or occupation of its Public Utility Rights of Way or the Public Utility's works located on its Public Utility Rights of Way; or
  - b) a Public Utility's authorized use or occupation of Kitsumkalum Lands or the Public Utility's works located on Kitsumkalum Lands.
26. Without limiting paragraph 24, Kitsumkalum shall, upon notice by BC Hydro, which may enforce this section in legal proceedings, indemnify BC Hydro from and against any cost or liability arising or incurred as a result of BC Hydro complying with a Kitsumkalum Law that regulates or purports to regulate BC Hydro's undertaking or works on Kitsumkalum Lands, to the extent that such costs or liabilities are in excess of those that would have arisen or been incurred under any existing applicable Federal Law or Provincial Law.
27. Public Utility Rights of Way established after the Effective Date on or adjacent to Kitsumkalum Lands will be subject to the provisions of the Final Agreement.

### **Consultation Regarding Traffic Regulation**

28. Upon request of Kitsumkalum, British Columbia will Consult with Kitsumkalum with respect to existing regulation by British Columbia of traffic and transportation on a Crown Corridor that is adjacent to a settled area on Kitsumkalum Lands.

### **Access and Safety Regulation**

29. British Columbia will retain the authority to regulate all matters relating to:
- a) the location and design of intersecting roads giving access to Crown Corridors from Kitsumkalum Lands, including:
    - i) regulating or requiring signs, signals, or other traffic control devices on Crown Corridors;
    - ii) regulating or requiring merging lanes, on ramps and off ramps; or
    - iii) requiring contributions to the cost of the matters referred to in subparagraphs 29(a)(i) and 29(a)(ii); and
  - b) the height and location of structures on Kitsumkalum Lands immediately adjacent to Crown Corridors, only to the extent reasonably required to protect the safety of the users of Crown Corridors.
30. Subject to provincial requirements, including those set out in paragraph 29, British Columbia will not unreasonably deny Kitsumkalum access to a Provincial Road from Kitsumkalum Lands.
31. British Columbia will provide Kitsumkalum with any licence, permit or approval required under Provincial Law to join or intersect a Provincial Road with a Kitsumkalum Road if:
- a) the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and
  - b) the joining or intersecting Kitsumkalum Road complies with standards established under Provincial Law for equivalent Provincial Roads.
32. Subject to provisions of the Final Agreement, British Columbia will not zone or otherwise regulate land use on Kitsumkalum Lands adjacent to Crown Corridors.
33. Kitsumkalum will Consult with British Columbia on any access or public safety issue associated with land use decisions relating to the development of Kitsumkalum Lands adjacent to Crown Corridors.

### **Roads**

34. Kitsumkalum Roads will be administered, controlled and maintained by Kitsumkalum.
35. In accordance with the Final Agreement, unless otherwise designated as private, Kitsumkalum will allow public use of Kitsumkalum Roads.

### **Gravel**

36. Kitsumkalum will have reasonable access at no cost, other than the cost of extraction, refinement and transportation, to sufficient quantities of gravel and related aggregate materials from existing gravel on provincial Crown lands in the vicinity of Kitsumkalum Lands to fulfill any obligations it may have to construct, maintain or repair roads or Rights of Way on Kitsumkalum Lands.



37. British Columbia will have reasonable access at no cost, other than the cost of extraction, refinement and transportation, to sufficient quantities of gravel and related aggregate materials from existing gravel on Kitsumkalum Lands. Gravel and related aggregate materials extracted from those sites will be used to fulfill any obligations British Columbia may have to construct, maintain or repair roads and public Rights of Way.
38. The Final Agreement will contain provisions for Kitsumkalum and British Columbia to prepare gravel management plans in respect of paragraphs 36 and 37 respectively.



## **CHAPTER 10 – FISHERIES**

1. As set out in paragraph 3 of the General Provisions Chapter, while this Agreement does not address fisheries matters, the Parties will address those matters before the Final Agreement.
2. For greater certainty, this Agreement is not intended to affect any aboriginal fishing rights that Kitsumkalum may have.



## CHAPTER 11 – WILDLIFE

### General

1. Kitsumkalum will have the right to harvest Wildlife for Domestic Purposes within the Harvest Area throughout the year in accordance with the Final Agreement.
2. The Kitsumkalum Right to Harvest Wildlife will be limited by measures necessary for conservation, public health or public safety.
3. The Kitsumkalum Right to Harvest Wildlife is held by Kitsumkalum and cannot be alienated.
4. The Final Agreement will provide that if Canada and British Columbia enter into a treaty with a Tsimshian First Nation, other than Kitsumkalum, that provides for harvesting of Wildlife by Kitsumkalum Members in areas outside the Harvest Area, the Parties will negotiate and attempt to reach agreement to amend the boundaries of the Harvest Area to include those additional areas and to make other necessary amendments to the Final Agreement.
5. The Kitsumkalum Right to Harvest Wildlife is a right to harvest in a manner that is consistent with the communal nature of Kitsumkalum's harvest for Domestic Purposes, and periods of harvest as determined by Kitsumkalum.
6. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Wildlife except as otherwise provided under Kitsumkalum Law.
7. The Minister retains the authority for managing and conserving Wildlife and Wildlife habitat and will exercise that authority consistent with the Final Agreement.
8. The Final Agreement will not alter Federal Law or Provincial Law in respect of property in Wildlife.

### Harvest Areas

9. The exercise of the Kitsumkalum Right to Harvest Wildlife in Area A of the Harvest Area set out in Appendix F is subject to a protocol in effect between the Kitsumkalum Nation and the Kitselas Nation.
10. Before the Final Agreement, the Parties will address the exercise of the Kitsumkalum Right to Harvest Wildlife in Area B of Appendix F.
11. The Kitsumkalum Nation will provide a copy of a protocol referred to in paragraph 9 and any amendments to Canada and British Columbia and will notify Canada and British Columbia if a protocol is cancelled.

### BC Reasonable Opportunity Language

12. British Columbia may authorize the use or disposition of provincial Crown lands, and any authorized use or disposition may affect the method, times and locations of harvesting Wildlife under the Kitsumkalum Right to Harvest Wildlife, provided that British Columbia ensures that those authorized uses or dispositions do not deny Kitsumkalum the reasonable opportunity to harvest Wildlife under the Kitsumkalum Right to Harvest Wildlife.

13. For the purposes of paragraph 12, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement by the Effective Date on a process to evaluate the impact of the uses or dispositions of provincial Crown land on Kitsumkalum's reasonable opportunity to harvest Wildlife.
14. The Kitsumkalum Right to Harvest Wildlife will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 12.

#### **Incidental Use**

15. Kitsumkalum Members may use the resources on provincial Crown land for purposes reasonably incidental to the exercise of the Kitsumkalum Right to Harvest Wildlife, subject to Federal Law and Provincial Law.

#### **Harvesting on Federal Crown Lands**

16. The Final Agreement will not preclude Kitsumkalum from entering into an agreement with a federal department or agency that provides for access and harvesting on land administered or occupied by that department or agency by Kitsumkalum Members in accordance with that agreement and Federal Law and Provincial Law.

#### **Harvesting on Fee Simple Lands**

17. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Wildlife on lands that are privately owned in fee simple off Kitsumkalum Lands, but access for the purposes of harvesting will be in accordance with Federal Law and Provincial Law.
18. If lands owned by another First Nation fall within the Harvest Area, Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Wildlife on those lands, provided access for purposes of harvesting will be in accordance with Federal Law and Provincial Law and the laws or agreements of the other First Nation respecting access to those lands.

#### **Licences and Fees**

19. Kitsumkalum Members will not be required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the Kitsumkalum Right to Harvest Wildlife.
20. Nothing in the Final Agreement will affect Canada's ability to require Kitsumkalum Members to obtain licences or registration certificates, where applicable, for acquisition, possession, transport, carrying and use of firearms under Federal Law.

#### **Harvesting Outside the Harvest Area**

21. The Final Agreement will not preclude Kitsumkalum Members from harvesting Wildlife outside of the Harvest Area throughout Canada in accordance with:
  - a) Federal Law and Provincial Law;
  - b) any agreements, that are in accordance with Federal Law and Provincial Law, between Kitsumkalum and other aboriginal people; or
  - c) any arrangements between other aboriginal people and Canada or British Columbia.

## **Documentation**

22. The Kitsumkalum Government will issue documentation to Kitsumkalum Members to harvest or transport Wildlife under the Kitsumkalum Right to Harvest Wildlife in the Harvest Area.
23. Documentation issued under paragraph 22 will:
  - a) be in the English language, which version is authoritative, and, at the discretion of Kitsumkalum, in the Sm'algx language;
  - b) include sufficient information to identify the Kitsumkalum Member; and
  - c) meet any other requirements under Kitsumkalum Law.

## **Conservation Measures of a Wildlife Species**

24. The Minister may establish or vary conservation measures in respect of Wildlife species in the Harvest Area.
25. The Minister will Consult with Kitsumkalum regarding a conservation measure, proposed by the Minister or Kitsumkalum, related to a Wildlife species within the Harvest Area, including the role of Kitsumkalum in the development and implementation of the conservation measure.
26. When considering a conservation measure under paragraph 24, the Minister will take into account all relevant information, including:
  - a) the conservation risk to the Wildlife species;
  - b) the population of the Wildlife species:
    - i) within the Harvest Area; and
    - ii) within its normal range or area of movement outside the Harvest Area; and
  - c) the necessity for and the nature of the proposed conservation measure.
27. Before authorizing the implementation of a conservation measure which will affect the Kitsumkalum Right to Harvest Wildlife, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the Kitsumkalum Right to Harvest Wildlife.
28. The Minister will provide to Kitsumkalum:
  - a) a copy of any approved conservation measure in respect of a Wildlife species within the Harvest Area; and
  - b) at the request of Kitsumkalum written reasons for the adoption of that conservation measure.
29. If the Minister determines that establishing or varying an Allocation for Kitsumkalum is the necessary conservation measure, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on that Allocation.
30. If British Columbia and Kitsumkalum fail to agree on an Allocation or variation under paragraph 29, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.
31. In determining the Allocation or variation under paragraph 29, the arbitrator must take into account all relevant information provided by Kitsumkalum and British Columbia.

### **Law-Making**

32. The Kitsumkalum Government may make laws in respect of the Kitsumkalum Right to Harvest Wildlife for:
  - a) the distribution of harvested Wildlife among Kitsumkalum Members;
  - b) designating Kitsumkalum Members to harvest Wildlife;
  - c) the administration of documentation of those individuals authorized to harvest Wildlife;
  - d) the methods, timing and location of the harvest of Wildlife;
  - e) Trade and Barter of Wildlife harvested by Kitsumkalum Members under paragraph 39; and
  - f) other matters as set out in the Final Agreement.
33. Kitsumkalum Law under paragraph 32 prevails to the extent of a Conflict with Federal Law or Provincial Law.
34. The Kitsumkalum Government will make laws to require all Kitsumkalum Members to comply with any conservation measures established by the Minister that affect the Kitsumkalum Right to Harvest Wildlife.
35. The Kitsumkalum Government will make laws to require all Kitsumkalum Members who harvest Wildlife under the Final Agreement, or transport Wildlife harvested under the Final Agreement, to carry documentation issued by the Kitsumkalum Government and produce that documentation on request by an authorized individual.
36. Federal Law or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law under paragraphs 34 or 35.

### **Wildlife Advisory Management Processes**

37. Kitsumkalum will have the right to participate in any public Wildlife advisory management processes established by British Columbia that includes any portion of the Harvest Area.
38. The Minister may request recommendations from the Wildlife advisory management process under paragraph 37 before determining whether a Wildlife species will be or continue to be a subject to a conservation measure.

### **Trade and Barter and Sale**

39. Kitsumkalum will have the right to Trade and Barter between themselves, or with other aboriginal people of Canada, any Wildlife, Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife.
40. Kitsumkalum Members may exercise the right to Trade and Barter except as otherwise provided in a Kitsumkalum Law under subparagraph 32.e).
41. Kitsumkalum and Kitsumkalum Members may, in accordance with Federal Law or Provincial Law, sell Wildlife and Wildlife parts, including meat and furs, harvested under the Kitsumkalum Right to Harvest Wildlife.



## **Trapping**

42. Registered traplines that exist on the Effective Date, and that are located wholly or partly on Kitsumkalum Lands, will be set out in Appendix C-3. They will be retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
43. Kitsumkalum will allow reasonable access to Kitsumkalum Public Lands by a person who holds a registered trapline set out in Appendix C-3, or any renewal or replacement of that trapline, or by any person who has written permission from that registered trapline holder to trap within the registered trapline area for the purpose of carrying out trapping activities.
44. If a trapline set out in Appendix C-3 becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration to that portion of the trapline located on Kitsumkalum Lands without the consent of Kitsumkalum.
45. Before the Final Agreement, the Parties may develop a process for the sale of traplines which may not be part of the Final Agreement.
46. If the holder of a registered trapline set out in Appendix C-3 agrees to transfer the trapline to Kitsumkalum, British Columbia will consent to and register the transfer.

## **Guiding and Angling**

47. Guide outfitter licences and certificates and angling guide licences that exist on the Effective Date, and that are located wholly or partly on Kitsumkalum Lands, will be set out in Appendix C-3. They will be retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
48. Kitsumkalum will allow reasonable access to Kitsumkalum Public Lands by a person who holds a guide outfitter licence and certificate or an angling guide licence as set out in Appendix C-3 or any renewal or replacement of such guide outfitter licence and certificate or angling guide licence, and their respective employees, agents and other representatives for the purpose of carrying out guiding activities.
49. Before the Final Agreement the Parties may develop a process for the purchase of guide outfitter licences which may not be part of the Final Agreement.
50. British Columbia will not grant the privilege of guiding for game on any portion of Kitsumkalum Lands not included in a guide outfitter licence or certificate on Effective Date without the consent of Kitsumkalum.
51. If a privilege of guiding for game exercisable in an area that is wholly or partly within Kitsumkalum Lands ceases by reason of non-renewal of the privilege or operation of law, including by exercise of administrative discretion, British Columbia will not grant a privilege of guiding for game on that portion included in Kitsumkalum Lands without the consent of Kitsumkalum.
52. If an angling guide licence set out in Appendix C-3 becomes vacant by reason of abandonment or operation of law, British Columbia will not issue a new angling guide licence to that portion of such watercourse within Kitsumkalum Lands without the consent of Kitsumkalum.

### **Transport and Export**

53. Kitsumkalum Members may, in accordance with:
  - a) Federal Law and Provincial Law; and
  - b) Kitsumkalum Law under paragraph 35,  
transport Wildlife or Wildlife parts, including meat, harvested under the Kitsumkalum Right to Harvest Wildlife.
54. Any export of Wildlife or Wildlife parts, including meat or fur harvested under the Kitsumkalum Right to Harvest Wildlife will be in accordance with Federal Law and Provincial Law.

## CHAPTER 12 – MIGRATORY BIRDS

### General

1. Kitsumkalum will have the right to harvest Migratory Birds for Domestic Purposes within the Harvest Area throughout the year in accordance with the Final Agreement.
2. The Kitsumkalum Right to Harvest Migratory Birds will be limited by measures necessary for conservation, public health or public safety.
3. Kitsumkalum Members may exercise the Kitsumkalum Right to Harvest Migratory Birds except as otherwise provided under Kitsumkalum Law.
4. The Kitsumkalum Right to Harvest Migratory Birds will be held by Kitsumkalum and cannot be alienated.
5. The Minister retains authority for managing and conserving Migratory Birds and Migratory Bird habitat.
6. Kitsumkalum Members will not be required to have federal or provincial licenses, or pay fees or royalties to Canada or British Columbia relating to the Kitsumkalum Right to Harvest Migratory Birds.
7. Nothing in the Final Agreement will affect Canada's ability to require Kitsumkalum Members to obtain licenses for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
8. The Final Agreement will not alter Federal Law or Provincial Law in respect of property in Migratory Birds.

### Harvest Areas

9. The exercise of the Kitsumkalum Right to Harvest Migratory Birds in Area A of the Harvest Area set out in Appendix F is subject to a protocol in effect between Kitsumkalum and the Kitselas First Nation.
10. Before the Final Agreement, the Parties will address the exercise of the Kitsumkalum Right to Harvest Migratory Birds in Area B of Appendix F.
11. Kitsumkalum will provide a copy of a protocol referred to in paragraph 9 and any amendments to Canada and British Columbia and will notify Canada and British Columbia if a protocol is cancelled.

### Provincial Reasonable Opportunity

12. British Columbia may authorize the use or disposition of provincial Crown lands, and any authorized use or disposition may affect the method, times and locations of harvesting Migratory Birds under the Kitsumkalum Right to Harvest Migratory Birds, provided that British Columbia ensures that those authorized uses or dispositions do not deny Kitsumkalum the reasonable opportunity to harvest Migratory Birds under the Kitsumkalum Right to Harvest Migratory Birds.
13. For the purposes of paragraph 12, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement by the Effective Date on a process to evaluate the impact of uses and

dispositions of provincial Crown land on Kitsumkalum's reasonable opportunity to harvest Migratory Birds.

14. The Kitsumkalum Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 12.

### **Incidental Use**

15. In the Kitsumkalum Harvest Area, the use of resources on Crown land for purposes reasonably incidental to the exercise of the Kitsumkalum Right to Harvest Migratory Birds is subject to Federal Law and Provincial Law.

### **Harvesting on Federal Crown Lands**

16. The Final Agreement will not preclude Kitsumkalum from entering into an agreement with a federal department or agency that provides for access and harvesting on land owned or in use by that department or agency by Kitsumkalum Members in accordance with that agreement and Federal Law and Provincial Law.

### **Harvest**

17. The Final Agreement will not preclude Kitsumkalum Members from harvesting Migratory Birds anywhere in Canada in accordance with:
  - a) Federal Law and Provincial Law;
  - b) any agreements, that are in accordance with Federal Law and Provincial Law, between Kitsumkalum and other aboriginal people; or
  - c) any arrangements between other aboriginal people and Canada or British Columbia.

### **Trade and Barter**

18. Kitsumkalum and Kitsumkalum Members, in accordance with any Kitsumkalum Law under paragraph 24, have a right to Trade and Barter Migratory Birds harvested in accordance with the Final Agreement between themselves, or with other aboriginal people of Canada.

### **Sale of Migratory Birds**

19. Kitsumkalum and Kitsumkalum Members may sell Migratory Birds harvested under the Final Agreement in accordance with:
  - a) any Federal Law and Provincial Law that permit the sale of Migratory Birds; and
  - b) any Kitsumkalum Law enacted under paragraph 24.
20. Notwithstanding paragraph 19, Kitsumkalum and Kitsumkalum Members may sell inedible byproducts, including down, of Migratory Birds harvested under the Final Agreement in accordance with any Kitsumkalum Law under paragraph 24.

### **Transport and Export**

21. Kitsumkalum and Kitsumkalum Members may transport Migratory Birds and inedible byproducts, including down, harvested under the Final Agreement in accordance with Federal Law and Provincial Law and Kitsumkalum Law under paragraph 27.
22. Notwithstanding paragraph 21, Migratory Birds harvested under the Final Agreement may be transported within Canada throughout the year.

23. Kitsumkalum and Kitsumkalum Members may, in accordance with Federal Law and Provincial Law, export Migratory Birds, and their inedible by-products, including down, harvested under the Kitsumkalum Right to Harvest Migratory Birds.

### **Law-Making**

24. The Kitsumkalum Government may make laws in respect of the Kitsumkalum Right to Harvest Migratory Birds for:
- a) the designation of Kitsumkalum Members who may harvest Migratory Birds under the Final Agreement;
  - b) the administration of documentation of those individuals authorized to harvest under the Kitsumkalum Right to Harvest Migratory Birds;
  - c) the distribution of harvested Migratory Birds to Kitsumkalum Members;
  - d) the methods, timing, and location of harvest of Migratory Birds under the Final Agreement;
  - e) the Trade and Barter of Migratory Birds harvested under the Final Agreement;
  - f) the sale of inedible byproducts, including down, of harvested Migratory Birds; and
  - g) other matters agreed to by the Parties.
25. Kitsumkalum Law under paragraph 24 prevails to the extent of a Conflict with Federal Law or Provincial Law.
26. The Kitsumkalum Government may make laws in respect of the Kitsumkalum Right to Harvest Migratory Birds for:
- a) the management of Migratory Birds and Migratory Bird habitat on Kitsumkalum Lands;
  - b) the sale of Migratory Birds, other than their inedible byproducts, if permitted by Federal Law and Provincial Law; and
  - c) other matters agreed to by the Parties.
27. The Kitsumkalum Government will make laws to require all individuals who harvest or transport Migratory Birds under the Kitsumkalum Right to Harvest Migratory Birds to carry documentation issued by the Kitsumkalum Government and produce that documentation on request by an authorized person.
28. Federal Law or Provincial Law in relation to Migratory Birds prevails to the extent of a Conflict with Kitsumkalum Law under paragraphs 26 and 27.
29. The Kitsumkalum Government will issue documentation to Kitsumkalum Members to harvest or transport Migratory Birds under the Kitsumkalum Right to Harvest Migratory Birds in the Harvest Area.
30. The documentation referred to in paragraph 27 and issued by the Kitsumkalum Government will:
- a) be in the English language, which version is authoritative, and, at the discretion of Kitsumkalum, in the Sm'algylx language;
  - b) include sufficient information to identify the person; and

- c) meet any other requirements set out by the Kitsumkalum Government.

### **Consultation on International Negotiations on Migratory Birds**

- 31. Canada will Consult with Kitsumkalum on the development of Canada's positions in respect of international discussions or negotiations that may adversely affect the Kitsumkalum Right to Harvest Migratory Birds.

### **Conservation Measures**

- 32. The Parties may negotiate agreements concerning the conservation and management of Migratory Birds to address matters of common concern, including, but not limited to:
  - a) setting local conservation objectives;
  - b) implementing conservation measures, such as the Allocation of harvests of a population of a Migratory Bird;
  - c) matters related to stewardship and recovery of Species at Risk, such as: determining the occurrence and range of species; monitoring the status of species; developing and implementing education and public awareness programs; developing and implementing recovery strategies, action plans and Management plans; protecting and enhancing species' habitats; and, undertaking research projects in support of stewardship and recovery efforts for species;
  - d) information sharing; or
  - e) license and permit requirements.
- 33. If, in the opinion of the Minister or Kitsumkalum, conservation measures are needed within the Harvest Area to protect a particular population of Migratory Bird, and those measures are likely to affect the Kitsumkalum Right to Harvest Migratory Birds, the Parties will Consult with one another in respect of the need for such conservation measures and, where applicable, the development and implementation of such conservation measures.
- 34. Canada and Kitsumkalum will attempt to work in a collaborative way with other First Nations and will endeavour to work out such arrangements as are necessary to implement Migratory Birds agreements under paragraph 32.
- 35. In establishing a conservation measure for a Migratory Bird population, the Minister will take into account, among other things, the Kitsumkalum Right to Harvest Migratory Birds.

## CHAPTER 13 - GATHERING

### Gathering Rights

1. Subject to the negotiation of the Gathering Area, Kitsumkalum will have the right to gather Plants for Domestic Purposes on provincial Crown lands within the Harvest Area in accordance with the Final Agreement.
2. The Kitsumkalum Right to Gather Plants will be limited by measures necessary for conservation, public health or public safety.
3. Before the Final Agreement, the Parties will negotiate and attempt to reach agreement on the provisions that set out a right to harvest Timber or Timber Resources for Domestic Purposes within the Kitsumkalum Area.
4. The Kitsumkalum Right to Gather Plants will be held by Kitsumkalum and cannot be alienated.
5. Kitsumkalum Members may exercise the Kitsumkalum Right to Gather Plants except as otherwise provided under Kitsumkalum Law.
6. Kitsumkalum Members are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia relating to the exercise of the Kitsumkalum Right to Gather Plants.
7. The Final Agreement will not preclude Kitsumkalum Members from gathering Plants on provincial Crown lands in accordance with Federal Law and Provincial Law.
8. The Minister will retain authority for managing and conserving Plants and Plant habitat.
9. The Final Agreement will not alter Federal Law or Provincial Law in respect of property interests in Plants.

### Reasonable Opportunity

10. British Columbia may authorize uses of or dispose of provincial Crown lands, and any authorized use or disposition may affect the methods, times and locations of gathering Plants under the Kitsumkalum Right to Gather Plants, provided that British Columbia ensures that those authorized uses or dispositions do not deny Kitsumkalum the reasonable opportunity to gather Plants under the Kitsumkalum Right to Gather Plants.
11. For the purposes of paragraph 10, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement by the Effective Date on a process to evaluate the impact of uses and dispositions of provincial Crown land on Kitsumkalum's reasonable opportunity to gather Plants.
12. The Kitsumkalum Right to Gather Plants will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 10.

### Incidental Use

13. Kitsumkalum Members may use resources on provincial Crown land for purposes reasonably incidental to the exercise of the Kitsumkalum Right to Gather Plants subject to Federal Law and Provincial Law.

### **Gathering Information**

14. Before the Effective Date, Kitsumkalum will provide British Columbia with general information regarding where and when Kitsumkalum exercises the Kitsumkalum Right to Gather Plants, and what Plants are harvested.
15. Kitsumkalum and British Columbia may enter into an agreement with respect to information sharing regarding gathering.
16. In the absence of agreement under paragraph 15, the Minister may request the following information with respect to the exercise of the Kitsumkalum Right to Gather Plants:
  - a) harvest location;
  - b) time of harvest; and
  - c) Plant species harvested.
17. When making a request for information under paragraph 16, the Minister will provide Kitsumkalum with sufficient information to enable it to be adequately informed of the purpose for the request.
18. Kitsumkalum will make reasonable efforts to provide the information requested under paragraph 16.
19. If Kitsumkalum is unable to provide the information requested under paragraph 16:
  - a) Kitsumkalum will provide the Minister with an explanation of why it is unable to provide the information; and
  - b) if the Minister is unsatisfied with the explanation provided by Kitsumkalum, the Minister may refer the matter for resolution in accordance with the Dispute Resolution Chapter.

### **Trade, Barter and Sale**

20. Kitsumkalum will have the right to Trade and Barter among themselves, or with other aboriginal people of Canada in British Columbia, any Plants gathered under the Kitsumkalum Right to Gather Plants.
21. Except as otherwise provided under Kitsumkalum Law, Kitsumkalum Members may exercise the right to Trade or Barter Plants, under paragraph 20.
22. Kitsumkalum and Kitsumkalum Members may, in accordance with Federal Law or Provincial Law, sell Plants harvested under the Kitsumkalum Right to Gather Plants.
23. The Kitsumkalum right to Trade and Barter under paragraph 20 is held by Kitsumkalum and cannot be alienated.

### **Law-Making**

24. The Kitsumkalum Government may make laws in respect of the Kitsumkalum Right to Gather Plants for:
  - a) designating Kitsumkalum Members to gather Plants;
  - b) the distribution of gathered Plants among Kitsumkalum Members; and
  - c) Trade and Barter of the Plants gathered by Kitsumkalum Members.



25. Kitsumkalum Law under paragraph 24 prevails to the extent of a Conflict with Federal Law or Provincial Law.
26. Kitsumkalum will make laws to require Kitsumkalum Members gathering under the Kitsumkalum Right to Gather Plants to comply with any conservation measures established by the Minister that affect the Kitsumkalum Right to Gather Plants.
27. Federal Law or Provincial Law prevails to the extent of a Conflict with a Kitsumkalum Law under paragraph 26.

**Documentation**

28. The Final Agreement will address the issue of documentation including the priority of laws.



## CHAPTER 14 - ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL PROTECTION

### Environmental Assessment

1. Notwithstanding any decision made by Canada or British Columbia in respect of a Federal Project or Provincial Project, no Federal Project or Provincial Project on Kitsumkalum Lands will proceed without the consent of Kitsumkalum.
2. Paragraph 1 will not apply in respect of the NTL Project.
3. The Final Agreement will contain provisions that specify, notwithstanding paragraph 1, consent of Kitsumkalum is not required in respect of a Federal Project or Provincial Project if an interest in Kitsumkalum Lands required for the project has been expropriated, or if the Federal Project or Provincial Project may be constructed under the existing Rights of Way granted under the Final Agreement.

### Kitsumkalum Participation in Federal Environmental Assessments

4. If a proposed Federal Project is to be located within the Kitsumkalum Area or may reasonably be expected to adversely affect Kitsumkalum Lands or Kitsumkalum Section 35 Rights, Canada will ensure that Kitsumkalum is provided with timely notice of the Environmental Assessment and information describing the Federal Project in sufficient detail to permit Kitsumkalum to determine if it is interested in participating in the Environmental Assessment.
5. If Kitsumkalum confirms it is interested in participating in the Environmental Assessment of the Federal Project in accordance with paragraph 4:
  - a) Canada will provide Kitsumkalum with an opportunity to comment on the Environmental Assessment of the Federal Project, including:
    - i) the scope of the assessment;
    - ii) the environmental effects of the Federal Project;
    - iii) any mitigation measures to be implemented; and
    - iv) any follow-up programs to be implemented;
  - b) Kitsumkalum will have access to information in Canada's possession related to the Environmental Assessment of the Federal Project in accordance with the public registry provisions in the *Canadian Environmental Assessment Act, 2012*; and
  - c) during the course of the Environmental Assessment under the *Canadian Environmental Assessment Act, 2012*, Canada will give full and fair consideration to any comments made under subparagraph 5(a) and will respond to the comments, prior to making a decision that would have the effect of enabling the proposed Federal Project to be carried out in whole or in part.

6. If a Federal Project described in paragraph 4 is referred to a panel under the *Canadian Environmental Assessment Act, 2012*, Kitsumkalum will have the opportunity to propose to the Minister a list of names that the Minister may consider for appointment to any panel unless:
  - a) the panel is a decision-making body, such as the National Energy Board; or
  - b) Kitsumkalum is a proponent of the Federal Project.
7. If a Federal Project described in paragraph 4 is referred to a panel under the *Canadian Environmental Assessment Act, 2012*, Kitsumkalum will have formal standing before that panel.

### **Participation in Provincial Environmental Assessment Processes**

8. If a Provincial Project is located within the Kitsumkalum Area or may reasonably be expected to adversely affect Kitsumkalum Lands, the residents of such lands, or Kitsumkalum Section 35 Rights, British Columbia will ensure Kitsumkalum:
  - a) is Consulted regarding the environmental, economic, social, heritage, or health effects of the Provincial Project; and
  - b) receives an opportunity to participate in the Environmental Assessment of the Provincial Project.
9. British Columbia will respond to any views provided by Kitsumkalum to British Columbia in paragraph 8 before making a decision that would have the effect of enabling the Provincial Project to be carried out in whole or in part.

### **Law-Making**

10. The Kitsumkalum Government may make laws applicable on Kitsumkalum Lands in respect of:
  - a) Environmental Assessment for Kitsumkalum Projects; and
  - b) environmental management relating to the protection, preservation and conservation of the Environment, including:
    - i) prevention, mitigation and remediation of pollution and degradation of the Environment;
    - ii) waste management, including solid wastes and wastewater;
    - iii) protection of local air quality; and
    - iv) Environmental Emergency response.
11. Kitsumkalum Law under subparagraph 10(a) in respect of Kitsumkalum Projects that are also Federal Projects will have the equivalent effect of, or exceed, the requirements of the *Canadian Environmental Assessment Act, 2012*.
12. If Kitsumkalum exercises law-making authority under subparagraph 10(a), Canada and Kitsumkalum will negotiate and attempt to reach agreement to:
  - a) coordinate the respective Environmental Assessment requirements; and
  - b) avoid duplication where the Kitsumkalum Project is also a Federal Project.
13. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 10.

**Community Watershed Lands**

14. Before the Final Agreement, the Parties may negotiate and attempt to reach agreement on watershed planning and management respecting specific community watersheds.



## **CHAPTER 15 – PARKS, PROTECTED AREAS, AND PUBLIC PLANNING**

### **Public Planning Processes**

1. Kitsumkalum will have the right to participate in any Public Planning Process that may be established by British Columbia for an area either wholly or partly within the Kitsumkalum Area in accordance with procedures established by British Columbia for that Public Planning Process.
2. Kitsumkalum may make proposals to British Columbia to establish a Public Planning Process for an area wholly or partly within the Kitsumkalum Area.
3. Nothing in the Final Agreement will obligate British Columbia to establish a Public Planning Process within the Kitsumkalum Area.
4. Kitsumkalum will have the right to participate in the development of the terms of reference of any Public Planning Process under paragraphs 1 or 2.
5. In participating in any Public Planning Process referred to in paragraphs 1 and 2 Kitsumkalum may bring forward any matters it considers relevant, including any rights set out in the Final Agreement.
6. British Columbia will review and take into consideration any matters brought forward under paragraph 5.
7. British Columbia will provide Kitsumkalum with the draft plan resulting from any Public Planning Process referred to in paragraphs 1 and 2, and Kitsumkalum may provide written recommendations to the Minister on the draft plan which may be made public by British Columbia.
8. After considering any written recommendations received from Kitsumkalum and any matters the Minister considers appropriate, the Minister will provide written reasons for any Kitsumkalum recommendations that are not accepted.
9. At the request of Kitsumkalum, the Minister will meet with Kitsumkalum to discuss any concerns that Kitsumkalum has with the Minister's response under paragraph 8.
10. British Columbia may proceed with any Public Planning Process even if Kitsumkalum does not participate in the process.

### **New Relationship**

11. Nothing in the Final Agreement will preclude Kitsumkalum from participating in a provincial process or institution, including a process or institution that may address matters of shared decision making, or benefiting from any future provincial program, policy or initiative of general application to First Nations as British Columbia develops a new relationship with First Nations, including the enactment of legislation to support these initiatives.
12. If British Columbia develops a process or institution under paragraph 11, at the request of either Party, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement

respecting the establishment of a process or institution with respect to the applicable areas within watersheds as set out in Appendix H of the Final Agreement.

13. Nothing in the Final Agreement will preclude Kitsumkalum from participating in, or benefiting from, provincial benefits-sharing programs of general application in accordance with the general criteria established for those programs from time to time.
14. Nothing in the Final Agreement will preclude Kitsumkalum from entering into arrangements for economic opportunities with third parties, provided that these arrangements are consistent with the Final Agreement.

### **Parks and Protected Areas**

15. Kitsumkalum may make proposals to British Columbia to establish a Provincial Protected Area within the Kitsumkalum Area.
16. Nothing in the Final Agreement will obligate British Columbia to establish a Provincial Protected Area within the Kitsumkalum Area.
17. Any Provincial Protected Area established after the Effective Date will not include Kitsumkalum Lands without the consent of Kitsumkalum.
18. Subject to paragraph 19, Kitsumkalum Members may exercise the Kitsumkalum Right to Gather Plants, the Kitsumkalum Right to Harvest Migratory Birds, and the Kitsumkalum Right to Harvest Wildlife within Provincial Protected Areas, in accordance with the Final Agreement.
19. For greater certainty, the Kitsumkalum Right to Gather Plants in Provincial Protected Areas is subject to negotiating a Gathering Area.
20. Before the Final Agreement, British Columbia and Kitsumkalum will attempt to reach an agreement with respect to provincial parks that addresses:
  - a) park planning;
  - b) management and operations;
  - c) economic opportunities; and
  - d) other matters agreed to by British Columbia and Kitsumkalum.
21. Before the Final Agreement, British Columbia and Kitsumkalum will attempt to address the outcomes of the Great Bear Initiative and the applicable Land and Resource Management Plans as they relate to provincial parks.
22. British Columbia will Consult with Kitsumkalum in respect of:
  - a) the establishment of new Provincial Protected Areas or Wildlife Management Areas;
  - b) the preparation or modification of any management plan for a Provincial Protected Area wholly or partly within the Kitsumkalum Area;
  - c) the disposition of or modification of boundaries of existing Provincial Protected Areas or Wildlife Management Areas; and
  - d) changes in the use or designation of existing Provincial Protected Areas or Wildlife Management Areas,

that may affect the Kitsumkalum Right to Gather Plants, the Kitsumkalum Right to Harvest Wildlife or the Kitsumkalum Right to Harvest Migratory Birds.



23. Before the Final Agreement, British Columbia and Kitsumkalum will negotiate and attempt to reach agreement on potential economic opportunities, consistent with park management plans, to be addressed outside of the Final Agreement.

**Parks and Protected Areas Management Planning Processes**

24. Where a public management planning process is established for a Provincial Protected Area that is wholly or partly within the Kitsumkalum Area, Kitsumkalum may participate in the planning process in accordance with procedures established by British Columbia for that process.
25. British Columbia may proceed with any process contemplated by paragraph 24 even if Kitsumkalum does not participate in that process.
26. Nothing in the Final Agreement obligates British Columbia to establish a public management planning process respecting any Provincial Protected Area.
27. British Columbia will provide Kitsumkalum with any draft public management plan for a Provincial Protected Area that is wholly or partly within the Kitsumkalum Area.
28. Kitsumkalum may provide written recommendations on a draft management plan received under paragraph 27 which may be made public by British Columbia.

**National Park and National Marine Conservation Area Establishment**

29. If, after the Effective Date, any National Park or National Marine Conservation Area is proposed to be established wholly or partly within the Kitsumkalum Area, before the establishment of that National Park or National Marine Conservation Area, Kitsumkalum and Canada will negotiate and attempt to reach agreement for the exercise of:
  - a) the Kitsumkalum Right to Harvest Wildlife;
  - b) the Kitsumkalum Right to Harvest Migratory Birds; and
  - c) the Kitsumkalum Right to Gather Plants,in that proposed National Park or National Marine Conservation Area.
30. Canada will Consult with Kitsumkalum before establishing any new National Park or National Marine Conservation Area wholly or partly within the Kitsumkalum Area.
31. If, after the Effective Date, any National Park, or National Marine Conservation Area is established wholly or partly within the Kitsumkalum Area, Kitsumkalum and Canada will negotiate and attempt to reach agreement regarding Kitsumkalum's participation in a planning and management process to provide advice to the Minister for that National Park or National Marine Conservation Area.



## CHAPTER 16 – SELF-GOVERNMENT

### General

1. Kitsumkalum will have the right to self-government, and the authority to make laws, as set out in the Final Agreement.
2. For greater certainty, the authority of the Kitsumkalum Government to make laws in respect of a subject matter as set out in the Final Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.
3. The Kitsumkalum Government may adopt Federal Law or Provincial Law in respect of matters within Kitsumkalum's law-making authority set out in the Final Agreement.

### Legal Status and Capacity

4. Kitsumkalum is a legal entity with the capacity, rights, powers and privileges of a natural person, including the ability to:
  - a) enter into contracts and agreements;
  - b) acquire and hold property or any interest in property, and sell or dispose of that property or interest;
  - c) raise, invest, expend and borrow money;
  - d) sue and be sued; and
  - e) do other things ancillary to the exercise of its rights, powers and privileges.
5. The rights, powers, and privileges of Kitsumkalum will be exercised in accordance with:
  - a) the Final Agreement; and
  - b) Kitsumkalum Law, including the Kitsumkalum Constitution.
6. Kitsumkalum will act through the Kitsumkalum Government in exercising its rights, powers, privileges and authorities, and in carrying out its duties, functions and obligations.

### Delegation

7. Any law-making authority of Kitsumkalum under the Final Agreement may be delegated by a Kitsumkalum Law to:
  - a) a Kitsumkalum Public Institution;
  - b) another First Nation Government in British Columbia or a public institution established by one or more First Nation Governments in British Columbia;
  - c) a First Nation with a self-government agreement negotiated with British Columbia and Canada that provides for receiving delegated authority;
  - d) Canada, British Columbia or a Local Government; or
  - e) a legal entity as agreed to by the Parties,

if the delegation and the exercise of any law-making authority is in accordance with the Final Agreement and the Kitsumkalum Constitution.

8. Any authority of Kitsumkalum under the Final Agreement other than a law-making authority may be delegated by a Kitsumkalum Law to:

- a) any body set out in paragraph 7; or
- b) a legal entity in Canada,

if the delegation and the exercise of any delegated authority is in accordance with the Final Agreement and the Kitsumkalum Constitution.

9. Any delegation under paragraph 7 or paragraph 8 requires the written consent of the delegate.

10. Kitsumkalum may enter into agreements to receive authorities, including law-making authority, by delegation.

### **Structure**

11. The Kitsumkalum Government, as provided for under its Constitution and the Final Agreement, is the government of Kitsumkalum.

### **Kitsumkalum Constitution**

12. Kitsumkalum will have a Kitsumkalum Constitution, consistent with the Final Agreement, which will provide:

- a) for a democratic Kitsumkalum Government, including its duties, composition and membership;
- b) that the majority of the members of the executive and legislative branches of the Kitsumkalum Government will be elected;
- c) that the Final Agreement sets out the authority of the Kitsumkalum Government to make laws;
- d) for the process for the enactment of laws by the Kitsumkalum Government;
- e) for a process for challenging the validity of Kitsumkalum Law;
- f) for the establishment of Kitsumkalum Public Institutions;
- g) that in the event of a conflict between the Kitsumkalum Constitution and the provisions of any Kitsumkalum Law, the Kitsumkalum Law is, to the extent of the conflict, of no force or effect;
- h) that the Kitsumkalum Government will be democratically accountable to the Kitsumkalum Members with elections at least every five years;
- i) for a system of financial administration comparable to standards generally acceptable for governments in Canada, through which the Kitsumkalum Government will be financially accountable to the Kitsumkalum Members;
- j) for conflict of interest rules that are comparable to generally accepted conflict of interest rules for governments of similar size in Canada;
- k) for conditions under which Kitsumkalum may dispose of land or interests in lands;
- l) for recognition and protection of rights and freedoms of Kitsumkalum Members;

- m) that every person who is enrolled under the Final Agreement is entitled to be a Kitsumkalum Member,
  - n) for a transitional Kitsumkalum Government from the Effective Date until the first elected Kitsumkalum Government takes office;
  - o) for a process for the amendment of the Kitsumkalum Constitution; and
  - p) other provisions as determined by Kitsumkalum.
13. The Kitsumkalum Constitution, once ratified in accordance with the Final Agreement, will come into force on the Effective Date.

### **Appeal and Review of Administrative Decisions**

14. The Kitsumkalum Government may establish processes for appeal or review of administrative decisions made by Kitsumkalum Institutions and if those processes provide for a right of appeal to a court, the Supreme Court of British Columbia will have jurisdiction to hear those appeals.
15. The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by Kitsumkalum Institutions under Kitsumkalum Law, provided no application for judicial review of those decisions may be brought until all procedures for appeal or review provided by the Kitsumkalum Government and applicable to that decision have been exhausted.
16. The *Judicial Review Procedure Act* applies to an application for judicial review under paragraph 15 as if the Kitsumkalum Law were an “enactment” within the meaning of that Act.

### **Registry of Laws**

17. The Kitsumkalum Government will:
- a) maintain a public registry of Kitsumkalum Law in the English language which will be the authoritative version and, at the discretion of the Kitsumkalum Government, in the Sm’algyx language; and
  - b) provide Canada and British Columbia with copies of Kitsumkalum Law as soon as practicable after they are enacted.

### **Notification of Provincial Legislation**

18. Subject to paragraph 24, or an agreement under paragraph 21, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant-Governor-in-Council, British Columbia will notify Kitsumkalum if:
- a) the Final Agreement provides the Kitsumkalum Government law-making authority in respect of the subject matter of the legislation or regulation;
  - b) the legislation or regulation may affect the protections, immunities, limitations in respect of liability, remedies over and rights referred to in paragraphs 161 to 162; or
  - c) the legislation or regulation may affect:

- i) the rights, powers, duties, obligations; or
  - ii) the protections, immunities, and/or limitations in respect of liability, referred to in paragraph 49 of the Emergency Preparedness section, except where this cannot be done for reasons of emergency or confidentiality.
19. If British Columbia does not notify Kitsumkalum under paragraph 18 for reasons of emergency or confidentiality, British Columbia will notify Kitsumkalum that the legislation has been introduced in the Legislative Assembly, or the regulation, as the case may be, has been deposited with the Registrar of Regulations.
20. Notifications under paragraphs 18 and 19 will include:
  - a) the nature and purpose of the proposed legislation or regulation; and
  - b) the date the proposed legislation or regulation is anticipated to take effect, if it has not already done so.
21. Kitsumkalum and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 18 to 20 and 22.
22. Subject to paragraph 23 and 24, or an agreement under paragraph 21, if, within 30 days after notice is given under paragraphs 18 or 19 or by agreement under paragraph 21, Kitsumkalum makes a written request to British Columbia, then British Columbia and Kitsumkalum will discuss the effect of the legislation or regulation, if any, on:
  - a) a Kitsumkalum Law; or
  - b) a matter referred to in subparagraphs 18.b) or 18.c).
23. If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in paragraph 22:
  - a) Kitsumkalum will be invited to participate in that process; and
  - b) the process will be deemed to satisfy British Columbia's obligation for discussion in respect of a particular matter under paragraph 22.
24. If Kitsumkalum is a member of a representative body, and with the consent of Kitsumkalum, British Columbia and that body have entered into an agreement providing for consultation in respect of matters under paragraphs 18, 19 and 22, then consultations in respect of a particular matter will be deemed to satisfy British Columbia's obligations for notification under paragraph 18, and 19 and discussion under paragraph 22
25. Unless British Columbia agrees otherwise, Kitsumkalum will retain the information provided under paragraphs 18 to 24 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative Assembly or a regulation is deposited with the registrar of regulations, as applicable.
26. The Parties acknowledge that nothing in paragraphs 18 to 24 is intended to interfere with British Columbia's legislative process.
27. Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in paragraph 18 affects the validity of a Kitsumkalum Law, the Kitsumkalum Law will be deemed to be valid for a period of six months after the coming into force of the provincial legislation or regulation.

### **Authorities**

28. The exercise of Kitsumkalum jurisdiction and authority as set out in the Final Agreement will evolve over time.

### **Kitsumkalum Government**

29. The Kitsumkalum Government may make laws in respect of the administration, management and operation of the Kitsumkalum Government, including:
- a) the establishment of Kitsumkalum Public Institutions, including their respective powers, duties, composition and membership but any incorporation of a Kitsumkalum Public Institution must be under Federal Law or Provincial Law;
  - b) the powers, duties, responsibilities, remuneration and indemnification of members, officials and appointees of a Kitsumkalum Institutions;
  - c) the establishment of Kitsumkalum Corporations, but the registration or incorporation of Kitsumkalum Corporations must be under Federal Law or Provincial Law;
  - d) financial administration of Kitsumkalum and Kitsumkalum Institutions; and
  - e) Kitsumkalum elections, by-elections and referenda.
30. The Kitsumkalum Government will make laws that provide for reasonable access to information in the custody or control of a Kitsumkalum Institution by:
- a) Kitsumkalum Members,
  - b) Non-Member Residents; and
  - c) persons who receive services and programs from a Kitsumkalum Institution.
31. Subject to paragraph 32, Kitsumkalum Law under paragraph 29 or 30 prevails to the extent of a Conflict with Federal Law or Provincial Law
32. Federal Law or Provincial Law in respect of the protection of personal information prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 29 or 30.

### **Citizenship**

33. The Kitsumkalum Government may make laws in respect of Kitsumkalum citizenship.
34. Kitsumkalum citizenship does not:
- a) confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
  - b) impose any obligation on British Columbia or Canada to rights or benefits, except as set out in the Final Agreement or in any Federal Law or Provincial Law.
35. A Kitsumkalum Law under paragraph 33 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Devolution of Cultural Property**

36. In paragraphs 37 to 40, “cultural property” means:
  - a) ceremonial regalia and similar personal property associated with a Kitsumkalum chief or clan; and
  - b) other personal property which has cultural significance to Kitsumkalum.
37. Kitsumkalum may make laws for the devolution of cultural property of a Kitsumkalum Member who dies without a valid will.
38. Kitsumkalum Law under paragraph 37 prevails to the extent of a Conflict with Federal Law or Provincial Law.
39. Kitsumkalum has standing in any judicial proceeding in which:
  - a) the validity of a will of a Kitsumkalum Member; or
  - b) the devolution of cultural property of a Kitsumkalum Member,is at issue, including any proceedings under wills variation legislation.
40. Kitsumkalum may commence an action under Provincial wills variation legislation with respect to cultural property addressed by the will of a Kitsumkalum Member that provides for a devolution of cultural property.
41. In proceedings to which paragraphs 39 or 40 applies, a court will consider, among other matters, any evidence and representations in respect of Kitsumkalum Law and customs relating to the devolution of cultural property.
42. The participation of Kitsumkalum in proceedings pursuant to paragraphs 39 or 40 will be in accordance with the applicable Rules of Court and will not affect the court's ability to control its process.

### **Kitsumkalum Assets**

43. The Kitsumkalum Government may make laws in respect of the use, possession, disposition and management of assets of Kitsumkalum, a Kitsumkalum Corporation or a Kitsumkalum Public Institution located:
  - a) on Kitsumkalum Lands; and
  - b) off Kitsumkalum Lands
44. Kitsumkalum Law under subparagraph 43.a) prevails to the extent of a Conflict with Federal Law or Provincial Law.
45. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under subparagraph 43.b).
46. For greater certainty, the law making authority under paragraph 43 does not include authority to make laws regarding creditors' rights and remedies.

### **Peace, Order, and Public Safety**

47. The Kitsumkalum Government may make laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Kitsumkalum Lands that constitute, or



may constitute, a nuisance, a trespass, a threat to public order, peace or safety or a danger to public health.

48. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 47.

### **Emergency Preparedness**

49. The Kitsumkalum Government has:
- a) the rights, powers, duties, and obligations; and
  - b) the protections, immunities and limitations in respect of liability,
- of a local authority under Federal Law and Provincial Law in respect of emergency preparedness and emergency measures on Kitsumkalum Lands.
50. The Kitsumkalum Government may make laws in respect of its rights, powers, duties, and obligations under paragraph 49.
51. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 50.
52. For greater certainty, the First Nation Government may declare a state of local emergency, and exercise the powers of a local authority in respect of local emergencies in accordance with Federal Law and Provincial Law in respect of emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia under Federal Law and Provincial Law.
53. Nothing in the Final Agreement affects the authority of:
- a) Canada to declare a national emergency; or
  - b) British Columbia to declare a provincial emergency,
- in accordance with Federal Law and Provincial Law.
54. Nothing in the Final Agreement will preclude Kitsumkalum from accessing emergency programs in the same manner that local governments access such programs from the Federal and Provincial Governments.

### **Regulation of Business**

55. The Kitsumkalum Government may make laws in respect of the regulation, licensing and prohibition of business on Kitsumkalum Lands, including the imposition of licence fees or other fees.
56. Unless otherwise provided in the Final Agreement, Kitsumkalum Government law-making authority under paragraph 55 does not include the authority to make laws in respect of the accreditation, certification or professional conduct of professions and trades.
57. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 55.

### **Buildings and Structures**

58. The Kitsumkalum Government may make laws in respect of the design, construction, maintenance, repair and demolition of public works, buildings and structures on Kitsumkalum Lands.

59. Kitsumkalum Law may only establish standards that are different than or additional to the *British Columbia Building Code* pursuant to an Agreement with British Columbia.
60. The *Canada Labour Code* applies to federal works, undertakings and businesses on Kitsumkalum Lands.
61. At the request of the Kitsumkalum Government, British Columbia will negotiate and attempt to reach an agreement to enable the Kitsumkalum Government to establish standards for buildings or structures which are additional to or different from the standards established by the *British Columbia Building Code*.
62. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 58.

### **Public Works**

63. The Kitsumkalum Government may make laws in respect of public works and related services on Kitsumkalum Lands.
64. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 63.

### **Traffic, Parking, Transportation, and Highways**

65. The Kitsumkalum Government may make laws in respect of parking, traffic, transportation and highways on Kitsumkalum Lands to the same extent as municipalities in British Columbia.
66. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 65.

### **Health**

67. The Kitsumkalum Government may make laws in respect of health services on Kitsumkalum Lands:
  - a) for Kitsumkalum Members; or
  - b) provided by a Kitsumkalum Institution.
68. Kitsumkalum Law under paragraph 67 will take into account the protection, improvement and promotion of public and individual health and safety.
69. Kitsumkalum Law under paragraph 67 does not apply to health services provided by a provincially-funded health institution, agency or body, other than an institution, agency or body established by Kitsumkalum.
70. At the request of any Party, the Parties will negotiate and attempt to reach agreement on the delivery and administration of federal and provincial health services and programs by a Kitsumkalum Institution for individuals residing on Kitsumkalum Lands.
71. Subject to paragraph 71, Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 67.
72. Kitsumkalum Law under paragraph 67 in respect of the organization and structure of a Kitsumkalum Institution used to deliver health services on Kitsumkalum Lands prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Aboriginal Healers**

73. The Kitsumkalum Government may make laws in respect of authorization, licensing and regulation of persons to practice as aboriginal healers within Kitsumkalum Lands.
74. The authority to make laws under paragraph 73 does not include the authority to regulate:
  - a) medical or health practices that, or practitioners who, require licensing or certification under Federal Law or Provincial Law; or
  - b) products or substances that are regulated under Federal Law or Provincial Law.
75. Any Kitsumkalum Law under paragraph 73 will include standards in respect of competence, ethics and quality of practice that are reasonably required to protect the public.
76. Kitsumkalum Law under paragraph 73 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Family and Social Services**

77. The Kitsumkalum Government may make laws in respect of family and social services, including income assistance and housing, provided by a Kitsumkalum Institution.
78. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 77.
79. The Kitsumkalum Government law-making authority under paragraph 77 does not include the authority to make laws in respect of the licensing and regulation of facility-based services off Kitsumkalum Lands.
80. If the Kitsumkalum Government makes laws under paragraph 77, at the request of any Party, the Parties will negotiate and attempt to reach agreements in respect of exchange of information with regards to avoidance of double payments, and related matters.
81. At the request of any Party, the Parties will negotiate and attempt to reach agreements for administration and delivery by a Kitsumkalum Institution of federal or provincial social services and programs for all individuals residing on Kitsumkalum Lands.

### **Child Protection Services**

82. The Kitsumkalum Government may make laws in respect of Child Protection Services on Kitsumkalum Lands with respect to Children of Kitsumkalum Families.
83. Kitsumkalum Law under paragraph 82 will:
  - a) expressly provide that those laws will be interpreted and administered such that the safety and well-being of Children are the paramount considerations; and
  - b) not preclude the reporting, under Provincial Law, of a Child in Need of Protection.
84. If the Kitsumkalum Government makes laws under paragraph 82, the Kitsumkalum Government will:
  - a) develop operational and practice standards intended to ensure the Safety and Well-Being of Children;
  - b) participate in British Columbia's information management systems, or establish an information management system that is compatible with British Columbia's information systems, concerning Children in Need of Protection and Children in Care;

- c) allow for mutual sharing of information concerning Children in Need of Protection and Children in Care with British Columbia; and
  - d) establish and maintain a system for the management, storage and disposal of Child Protection Services records and the safeguarding of personal Child Protection Services information.
85. Notwithstanding any laws under paragraph 82, if there is an emergency in which a Child of a Kitsumkalum Family on Kitsumkalum Lands is a Child in Need of Protection, and Kitsumkalum has not responded or is unable to respond in a timely manner, British Columbia may act to protect the Child and, unless British Columbia and Kitsumkalum otherwise agree in writing, British Columbia will refer the matter to Kitsumkalum after the emergency.
86. If the Kitsumkalum Government has made a law under 82, and there is an emergency in which a Child under British Columbia's authority is a Child in Need of Protection, Kitsumkalum may act to protect the Child, and unless British Columbia and Kitsumkalum agree otherwise in writing, Kitsumkalum will refer the matter to British Columbia after the emergency.
87. Kitsumkalum Law under paragraph 82 prevails to the extent of a Conflict with Federal Law or Provincial Law.
88. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement in respect of Child Protection Services for:
- a) Children of Kitsumkalum Families who reside on or off Kitsumkalum Lands; or
  - b) Children who are not members of Kitsumkalum Families and who reside on Kitsumkalum Lands.
89. Where the Director becomes the guardian of a Kitsumkalum Child, the Director will contact Kitsumkalum and will make reasonable efforts to include Kitsumkalum in planning for the Kitsumkalum Child, including adoption planning.

### **Child Custody**

90. The Kitsumkalum Government will have standing in any judicial proceedings in British Columbia in which custody of a Kitsumkalum Child is in dispute, and the court will consider any evidence and representations concerning Kitsumkalum Law and customs in addition to any other matters they are required by law to consider.
91. The participation of the Kitsumkalum Government pursuant to paragraph 90 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Adoption**

92. For the purposes of paragraphs 93 to 101, all relevant factors must be considered in determining a Child's best interests, including those factors that must be considered under the *Adoption Act*.
93. The Kitsumkalum Government may make laws in respect of adoptions in British Columbia for:
- a) Kitsumkalum Children; and
  - b) Children who reside on Kitsumkalum Lands to be adopted by Kitsumkalum Members.

94. Kitsumkalum Law under paragraph 93 will:
  - a) expressly provide that the best interests of the child are the paramount consideration in determining whether an adoption will take place; and
  - b) provide for the consent of individuals whose consent to a Child's adoption is required under Provincial Law, subject to the power of the court to dispense with such consent under Provincial Law.
95. If the Kitsumkalum Government makes laws under paragraph 93, Kitsumkalum will:
  - a) develop operational and practice standards that promote the best interests of the Child; and
  - b) provide Canada and British Columbia with a record of all adoptions occurring under Kitsumkalum Law.
96. The Parties will negotiate and attempt to reach agreement on the information that will be included in the record provided under subparagraph 95.b).
97. Kitsumkalum Law under paragraph 93 prevails to the extent of a Conflict with Federal Law or Provincial Law.
98. Kitsumkalum Law under paragraph 93 applies to the adoption of a Kitsumkalum Child residing off Kitsumkalum Lands or a Child residing on Kitsumkalum Lands who is not a Kitsumkalum Child if the child has not been placed for adoption under the *Adoption Act*, and those individuals whose consent to the Kitsumkalum Child's adoption is required under Provincial Law consent to the application of Kitsumkalum Law to the adoption, or a court dispenses with the requirement for the consent required in subparagraph 99.d).
99. If a Director designated under Provincial Law becomes the guardian of a Kitsumkalum Child, the Director will:
  - a) provide notice to the Kitsumkalum Government that the Director is the guardian of the Kitsumkalum Child;
  - b) provide notice to the Kitsumkalum Government when the Director applies for continuing custody order;
  - c) provide the Kitsumkalum Government with a copy of the continuing custody order once the order is made and make reasonable efforts to involve the Kitsumkalum Government in planning for the Kitsumkalum Child;
  - d) if requested by Kitsumkalum, consent to the application of Kitsumkalum Law to the adoption of that Kitsumkalum Child, provided that it is in the best interests of the Kitsumkalum Child; and
  - e) in determining the best interests of the Kitsumkalum Child under subparagraph 99(d), the Director will consider the importance of preserving the Kitsumkalum Child's cultural identity.
100. Before placing a Kitsumkalum Child for adoption, the adoption agency will make reasonable efforts to obtain information about the Kitsumkalum Child's cultural identity and discuss with a designated representative of the Kitsumkalum Child's placement.

101. Paragraph 100 does not apply if the Kitsumkalum Child has reached the age where consent to adoption is required under Provincial Law and objects to the discussion taking place, or if the birth parent or other guardian of the Kitsumkalum Child who requested that the Kitsumkalum Child be placed for adoption objects to the discussion taking place.

### **Child Care**

102. The Kitsumkalum Government may make laws in respect of Child Care services on Kitsumkalum Lands.
103. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law made under paragraph 102.

### **Language and Culture Education**

104. The Kitsumkalum Government may make laws applicable on Kitsumkalum Lands in respect of:
- a) the education of Sm'algx language and Tsimshian culture provided by a Kitsumkalum Institution, including:
    - i) the certification and accreditation of teachers of Sm'algx language and Tsimshian culture;
    - ii) the development and teaching of Sm'algx language and Tsimshian culture curriculum; and
  - b) the preservation, promotion and development of Sm'algx language and Tsimshian culture.
105. Kitsumkalum Law under paragraph 104 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Kindergarten to Grade 12 Education**

106. The Kitsumkalum Government may make laws in respect of kindergarten to grade 12 education provided by a Kitsumkalum Institution on Kitsumkalum Lands.
107. Kitsumkalum Law under paragraph 106 will:
- a) establish curriculum, examination and other standards that permit the transfer of students between school systems at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
  - b) provide for the certification, other than for the teaching of Sm'algx language and culture, of teachers by a Kitsumkalum Institution, or a body recognized by British Columbia in accordance with standards comparable to standards under Provincial Law applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
108. The Kitsumkalum Government may make laws in respect of home education of Kitsumkalum Members on Kitsumkalum Lands.
109. Kitsumkalum Law under paragraphs 106 and 108 prevails to the extent of a Conflict with Federal Law or Provincial Law.

110. At the request of Kitsumkalum or British Columbia, Kitsumkalum and British Columbia will negotiate and attempt to reach an agreement concerning the provision of kindergarten to grade 12 education by a Kitsumkalum Institution to:
- a) persons other than Kitsumkalum Children residing on Kitsumkalum Lands; or
  - b) Kitsumkalum Children residing off Kitsumkalum Lands.

### **Post Secondary Education**

111. The Kitsumkalum Government may make laws in respect of post-secondary education provided by a Kitsumkalum Institution on Kitsumkalum Lands, including:
- a) the establishment of post-secondary institutions with the ability to grant degrees, diplomas or certificates;
  - b) the determination of the curriculum for post-secondary education institutions established by the Kitsumkalum Government; and
  - c) the provision for and coordination of adult education programs.
112. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 111.

### **Solemnization of Marriages**

113. The Kitsumkalum Government may make laws in respect of solemnization of marriages in British Columbia by individuals designated by the Kitsumkalum Government.
114. Individuals designated by the Kitsumkalum Government to solemnize marriages:
- a) will be appointed by British Columbia as persons authorized to solemnize marriages; and
  - b) have the authority to solemnize marriages under Provincial Law and Kitsumkalum Law, and have all the associated rights, duties and responsibilities of a marriage commissioner under Provincial Law.
115. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 113.

### **Liquor Control**

116. The Kitsumkalum Government may make laws in respect of prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on Kitsumkalum Lands.
117. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 116.
118. British Columbia will approve all applications made by or with the consent of the Kitsumkalum Government for licenses or permits to sell liquor on Kitsumkalum Lands, where the proposed sale complies with applicable Provincial Law.
119. British Columbia will not issue a license, permit or other authority to sell liquor on Kitsumkalum Lands without the consent of the Kitsumkalum Government.
120. A person with a licence, permit, or other authority to sell liquor on Kitsumkalum Lands must purchase liquor from the British Columbia Liquor Distribution Branch or from any person

authorized to sell liquor by the British Columbia Liquor Distribution Branch, in accordance with Federal Law and Provincial Law.

121. British Columbia will, in accordance with Provincial Law, authorize persons designated by the Kitsumkalum Government to approve or deny applications for special occasion licences to sell liquor on Kitsumkalum Lands.

## **Administration of Justice**

### ***Penalties***

122. Kitsumkalum Law may provide for the imposition of sanctions, including fines, Administrative Penalties, community service, restitution and imprisonment, for the violation of Kitsumkalum Law.
123. Except as provided in paragraph 6 of the Taxation Chapter, Kitsumkalum Law may provide for:
- a) a maximum fine that is not greater than that which may be imposed for comparable regulatory offences punishable by way of summary conviction under Federal Law or Provincial Law; and
  - b) a maximum Administrative Penalty that is not greater than that which may be imposed for a breach of a comparable regulatory requirement under Federal Law or Provincial Law.
124. Where there is no comparable regulatory offence or regulatory requirement under Federal Law or Provincial Law, the maximum fine or Administrative Penalty will not be greater than the general limit for offences under the *Offence Act*.
125. Subject to paragraph 6 of the Taxation Chapter, Kitsumkalum Law may provide for a maximum term of imprisonment that is not greater than the general limit for offences under the *Offence Act*.

### ***Enforcement of Kitsumkalum Law***

126. The Kitsumkalum Government is responsible for the enforcement of Kitsumkalum Law.
127. At the request of Kitsumkalum, the Parties may negotiate and attempt to reach agreement for the enforcement of Kitsumkalum Law by a police force or federal or provincial enforcement officials.
128. The Kitsumkalum Government may make laws for the enforcement of Kitsumkalum Law, including:
- a) the appointment of officials to enforce Kitsumkalum Law; and
  - b) powers of enforcement provided such powers will not exceed those provided by Federal Law or Provincial Law for enforcing similar laws in British Columbia.
129. The Kitsumkalum Government law-making authority in paragraph 128 does not include the authority to:
- a) establish a police force, regulate police activities, or appoint peace officers (including but not limited to police officers); or
  - b) authorize the acquisition, possession, transport, carrying or use of a firearm, ammunition, prohibited weapon or prohibited device as these terms are defined in Part III of the *Criminal Code*,



but nothing in the Final Agreement prevents Kitsumkalum from establishing a police force in accordance with Provincial Law. For greater certainty, nothing in paragraph 129 would prevent Kitsumkalum Members from acquiring, possessing, transporting, carrying or using a firearm or ammunition under Federal Law and Provincial Law.

130. If the Kitsumkalum Government appoints officials to enforce Kitsumkalum Law, the Kitsumkalum Government will:
  - a) ensure that any Kitsumkalum enforcement officials are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in British Columbia; and
  - b) establish and implement procedures for responding to complaints against Kitsumkalum enforcement officials.
131. The Parties may negotiate agreements concerning enforcement of Federal Law, Provincial Law or Kitsumkalum Law in respect of Wildlife and Migratory Birds.
132. Kitsumkalum Law made under the Wildlife and Migratory Birds Chapters may be enforced by persons authorized to enforce Federal Law, Provincial Law or Kitsumkalum Law in respect of Wildlife and Migratory Birds in British Columbia, respectively.
133. Federal Law or Provincial Law prevails to the extent of a Conflict with Kitsumkalum Law under paragraph 128.
134. Kitsumkalum may, by a proceeding brought in Supreme Court of British Columbia, enforce, prevent or restrain the contravention of a Kitsumkalum Law.

***Adjudication of Kitsumkalum Law***

135. The Provincial Court of British Columbia has jurisdiction to hear prosecutions of offences under Kitsumkalum Law.
136. The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under Kitsumkalum Law.
137. The Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, has jurisdiction to hear legal disputes arising between individuals under Kitsumkalum Law.
138. The Kitsumkalum Government is responsible for the prosecution of all matters arising from Kitsumkalum Law, including appeals, and may carry out this responsibility by:
  - a) appointing or retaining individuals to conduct prosecutions and appeals in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia;
  - b) entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals; or
  - c) both subparagraphs 138(a) and 138(b).
139. Unless the Parties agree otherwise, British Columbia will pay to the Kitsumkalum Government any fines collected in respect of a penalty imposed on a person by the Provincial Court of British Columbia or the Supreme Court of British Columbia as the case may be, for an offence

under a Kitsumkalum Law, on a similar basis as British Columbia makes payments to Canada for fines collected by British Columbia in respect of an offence under a Federal Law.

140. The Kitsumkalum Government law-making authority does not include the authority to establish a court.
141. The Final Agreement will provide that the Kitsumkalum Government may propose individuals to the Judicial Council of British Columbia to be recommended for appointment and designation as judicial justices of the peace.
142. For the purposes of paragraph 141, the Kitsumkalum Government will:
  - a) develop and implement a process, including eligibility criteria, for identifying candidates; and
  - b) on submitting the name of a proposed candidate, disclose to the Judicial Council of British Columbia the nature and result of the processes referred to in subparagraph 142(a).
143. The *Provincial Court Act* will apply in all respects to:
  - a) the appointment and designation by the Lieutenant Governor in Council of individuals recommended by the Judicial Council of British Columbia under paragraph 141; and
  - b) judicial justices of the peace appointed and designated by the Lieutenant Governor under subparagraph 143(a).
144. Judicial justices of the peace appointed under paragraph 141 will have jurisdiction to adjudicate offences established under Kitsumkalum Law and such other offences as may be determined by the Chief Judge of the Provincial Court of British Columbia.
145. After receiving a written request from the Kitsumkalum Government, the Parties will discuss and explore options for the establishment of a court, other than a court with inherent jurisdiction or a federal court, to adjudicate offences and other matters arising under Kitsumkalum Law or laws of other First Nation Governments in British Columbia.

### ***Community Correctional Services***

146. The Kitsumkalum Government may provide Community Correctional Services for persons charged with, or found guilty of, an offence under Kitsumkalum Law and to carry out such other responsibilities as may be set out in an agreement under paragraphs 147 and 149.
147. At the request of the Kitsumkalum Government, the Kitsumkalum Government and British Columbia will enter into agreements to provide Community Correctional Services in relation to persons who fall under the jurisdiction of British Columbia on Kitsumkalum Lands for persons charged with, or found guilty of, an offence under a Federal Law or Provincial Law.
148. Any agreements under paragraph 147 will address:
  - a) recruitment and selection standards for individuals appointed by the Kitsumkalum Government to provide community correctional services;
  - b) adherence to provincial operational policy, including training standards;
  - c) confirmation of the authority of the official charged with the responsibility for investigations, inspections and standards of corrections and youth justice services under Provincial Law; and

- d) provisions for the Kitsumkalum Government to provide Community Correctional Services consistent with the needs and priorities of Kitsumkalum.
149. The Kitsumkalum Government and British Columbia may enter into agreements to enable the Kitsumkalum Government to provide rehabilitative community-based programs and interventions off Kitsumkalum Lands for Kitsumkalum Members charged with, or found guilty of, an offence under a Federal Law or Provincial Law.
150. The Final Agreement will not authorize the Kitsumkalum Government to establish or maintain places of confinement, except for police jails or lockups operated by a police service established under Provincial Law or as provided for under an agreement referred to in paragraph 147.
151. The Final Agreement will address matters, including the negotiation of an agreement between Canada and Kitsumkalum related to Federal correctional facilities and services.

***Writ of Execution Against Kitsumkalum***

152. A writ of execution against Kitsumkalum must not be issued without leave of the Supreme Court of British Columbia, which on application may:
- a) permit its issue at a time and on conditions the court considers proper; or
  - b) refuse to permit it to be issued or suspend action under it on terms and conditions the court thinks proper or expedient.
153. In determining how it will proceed under paragraph 152, the court must have regard to:
- a) any reputed insolvency of Kitsumkalum;
  - b) any security afforded to the person entitled to the judgment by the registration of the judgment;
  - c) the delivery of programs or services by Kitsumkalum that are not provided by municipalities in British Columbia, and the funding of those programs or services; and
  - d) the immunities from seizure of assets of Kitsumkalum as set out in this Agreement.

**Kitsumkalum Government Liability**

***Members of Kitsumkalum Government***

154. No action for damages lies or may be instituted against a member or former member of the executive or legislative branches of the Kitsumkalum Government for:
- a) anything said or done, or omitted to be said or done, by or on behalf of Kitsumkalum or the Kitsumkalum Government by somebody other than that member or former member while he or she is, or was, a member;
  - b) any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of Kitsumkalum or the Kitsumkalum Government while that person is, or was, a member;
  - c) anything said or done or omitted to be said or done by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or
  - d) any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.

155. Subparagraphs 154.c) and 154.d) do not provide a defence if:
- a) the person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - b) the cause of action is libel or slander.
156. Subparagraphs 154.c) and 154.d) do not absolve Kitsumkalum from vicarious liability arising out of a tort committed by an elected member or former elected member of the Kitsumkalum Government for which Kitsumkalum would have been liable had those subparagraphs not been in effect.

***Kitsumkalum Public Officers***

157. No action for damages lies or may be instituted against a Kitsumkalum Public Officer or former Kitsumkalum Public Officer:
- a) for anything said or done or omitted to be said or done by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or
  - b) for any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.
158. Paragraph 157 does not provide a defence if:
- a) the Kitsumkalum Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - b) the cause of action is libel or slander.
159. Paragraph 157 does not absolve any of the corporations or bodies referred to in the definition of Kitsumkalum Public Officer from vicarious liability arising out of a tort committed by a Kitsumkalum Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.
160. Notwithstanding paragraph 157, except as may be otherwise provided under Federal Law or Provincial Law, a Kitsumkalum Public Officer does not have protections, immunities or limitations in respect of liability in respect of the provision of a service, if no persons delivering reasonably similar programs or services under Federal Law or Provincial Law have protections, immunities or limitations in respect of liability and rights under Federal Law or Provincial Law.

***Kitsumkalum Government***

161. Kitsumkalum and the Kitsumkalum Government will have the protections, immunities, limitations in respect of liability, remedies over and rights provided to a municipality and its municipal council under provincial legislation.
162. Subject to subparagraph 1(b) of the Access Chapter, Kitsumkalum will have the protections, immunities, limitations in respect of liability, remedies over and rights provided to a municipality under the *Occupiers Liability Act* and, for greater certainty, has those protections, immunities, limitations in respect of liability, remedies over and rights, in respect of a road on Kitsumkalum Lands used by the public, or by industrial or resource users, if Kitsumkalum is the occupier of that road.

### **Non-Member Resident Representation**

163. The Final Agreement will provide that individuals residing on Kitsumkalum Lands who are not Kitsumkalum Members:
- a) are consulted about the Kitsumkalum Government decisions which directly and significantly affect them; and
  - b) have means of participation in subordinate elected bodies whose activities directly and significantly affect them, including access to review and appeal procedures.
164. In addition to the requirement to consult under paragraph 163, the Kitsumkalum Government will provide Non-Member Residents with the opportunity to participate in the decision-making processes of a Kitsumkalum Public Institution if the activities of that Kitsumkalum Public Institution directly and significantly affect Non-Member Residents.
165. The Kitsumkalum Government will establish the means of participation under paragraph 163 by Kitsumkalum Law at the same time that it establishes a Kitsumkalum Public Institution whose activities may directly and significantly affect Non-Member Residents.

### **Transitional Provisions**

#### ***Kitsumkalum Government***

166. The Chief Councillor and Councillors of Kitsumkalum Band Council under the *Indian Act* on the day immediately before the Effective Date are deemed the elected members of the Kitsumkalum Government from the Effective Date until the office holders elected in the first election take office.
167. The first election for the officers of the Kitsumkalum Government will be initiated no later than six months after the Effective Date and the office holders elected in the election will take office no later than one year after the Effective Date.

#### ***Law-making by the Kitsumkalum Government***

168. Before the Kitsumkalum Government makes a Kitsumkalum Law in respect of adoption, Child Protection Services, health services, family and social services, Child Care, or kindergarten to grade 12 education, the Kitsumkalum Government will give at least six months written notice of its intention to exercise the law-making authority to Canada and British Columbia.
169. Upon agreement by the Parties, the Kitsumkalum Government may exercise a law-making authority before the expiration of the six month notice period required in accordance with paragraph 168.
170. At the written request of Canada or British Columbia made within three months of receiving notice under paragraph 168, Kitsumkalum will Consult with Canada or British Columbia, as the case may be, in respect of:
- a) options to address the interests of the Kitsumkalum Government through methods other than the exercise of law-making authority;
  - b) the comparability of standards to be established under Kitsumkalum Law to standards set out in Provincial Law;
  - c) immunity of individuals providing services or exercising authority under Kitsumkalum Law;

- d) readiness;
  - e) quality assurance; and
  - f) other matters agreed to by the Parties.
171. At the written request of any Party made within three months of receiving notice under paragraph 168, the relevant Parties will discuss:
- a) any transfer of cases and related documentation from Federal or Provincial institutions to Kitsumkalum Institutions, including any confidentiality and privacy considerations;
  - b) any transfer of assets from Federal or Provincial institutions to Kitsumkalum Institutions;
  - c) any appropriate amendments to Federal Law or Provincial Law; and
  - d) other matters agreed to by the Parties.
172. The Parties may enter into agreements regarding any of the matters set out in paragraph 170 or 171, but an agreement under this paragraph is not a condition precedent to the exercise of law-making authority by the Kitsumkalum Government, and such authority may be exercised immediately following the six-month notice period, or the notice period agreed upon in accordance with paragraph 168.

#### **Local Government & School District Relationships**

173. Before the Final Agreement, the Parties will attempt to address the relationship that the Kitsumkalum Government will have with the Kitimat Stikine, Central Coast and Skeena Queen Charlotte Regional Districts, including member municipalities of these Regional Districts and school districts within the Kitsumkalum Area, on matters such as the delivery of and payment for services, coordination between the governments for common areas of responsibility, and representation of the Kitsumkalum Government and residents of Kitsumkalum Lands on the Kitimat Stikine, Central Coast and Skeena Queen Charlotte Regional Districts.

## CHAPTER 17 - INDIAN ACT TRANSITION

1. The Final Agreement will provide that the *Indian Act* applies after the Effective Date, with any modifications that the circumstances require, to the estate of an individual who:
  - a) died testate or intestate before the Effective Date; and
  - b) at the time of death, was an Indian of the Kitsumkalum Band.
2. Before the Effective Date, Canada will take reasonable steps to:
  - a) notify in writing all Indians of the Kitsumkalum Band who have deposited wills with the Minister; and
  - b) provide information to all Indians of the Kitsumkalum Band who have not deposited wills with the Minister and to all individuals who may be eligible to be Enrolled under the Final Agreement,that their wills may not be valid after the Effective Date and that their wills should be reviewed to ensure validity under Provincial Law.
3. The Final Agreement will provide that section 51 of the *Indian Act* applies after the Effective Date, with any modifications that the circumstances require to the property and estate of an individual whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date, until that individual is declared to be no longer incapable under the *Patients Property Act*.
4. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a Kitsumkalum Member:
  - a) who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before Effective Date;
  - b) whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date and at the time of death; and
  - c) who did not execute a will that complies with the requirements as to form and execution under Provincial Law during a period after the Effective Date in which that individual was declared to be no longer incapable under the *Patients Property Act*.
5. Sections 52 and 52.2 to 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, where immediately before the Effective Date the Minister was administering property under the *Indian Act* to which an individual who is the infant child of an Indian is entitled, until the duties of the Minister in respect of the property have been discharged.

### **Continuation of *Indian Act* Bylaws and Land Code**

6. Before the Final Agreement, the Parties will agree to a period of time for the bylaws of the Kitsumkalum Band that were in effect immediately before the Effective Date to have effect after the Effective Date on Kitsumkalum Lands.

7. The relationship between a bylaw of the Kitsumkalum Band referred to in paragraph 6, and Federal Law and Provincial Law, will be governed by the provisions of the Final Agreement governing the relationship between Kitsumkalum Law and Federal Law and Provincial Law in respect of the subject matter of the bylaw.
8. The Kitsumkalum Government may repeal, but not amend, that bylaw referred to in paragraph 6.
9. Nothing in the Final Agreement precludes a person from challenging the validity of a bylaw of the Kitsumkalum Band referred to in paragraph 6.

**Transfer of Band Assets**

10. Subject to the Final Agreement, on the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of the Kitsumkalum Band vest in Kitsumkalum and the Kitsumkalum Band under the *Indian Act* cease to exist.
11. All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of Kitsumkalum, including capital and revenue moneys of the Kitsumkalum Band and, shall be transferred by Canada to Kitsumkalum as soon as practicable after the Effective Date.
12. Upon transfer of the moneys referred to in paragraph 11, Canada will no longer thereafter be responsible for the collection of moneys payable:
  - a) to or for the benefit of Kitsumkalum; or
  - b) except as provided in paragraphs 1, 3 and 4, to or for the benefit of a Kitsumkalum Member.
13. For greater certainty, Canada will not be liable for any errors or omissions in the administration of all moneys held by Kitsumkalum for the use and benefit of Kitsumkalum that occur subsequent to the transfer of capital and revenue moneys of the Kitsumkalum Band from Canada to Kitsumkalum.



## CHAPTER 18 - CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT

### Capital Transfer

1. The Capital Transfer from Canada and British Columbia to Kitsumkalum will be \$44.2 million and will be paid in accordance with the Final Agreement.
2. A provisional schedule of payments will be negotiated before initialling the Final Agreement such that:
  - a) the timing and amounts of payments in the provisional schedule of payments will provide for a first payment to Kitsumkalum on the Effective Date and subsequent payments on each anniversary of the Effective Date;
  - b) the net present value of the amounts listed in the provisional schedule of payments will equal the amount set out in paragraph 1; and
  - c) the net present value of the amounts listed in the provisional schedule of payments will be calculated using as a discount rate the most recent and appropriate Consolidated Revenue Fund Lending Rate available before initialling the Final Agreement from the Department of Finance, Canada, less one-eighth of one percent.

3. A final schedule of payments will be determined on the Revision Date, in accordance with the following formula:

$$\text{Final Amount} = \text{Provisional Amount} * (\text{Effective Date FDDIPI} / \text{1st Q 2012 FDDIPI})$$

Where,

“\*” means multiplied by;

“/” means divided by;

“Final Amount” refers to each amount in the final schedule of payments;

“Provisional Amount” refers to the corresponding amount in the provisional schedule of payments;

“Effective Date FDDIPI” refers to the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the quarter before the Effective Date;

“Revision Date” means the date which is 30 days before the Effective Date or as otherwise agreed to by the Parties;

“1st Q 2012 FDDIPI” refers to the value of the Canada FDDIPI for the 1st quarter of the year 2012; and

the Effective Date FDDIPI and 1st Q 2012 FDDIPI values used will be the latest published values available from Statistics Canada on the Revision Date.

4. Canada, subject to paragraph 9, and British Columbia will make payments to Kitsumkalum in accordance with the final schedule of payments determined in accordance with paragraph 3.

### **Negotiation Loan Repayment**

5. Before the Final Agreement, Canada will determine the outstanding amount of negotiation loans made by Canada to Kitsumkalum, including any interest that may have accrued to that date, in accordance with First Nation Negotiation Support Agreements.
6. When it determines the outstanding negotiation loan amount in paragraph 5, Canada will prepare a provisional schedule for the repayment of the outstanding negotiation loan amount, such that the repayments will be proportional to the provisional schedule of payments referred to in paragraph 2.
7. This provisional schedule will use an interest rate equal to the discount rate referred to in subparagraph 2.c).
8. A final schedule of loan repayment amounts will be determined on the Revision Date by:
  - a) determining the amount of any additional negotiation loans made by Canada to Kitsumkalum after the initialling of the Final Agreement and before the Effective Date, and any further interest that may have accrued in respect of any negotiation loans, in accordance with First Nation Negotiation Support Agreements; and
  - b) pro-rating the additional amount in subparagraph 8(a) over the provisional repayment schedule.
9. Canada may deduct any amounts due pursuant to the final schedule of loan repayments referred to in paragraph 8 from Capital Transfer payments payable to Kitsumkalum in accordance with paragraph 4.
10. Kitsumkalum may pay to Canada, in advance and on account, without bonus or penalty, amounts that will be credited against the loan repayment amounts set out in paragraph 8.

### **Revenue Sharing**

11. Before the Final Agreement, the Parties will negotiate and attempt to reach agreement on sharing with Kitsumkalum agreed-upon resource revenues originating in British Columbia and flowing to Canada or British Columbia.

## CHAPTER 19—FISCAL RELATIONS

### General

1. The Parties acknowledge they each have a role in supporting Kitsumkalum through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements pursuant to the Final Agreement.
2. In Final Agreement negotiations, the Parties will address fiscal matters including:
  - a) Final Agreement provisions regarding the ongoing fiscal relationship among the Parties, including Agreed-Upon Programs and Services;
  - b) funding arrangements to take effect no later than Effective Date that will set out terms, conditions and funding with respect to the responsibilities, including Agreed-Upon Programs and Services, assumed by Kitsumkalum, taking into account its ability to contribute from its own source revenues; and
  - c) any other matters agreed to by the Parties.
3. The Parties have been advised that Canada is developing a new national fiscal policy, including a transparent methodology for determining levels of federal funding that may be provided to self governing aboriginal groups in Canada to support the delivery of Agreed-Upon Programs and Services, taking into account the ability of each self governing aboriginal group to generate revenues from its own sources.
4. Unless otherwise agreed by the Parties in a Fiscal Financing Agreement, the creation of the Kitsumkalum Government, the provision of Kitsumkalum Government legislative authority under the Final Agreement, or the exercise of Kitsumkalum Government legislative authority, does not create or imply any financial obligation or service responsibility on the part of any Party.
5. Any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are required or permitted under any provision of the Final Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
  - a) in the case of Canada, by the Parliament of Canada;
  - b) in the case of British Columbia, by the Legislature of British Columbia; or
  - c) in the case of Kitsumkalum, by the Kitsumkalum Government.



## CHAPTER 20 - TAXATION

### Direct Taxation

1. The Kitsumkalum Government may make laws with respect to:
  - a) Direct taxation of Kitsumkalum Members within Kitsumkalum Lands in order to raise revenue for Kitsumkalum Government purposes; and
  - b) the implementation of any taxation agreement between it and Canada or British Columbia.
2. The Kitsumkalum Government law-making authority under subparagraph 1.a) will not limit the taxation powers of Canada or British Columbia.
3. Any Kitsumkalum Law made under this Chapter or any exercise of power by the Kitsumkalum Government, will be subject to and will conform with Canada's international legal obligations respecting taxation.

### Tax Agreements

4. From time to time, at the request of Kitsumkalum, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreements with the Kitsumkalum Government with respect to:
  - a) the extent to which the Direct taxation law-making authority of the Kitsumkalum Government under subparagraph 1.a) may be extended to apply to Persons, other than Kitsumkalum Members, within Kitsumkalum Lands; and
  - b) the manner in which the Kitsumkalum Government law-making authority under subparagraph 1.a), as extended by the application of subparagraph 4(a), will be coordinated with existing federal or provincial tax systems, including:
    - i) the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by the Kitsumkalum Government; and
    - ii) the terms and conditions under which Canada or British Columbia may administer, on behalf of the Kitsumkalum, taxes imposed by the Kitsumkalum Government.

### Real Property Tax Coordination Agreement

5. Before the Final Agreement, Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on:
  - a) Kitsumkalum's authority to impose property taxes on Persons who are not Kitsumkalum Members in relation to those Persons' ownership or occupation of Kitsumkalum Lands; and
  - b) the coordination of the exercise of the Kitsumkalum taxation authority with British Columbia's tax systems.

## **Penalties**

6. A Kitsumkalum Law in respect of taxation may provide for:
- a) a fine that is greater than the limits set out in paragraph 123 of the Self-Government Chapter; or
  - b) a term of imprisonment that is greater than the limit set out in paragraph 125 of the Self-Government Chapter,
- where there is an agreement to that effect as contemplated in paragraph 4 of this Chapter.

## **Adjudication**

7. Notwithstanding paragraph 135 of the Self-Government Chapter, parties to an agreement under paragraph 4 may provide for an alternative approach to the appeal, enforcement or adjudication of Kitsumkalum Law with respect to taxation.

## **Kitsumkalum Lands**

8. Kitsumkalum is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of Kitsumkalum in Kitsumkalum Lands on which there are no improvements or on which there is a designated improvement.
9. In paragraph 8, “designated improvement” means:
- a) a residence of a Kitsumkalum Member;
  - b) an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
    - i) a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacher age, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Kitsumkalum cultural or spiritual purposes;
    - ii) works of public convenience constructed or operated for the benefit of Kitsumkalum Members, occupiers of Kitsumkalum Lands or individuals visiting or in transit through Kitsumkalum Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks, and public parking lots; or
    - iii) other improvements similar in nature to those described in subparagraphs 9(b)(i) and 9(b)(ii);
  - c) an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a Forest Resource, fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
  - d) Forest Resources and forest roads.
10. In subparagraph 9.b), “public purpose” does not include the provision of property or services primarily for the purpose of profit.

11. For the purposes of paragraphs 8 and 9:
  - a) for greater certainty, Kitsumkalum Lands include the improvements on those lands; and
  - b) an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.
12. For greater certainty, the exemption from taxation in paragraph 8 does not apply to a taxpayer other than Kitsumkalum nor does it apply with respect to a disposition of Kitsumkalum Lands or interests in those lands by Kitsumkalum.
13. For federal and British Columbia income tax purposes, proceeds of disposition received by Kitsumkalum on expropriation of Kitsumkalum Lands in accordance with the Lands Chapter will not be taxable.

### **Transfer of Kitsumkalum Capital**

14. A transfer under the Final Agreement of Kitsumkalum Capital and a recognition of ownership of Kitsumkalum Capital under the Final Agreement are not taxable.
15. For purposes of paragraph 14, an amount paid to a Kitsumkalum Member is deemed to be a transfer of Kitsumkalum Capital under the Final Agreement if the payment:
  - a) reasonably can be considered to be a distribution of Capital Transfer received by Kitsumkalum; and
  - b) becomes payable to the Kitsumkalum Member within 90 days and is paid to the Kitsumkalum Member within 270 days from the date that Kitsumkalum receives the Capital Transfer.
16. For federal and British Columbia income tax purposes, Kitsumkalum Capital is deemed to have been acquired by Kitsumkalum at a cost equal to its fair market value on the later of:
  - a) the Effective Date; and
  - b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

### ***Indian Act* Tax Exemption and Transitional Exemption**

17. Before the Final Agreement, the Parties agree to negotiate transitional tax measures to address the fact that the *Indian Act* will no longer apply after the Effective Date. These transitional measures will be negotiated in a way that provides a reasonably comparable effect to transitional tax measures in other treaties negotiated with other aboriginal groups in British Columbia.

### **Tax Treatment Agreement**

18. The Parties will enter into a Tax Treatment Agreement which will come into effect on the Effective Date.
19. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the Tax Treatment Agreement be given effect and force of law under federal and provincial legislation.





## CHAPTER 21 – CULTURE AND HERITAGE

### General

1. Kitsumkalum Members have the right to practice Tsimshian culture and to use the Sm'algyn language in a manner consistent with the Final Agreement.
2. Nothing in paragraph 1 creates or implies any financial obligation or service delivery responsibilities on the part of Canada or British Columbia.
3. The Parties recognize the integral role of Kitsumkalum Artifacts in the continuation of Kitsumkalum culture, values and traditions, whether those Kitsumkalum Artifacts are held by Kitsumkalum, a Kitsumkalum Corporation, Kitsumkalum Members, Parks Canada, the Canadian Museum of Civilization or the Royal British Columbia Museum.

### Law-Making

4. The Kitsumkalum Government may make laws applicable on Kitsumkalum Lands in respect of:
  - a) the conservation, protection and management of Heritage Sites, including public access to Heritage Sites;
  - b) the conservation, protection and management of Kitsumkalum Artifacts owned by Kitsumkalum;
  - c) the cremation or interment of Archaeological Human Remains found on Kitsumkalum Lands or returned to Kitsumkalum.
5. Kitsumkalum Law under subparagraph 4(a) will:
  - a) establish standards and processes for the conservation and protection of Heritage Sites; and
  - b) ensure the Minister is provided with information relating to:
    - i) the location of Heritage Sites; and
    - ii) any materials recovered from Heritage Sites.
6. Information provided by Kitsumkalum to British Columbia under subparagraph 5(b) will not be subject to public disclosure without the prior written consent of Kitsumkalum.
7. After Kitsumkalum makes a law under paragraph 4, Provincial Law respecting heritage inspections, heritage investigations and the alteration of Heritage Sites will not apply to Kitsumkalum Lands.
8. British Columbia will not designate any Kitsumkalum Lands as a provincial heritage site without the consent of Kitsumkalum.
9. A Kitsumkalum Law under subparagraph 4(a) will not unreasonably deny public access to Heritage Sites on Kitsumkalum Lands, but for greater certainty, nothing in this paragraph prevents Kitsumkalum from restricting access when necessary to protect and preserve Heritage Sites.

10. Kitsumkalum Law under paragraph 4 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Kitsumkalum Artifacts**

11. The Final Agreement will set out provisions for the lending to, sharing of or transfer to Kitsumkalum of Kitsumkalum Artifacts, if any, in the permanent collection of the Canadian Museum of Civilization.
12. The Final Agreement will set out provisions for the lending to or transfer to Kitsumkalum of certain Kitsumkalum Artifacts, if any, in the permanent collection of Parks Canada.
13. The Final Agreement will set out provisions for the lending to, sharing of or transfer to Kitsumkalum of Kitsumkalum Artifacts, if any, in the permanent collection of the Royal British Columbia Museum.
14. At the request of Kitsumkalum, Canada or British Columbia, respectively, will make reasonable efforts to facilitate Kitsumkalum's access to Kitsumkalum Artifacts, Kitsumkalum Archaeological Human Remains, in other public collections in Canada.

### **Archaeological Human Remains**

15. At the request of Kitsumkalum, Canada or British Columbia will return any Kitsumkalum Archaeological Human Remains and associated burial objects held by Canada or British Columbia at the Effective Date in accordance with Federal Law and policy and Provincial Law.
16. If, after the Effective Date, Kitsumkalum Archaeological Human Remains and associated burial objects come into the possession or under the control of Canada or British Columbia, Canada or British Columbia will, at the request of Kitsumkalum, transfer the Kitsumkalum Archaeological Human Remains and associated burial objects to Kitsumkalum in accordance with Federal Law and policy and Provincial Law.
17. In the event of competing claims with another aboriginal group as to whether Archaeological Human Remains and associated burial objects are Kitsumkalum Archaeological Human Remains and associated burial objects, Kitsumkalum will provide to Canada or British Columbia, as applicable, written confirmation that the dispute has been resolved in favour of Kitsumkalum before further negotiations of the transfer of the Kitsumkalum Archaeological Human Remains and associated burial objects.

### **Heritage Sites**

18. On the Effective Date, British Columbia will commence the provincial designation process under the *Heritage Conservation Act* for sites of cultural or historic significance set out in Appendix I of the Final Agreement.

### **Place Names**

19. Kitsumkalum and British Columbia will negotiate and attempt to reach agreement on a list of geographic features and places, set out in the Final Agreement, to be named or renamed with their traditional names.
20. After the Effective Date, Kitsumkalum may propose that British Columbia name or rename other geographic features with traditional names, and British Columbia will consider those proposals in accordance with Provincial Law and policy and procedures.

21. At the request of Kitsumkalum, British Columbia will record for inclusion in the British Columbia geographic names data base traditional names and historic background information submitted by Kitsumkalum for the geographic features that are set out in the Final Agreement, in accordance with provincial policy and procedures.



## CHAPTER 22 - DISPUTE RESOLUTION

### General

1. In this Chapter and in Appendix J-1 to J-5, “Appendix” means Appendix J-1, J-2, J-3, J-4 or J-5 to this Agreement.
2. In this Chapter, and in each Appendix, a Party is deemed to be directly engaged in a Disagreement if another Party, acting reasonably, gives the first Party written notice requiring it to participate in a process described in this Chapter to resolve the Disagreement.
3. The Parties share the following objectives:
  - a) to cooperate with each other to develop harmonious working relationships;
  - b) to prevent, or, alternatively, to minimize Disagreements;
  - c) to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner possible; and
  - d) to resolve Disagreements in a non-adversarial, collaborative, and informal atmosphere.
4. Except as otherwise provided, participating Parties may agree to vary a procedural requirement contained in this Chapter, or in an Appendix, as it applies to a particular Disagreement.
5. Participating Parties may agree to, and the Supreme Court of British Columbia, on application, may order:
  - a) the abridgment of a time limit; or
  - b) the extension of a time limit, despite the expiration of that time limit,in this Chapter or in an Appendix.

### Scope: When This Chapter Applies to a Disagreement

6. This Chapter does not apply to all disputes between or among the Parties, but is limited to the disputes described in paragraph 7.
7. This Chapter only applies to:
  - a) a dispute respecting:
    - i) the interpretation, application or implementation of the Final Agreement, or
    - ii) a breach or anticipated breach of the Final Agreement;
  - b) a dispute, where provided for in the Final Agreement; or
  - c) negotiations required to be conducted under any provision of this Agreement that provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”.

8. This Chapter does not apply to:
  - a) an agreement, plan, guideline or other document made between or among the Parties that is ancillary, subsequent, or supplemental to the Final Agreement unless the Parties have agreed that this Chapter applies to that agreement;
  - b) the Implementation Plan; or
  - c) a dispute, where excluded from this Chapter.
9. Nothing in this Chapter limits the application of a dispute resolution process, under Federal Law or Provincial Law, to a dispute involving a person if that dispute is not a Disagreement.
10. Nothing in any Federal Law or Provincial Law limits the right of a Party to refer a Disagreement to this Chapter.

### **Disagreements to Go Through Stages**

11. The Parties desire and expect that most Disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this Chapter.
12. Except as otherwise provided, Disagreements not resolved informally will progress, until resolved, through the following stages:
  - a) Stage One: formal, unassisted efforts to reach agreement between or among the Parties, in collaborative negotiations under Appendix J-1;
  - b) Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a Neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix J-2, J-3 or J-4 as applicable; and
  - c) Stage Three: final adjudication in arbitral proceedings under Appendix J-5, or in judicial proceedings.
13. Except as otherwise provided, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and a facilitated process in Stage Two as required in this Chapter.
14. Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
  - a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
  - b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this Chapter.

### **Stage One: Collaborative Negotiations**

15. If a Disagreement is not resolved by informal discussion, and a Party directly engaged in the Disagreement wishes to invoke this Chapter, that Party will deliver written notice, as required under Appendix J-1, as soon as practicable to the other Parties, requiring the commencement of collaborative negotiations.
16. Upon receiving the notice under paragraph 15, a Party directly engaged in the Disagreement will participate in the collaborative negotiations.

17. A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving written notice to the other Parties, preferably before the collaborative negotiations commence.
18. If the Parties have commenced negotiations in the circumstances described in subparagraph 7.c), then, for all purposes under this Chapter, those negotiations will be deemed collaborative negotiations.
19. Collaborative negotiations terminate in the circumstances set out in Appendix J-1.

### **Stage Two: Facilitated Processes**

20. Within 15 days of termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement, may require the commencement of a facilitated process, by delivering notice to the other Parties.
21. Notice under paragraph 20:
  - a) will include the name of the Party or Parties directly engaged in the Disagreement and a summary of the particulars of the Disagreement; and
  - b) may propose the use of a particular facilitated process described in paragraph 24.
22. Upon receiving a notice under paragraph 20, a Party directly engaged in the Disagreement will participate in a facilitated process described in paragraph 24.
23. A Party not directly engaged in the Disagreement may participate in the facilitated process by giving written notice to the other Parties within 15 days of delivery of a notice under paragraph 20.
24. Within 30 days after delivery of a notice under paragraph 20, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:
  - a) mediation under Appendix J-2;
  - b) technical advisory panel under Appendix J-3;
  - c) neutral evaluation under Appendix J-4; or
  - d) any other non-binding dispute resolution process assisted by a Neutral,and if they fail to agree, they will be deemed to have selected mediation under Appendix J-2.
25. A facilitated process terminates:
  - a) in the circumstances set out in the applicable Appendix; or
  - b) as agreed by the participating Parties, if an Appendix does not apply.

### **Negotiating Conditions**

26. In order to enhance the prospect of reaching agreement, the Parties participating in collaborative negotiations or a negotiation component of a facilitated process will:
  - a) at the request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;
  - b) make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and

- c) negotiate in good faith.

### **Settlement Agreement**

- 27. Any agreement reached in a process under this Chapter:
  - a) will be:
    - i) recorded in writing;
    - ii) signed by authorized representatives of the Parties to the agreement;
    - iii) delivered to all Parties; and
  - b) is binding only on the Parties who have signed the agreement.

### **Stage Three: Adjudication - Arbitration**

- 28. If a Disagreement arising out of any provision of the Final Agreement provides that a matter will be “finally determined by arbitration”, the Disagreement will, on the delivery of a notice by a Party directly engaged in the Disagreement, to all Parties as required under Appendix J-5, be referred to and finally resolved by arbitration in accordance with that Appendix.
- 29. A Disagreement, other than a Disagreement referred to in paragraph 28, and with the written agreement of all Parties directly engaged in the Disagreement, the Disagreement will be referred to, and finally resolved by, arbitration in accordance with Appendix J-5.
- 30. If two Parties make a written agreement under paragraph 29, they will deliver a copy of the agreement as soon as practicable to the Party that was not directly engaged in the Disagreement.
- 31. Upon delivering a written notice to the participating Parties to the arbitration within 15 days after receiving a notice under paragraph 28 or copy of a written agreement under paragraph 30, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.
- 32. Notwithstanding paragraph 31, an arbitral tribunal may make an order adding a Party as a participating Party at any time, if the arbitral tribunal considers that:
  - a) the participating Parties will not be unduly prejudiced; or
  - b) the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under paragraph 28 or the written agreement to arbitrate in paragraph 29,

and, in that event, the arbitral tribunal may make any order it considers appropriate or necessary in the circumstances respecting conditions, including the payment of costs, upon which the Party may be added.

### **Effect of Arbitral Award**

- 33. An arbitral award is final and binding on all Parties whether or not a Party has participated in the arbitration.



34. Notwithstanding paragraph 33, an arbitral award is not binding on a Party that has not participated in the arbitration if:
- a) the Party did not receive copies of:
    - i) the notice of arbitration or agreement to arbitrate; or
    - ii) the pleadings and any amendments or supplements to the pleadings; or
  - b) the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 32.

### **Application of Legislation**

35. No legislation of any Party respecting arbitration, except the settlement legislation, applies to an arbitration conducted under this Chapter.
36. A court must not intervene or offer assistance in an arbitration or review an arbitral award under this Chapter except as provided in Appendix J-5.

### **Stage Three: Adjudication - Judicial Proceedings**

37. Nothing in this Chapter creates a cause of action where none otherwise exists.
38. Subject to paragraph 39, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a Disagreement.
39. Subject to paragraph 14, a Party may not commence judicial proceedings in respect of a Disagreement if the Disagreement:
- a) is required to be referred to arbitration under paragraph 28 or has been agreed to be referred to arbitration under paragraph 29;
  - b) has not been referred to collaborative negotiations or a facilitated process as required under this Chapter; or
  - c) has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.
40. Nothing in subparagraph 39.a) prevents an arbitral tribunal or the participating Parties from requesting the Supreme Court of British Columbia to make a ruling respecting a question of law as permitted in Appendix J-5.

### **Notice to Parties**

41. If, in any judicial or administrative proceeding, an issue arises in respect of:
- a) the interpretation or validity of this Agreement; or
  - b) the validity, or applicability of:
    - i) any settlement legislation; or
    - ii) any Kitsumkalum Law,

the issue will not be decided until the party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada and the Kitsumkalum Government.

42. In any judicial or administrative proceeding to which paragraph 41 applies, the Attorney General of British Columbia, the Attorney General of Canada and the Kitsumkalum Government may appear and participate in the proceedings as parties with the same rights as any other party.

**Costs**

43. Except as provided otherwise in the Appendices, each participating Party will bear the costs of its own participation, representation, and appointments in collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
44. Subject to paragraph 43 and except as provided otherwise in the Appendices, the participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
45. For purposes of paragraph 44, “costs” include:
- a) fees of the Neutrals;
  - b) costs of hearing and meeting rooms;
  - c) actual and reasonable costs of communications, accommodation, meals and travel of the Neutrals;
  - d) costs of required secretarial and administrative support for the Neutrals, as permitted in the Appendices; and
  - e) administration fees of a Neutral Appointing Authority.

## CHAPTER 23 – ELIGIBILITY AND ENROLMENT

### General

1. Enrolment under the Final Agreement does not:
  - a) confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
  - b) except as set out in the Final Agreement or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

### Eligibility Criteria

2. An individual is eligible to be enrolled under the Kitsumkalum Final Agreement, if that individual is:
  - a) of Kitsumkalum ancestry;
  - b) a Band member listed or entitled to be listed as a Band member on the Kitsumkalum Band lists pursuant to the *Indian Act*;
  - c) adopted as a Child under laws recognized in Canada, or by a Kitsumkalum custom, by an individual eligible for enrolment under subparagraphs a) or 2(b);
  - d) a descendant or an adopted child of an individual eligible for enrolment under subparagraphs 2(a), 2(b) or 2(c); or
  - e) a spouse, including a common law spouse, of an individual eligible for enrolment under subparagraphs 2(a), 2(b) or 2(c) and who is accepted under a community acceptance process set out in Kitsumkalum custom.

### Applications for Enrolment

3. An individual may:
  - a) apply to the Enrolment Committee, or a body responsible under subparagraph 38.a), for enrolment under the Final Agreement;
  - b) appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; or
  - c) seek judicial review of a decision of the Enrolment Appeal Board or a body responsible under subparagraph 38.a),  
on the individual's own behalf, or on behalf of an individual whose affairs they have the legal authority to manage.
4. Each applicant, or individual who has the legal authority to manage the affairs of an applicant, has the burden of demonstrating to the Enrolment Committee that the Eligibility Criteria are met.

### **Other Land Claims Agreements**

5. Other than as provided below, an applicant who is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada will not at the same time be enrolled under the Final Agreement.
6. Upon application to be enrolled under the Final Agreement, an applicant must notify the Enrolment Committee or a body established under subparagraph 38.a) if they are a beneficiary of, or have applied for enrolment under, another treaty or land claims agreement in Canada.
7. An individual described in paragraph 5 will be enrolled if they meet the Eligibility Criteria.
8. An individual who has been enrolled under paragraph 7 will:
  - a) within 120 days after the Effective Date; or
  - b) where the decision to accept their application to be enrolled under paragraph 7 is made after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee or a body established under subparagraph 38.a) that they have been enrolled;  
  
provide written evidence to a body established under subparagraph 38.a) to demonstrate that they have ceased to be a beneficiary of, or have withdrawn their application for enrolment under, another treaty or land claims agreement in Canada.
9. If an individual enrolled under paragraph 7 fails to satisfy the requirements of paragraph 8, their name will be removed from the Enrolment Register.
10. An individual enrolled under paragraph 7 is not entitled to exercise any rights or receive any benefits under the Final Agreement until they have satisfied the requirements of paragraph 8.

### **Membership in a Band Other Than Kitsumkalum**

11. For greater certainty, after the Effective Date, upon becoming a Kitsumkalum Member, an individual ceases to be a member or a registered Indian of any Band in accordance with paragraph 24 of the General Provisions Chapter.
12. An individual who was a member or a registered Indian of a Band other than the Kitsumkalum Band will:
  - a) within 120 days after the Effective Date; or
  - b) where the decision to accept their application to be enrolled is made after the Effective Date, within 120 days of receiving notification from the Enrolment Committee or a body established under subparagraph 38.a) that they have been enrolled,  
  
do all things necessary to request Canada to change their affiliation to Kitsumkalum and to issue a new status card.

### **The Enrolment Committee**

13. At the beginning of the Initial Enrolment Period, an Enrolment Committee will be established by Kitsumkalum, and will be comprised of three representatives selected by Kitsumkalum.
14. Kitsumkalum will notify Canada and British Columbia of the members of the Enrolment Committee as soon as practicable after their appointment.

15. The Enrolment Committee will:
  - a) establish enrolment procedures and set time limits;
  - b) during the Initial Enrolment Period, receive enrolment applications, consider each application, enrol all applicants who meet the Eligibility Criteria and maintain a record of those decisions and request further information if required;
  - c) establish and maintain an Enrolment Register containing the names of all enrolled individuals;
  - d) publish its procedures, including a list of the documentation and information required of each applicant;
  - e) publish the Eligibility Criteria and provide information on the enrolment process and application forms to any person who wishes to apply for enrolment;
  - f) notify in writing each applicant and the Parties of its decision and, where enrolment is refused, provide written reasons;
  - g) upon request, provide to a Party or the Enrolment Appeal Board, in confidence, information in respect of an individual's enrolment application;
  - h) add, delete or amend names from the Enrolment Register in accordance with decisions of the Enrolment Appeal Board;
  - i) subject to this Chapter, keep information provided by and about applicants confidential;
  - j) provide a true copy of the Enrolment Register to the Parties on request;
  - k) take reasonable steps to notify individuals potentially eligible for enrolment of the Eligibility Criteria and application procedures; and
  - l) provide a true copy of the Enrolment Register and any other relevant information requested to the Ratification Committee in a timely manner.
16. After a decision by the Enrolment Committee and before any appeal of that decision is commenced, an Applicant may submit new information to the Enrolment Committee.
17. Subject to this Chapter, all decisions of the Enrolment Committee will be final and binding.
18. During the Initial Enrolment Period, the Enrolment Committee may, before an appeal of a decision is commenced, vary, or rescind and re-make, the decision on the basis of new information, if it considers the decision was in error.
19. Where the Enrolment Committee fails to decide upon an application for enrolment within the time established in its procedures, the application will be deemed to be refused and the deemed refusal will constitute grounds for appeal to the Enrolment Appeal Board.
20. Where an applicant, or an individual having legal authority to manage the affairs of an applicant, applies to have the applicant's name removed from the Enrolment Register, the Enrolment Committee will remove the applicant's name and will notify the applicant and the individual who made the application.

### **The Enrolment Appeal Board**

21. The Enrolment Appeal Board will be established by Canada and Kitsumkalum at a date agreed upon by the Parties.

22. The Enrolment Appeal Board will be comprised of members agreed to by the Parties.
23. Kitsumkalum and Canada will each appoint one member to the Enrolment Appeal Board and will jointly appoint a third member, and the members will select a chairperson from among themselves.
24. A member of the Enrolment Committee will not be a member of the Enrolment Appeal Board.
25. During the Initial Enrolment Period, an applicant or a Party may appeal by written notice to the Enrolment Appeal Board any decision of the Enrolment Committee made pursuant to subparagraphs 15.b) or paragraph 18, or an application deemed to be refused under paragraph 19.
26. The Enrolment Appeal Board will:
  - a) establish its own procedures and set time limits;
  - b) hear and determine any appeal brought pursuant to paragraph 25 and decide whether the Applicant will be enrolled;
  - c) conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality which outweigh the public interest in having an open hearing;
  - d) provide written reasons for its decision to the applicant and the Parties within 90 days;
  - e) maintain a record of its decisions and communicate them to the Enrolment Committee as required; and
  - f) report on the appeal process to the Parties as requested.
27. After the Effective Date, the Enrolment Appeal Board may:
  - a) by summons require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in that individual's possession; and
  - b) require any witness to answer on oath or solemn affirmation any relevant question posed to the witness.
28. Where an individual fails to comply with a direction of the Enrolment Appeal Board made under subparagraphs 27.a) or 27.b), on application by the Enrolment Appeal Board, a judge of the Supreme Court of British Columbia may enforce the direction.
29. Any applicant, Party, or witness appearing before the Enrolment Appeal Board may be assisted by counsel or agent.
30. Subject to paragraphs 32 to 35, all decisions of the Enrolment Appeal Board will be final and binding.

#### **Actions Against the Enrolment Committee or Enrolment Appeal Board**

31. No action lies or may be commenced against the Enrolment Appeal Board, the Enrolment Committee or any member of the Enrolment Appeal Board or any member of the Enrolment Committee for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

## **Judicial Review**

32. An applicant or a Party may apply to the Supreme Court of British Columbia to review or set aside a decision of the Enrolment Appeal Board, or any body established under subparagraph 38.a), on the grounds that the Enrolment Appeal Board or body established under subparagraph 38.a)
  - a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
  - b) failed to observe procedural fairness;
  - c) erred in law; or
  - d) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
33. On an application for judicial review the Supreme Court of British Columbia may either dismiss the application, or set aside the decision and refer the matter back to the Enrolment Appeal Board or any body established under subparagraph 38.a) for determination in accordance with such directions as the Supreme Court of British Columbia considers appropriate.
34. Where the Enrolment Appeal Board or any body established under subparagraph 38.a), refuses or fails to hear or decide an appeal within a reasonable time, the applicant or a Party may apply to the court for an order directing the Enrolment Appeal Board or the body established under subparagraph 38.a) to hear or decide the appeal in accordance with such directions as the Supreme Court of British Columbia considers appropriate.
35. An applicant or a Party may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board or any body established under subparagraph 38.a) or a longer time that may be determined by the Supreme Court of British Columbia.

## **Costs**

36. Canada and British Columbia will provide agreed upon funding for the Enrolment Committee and Enrolment Appeal Board.

## **Enrolment after the Initial Enrolment Period**

37. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered decisions in respect of those applications or appeals made or commenced before the end of the Initial Enrolment Period. On dissolution the Enrolment Committee and the Enrolment Appeal Board will provide their records to Kitsumkalum and upon request to British Columbia or Canada.
38. Following the Initial Enrolment Period, Kitsumkalum will:
  - a) be responsible for an enrolment process, including the application of the Eligibility Criteria, and the administrative costs of that process;
  - b) maintain the Enrolment Register;
  - c) provide a true copy of the Enrolment Register to Canada and British Columbia as they request; and
  - d) provide information concerning enrolment to Canada and British Columbia as they request.





e)

## CHAPTER 24 – IMPLEMENTATION

### General

1. The Parties will develop an Implementation Plan for the Final Agreement that will take effect on the Effective Date and have a term of 10 years, which may be renewed or extended upon agreement of the Parties.

### Implementation Plan

2. The Implementation Plan for the Final Agreement will:
  - a) identify the obligations in the Final Agreement and the activities to be undertaken to fulfill these obligations, the responsible Party or Parties and when the activities will be completed;
  - b) specify how the Implementation Plan may be amended;
  - c) specify how the Implementation Plan may be renewed or extended; and
  - d) address other matters agreed to by the Parties.
3. The Implementation Plan for the Final Agreement will not:
  - a) create legal obligations;
  - b) alter any rights or obligations set out in the Final Agreement;
  - c) preclude any Party from asserting that rights or obligations exist under the Final Agreement even though they are not referred to in the Implementation Plan; and
  - d) be used to interpret the Final Agreement.

### Implementation Working Group

4. The Parties agree to establish a tripartite implementation working group during Final Agreement negotiations which will:
  - a) be responsible for the development of an Implementation Plan before initialling the Final Agreement; and
  - b) be responsible for the development of a list of activities that the Parties must complete by the Effective Date.

### Implementation Committee

5. On the Effective Date, the Parties will establish a tripartite implementation committee for a term of 10 years, which may be renewed or extended as agreed by the Parties.
6. The Parties will each appoint one representative to the implementation committee.
7. The implementation committee will:
  - a) establish its own procedures and operating guidelines;

- b) develop a communications strategy in respect of the implementation and content of the Final Agreement;
- c) provide a forum for the Parties to discuss the implementation of the Final Agreement;
- d) provide for the preparation of annual reports on the implementation of the Final Agreement; and
- e) before the expiry of the Implementation Plan, review the Implementation Plan and advise the Parties on the further implementation of the Final Agreement.

## **CHAPTER 25 - APPROVAL OF THE AGREEMENT-IN-PRINCIPLE**

1. This Agreement will be submitted to the Parties for approval after it has been initialled by the Chief Negotiators for Canada, British Columbia and Kitsumkalum.
2. Kitsumkalum will have approved this Agreement when it is signed by the Chief Negotiator for Kitsumkalum after a community approval process.
3. Canada will have approved this Agreement when it is signed by a Minister authorized to do so by the federal Cabinet.
4. British Columbia will have approved this Agreement when it is signed by a Minister authorized to do so by the provincial Cabinet.
5. This Agreement is not legally binding.
6. The signing of this Agreement does not preclude any other Tsimshian First Nation from continuing negotiations in accordance with the Tsimshian Framework Agreement, as amended.



## CHAPTER 26 – RATIFICATION OF THE FINAL AGREEMENT

### General

1. The Final Agreement will be legally binding once ratified by all of the Parties in accordance with the Ratification Chapter of the Final Agreement.
2. The Final Agreement will be submitted to the Parties for ratification as set out in the Final Agreement after it has been initialled by Chief Negotiators for Canada, British Columbia and Kitsumkalum.

### Ratification by Kitsumkalum

3. The Parties will establish a Ratification Committee, with equal representation of each of the Parties, to be responsible for the Kitsumkalum ratification process, including preparing a list of eligible voters, as set out in the Final Agreement.
4. An eligible voter will be a person who:
  - a) is enrolled under the Eligibility and Enrolment Chapter; and
  - b) meets any other criterion set out in the Final Agreement.
5. The Final Agreement will set out the minimum age for an eligible voter on the day of voting.
6. Ratification of the Final Agreement by Kitsumkalum requires:
  - a) that Kitsumkalum voters have a reasonable opportunity to review the Final Agreement;
  - b) a vote, by way of a secret ballot;
  - c) that a majority of eligible voters of Kitsumkalum vote in favour of the Final Agreement;
  - d) ratification of the Kitsumkalum Constitution through the process set out in the Final Agreement; and
  - e) the Final Agreement be signed by the authorized representative(s) of Kitsumkalum.

### Ratification by Canada

7. Ratification of the Final Agreement by Canada requires:
  - a) that the Final Agreement be signed by a Minister authorized by the federal Cabinet; and
  - b) the coming into force of Federal Settlement Legislation.

### Ratification by British Columbia

8. Ratification of the Final Agreement by British Columbia requires:
  - a) that the Final Agreement be signed by a Minister authorized to do so; and
  - b) the coming into force of Provincial Settlement Legislation.

**Ratification of the Kitsumkalum Constitution**

9. Ratification of the Kitsumkalum Constitution by Kitsumkalum requires:
  - a) that the voters of Kitsumkalum have a reasonable opportunity to review their Kitsumkalum Constitution;
  - b) a vote, by way of a secret ballot; and
  - c) that a majority of the eligible voters vote in favour of adopting their Kitsumkalum Constitution.

**KITSUMKALUM  
AGREEMENT-IN-PRINCIPLE  
APPENDICES**





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**Appendix A**

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**Map of Kitsumkalum Area**

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*Note: The Parties will update the Appendices prior to the Effective Date.*



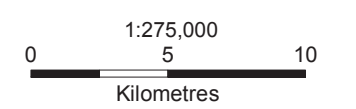
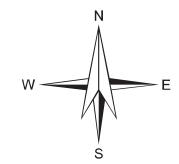


### Kitsumkalum Area

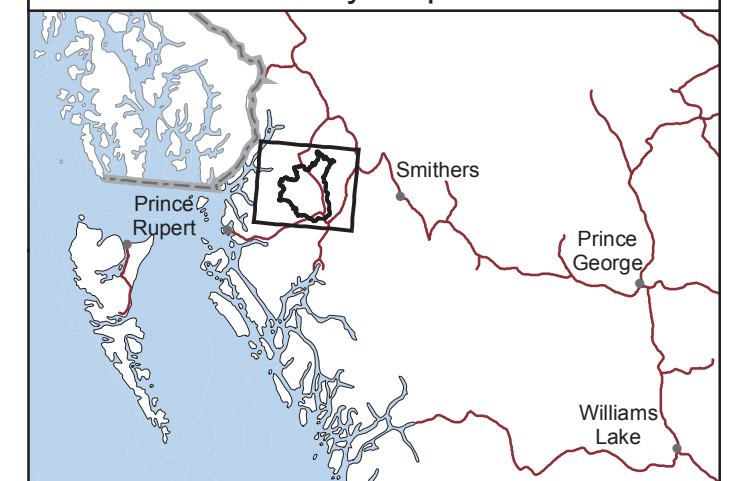
#### Legend

-  Kitsumkalum Area
-  Municipality
-  Highway

This map is not to be used for defining Kitsumkalum land boundaries or for their legal descriptions. Depictions of Kitsumkalum land on this map are to be used for illustrative purposes only.



#### Key Map



Base map derived from 1:250,000 NTS data  
Land District: Range 5 Coast District  
UTM Zone 09

#### Appendix: A Kitsumkalum Area



**Appendix B**  
**Kitsumkalum Lands**

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**Appendix B-1 Overview Map of Kitsumkalum Lands**

**Appendix B-2 Kitsumkalum Indian Reserves**

Part 1: Land Descriptions of Kitsumkalum Indian Reserves

Part 2: Map of Kitsumkalum Indian Reserves

**Appendix B-3 Maps of Provincial Crown Lands**





**Appendix B-1**

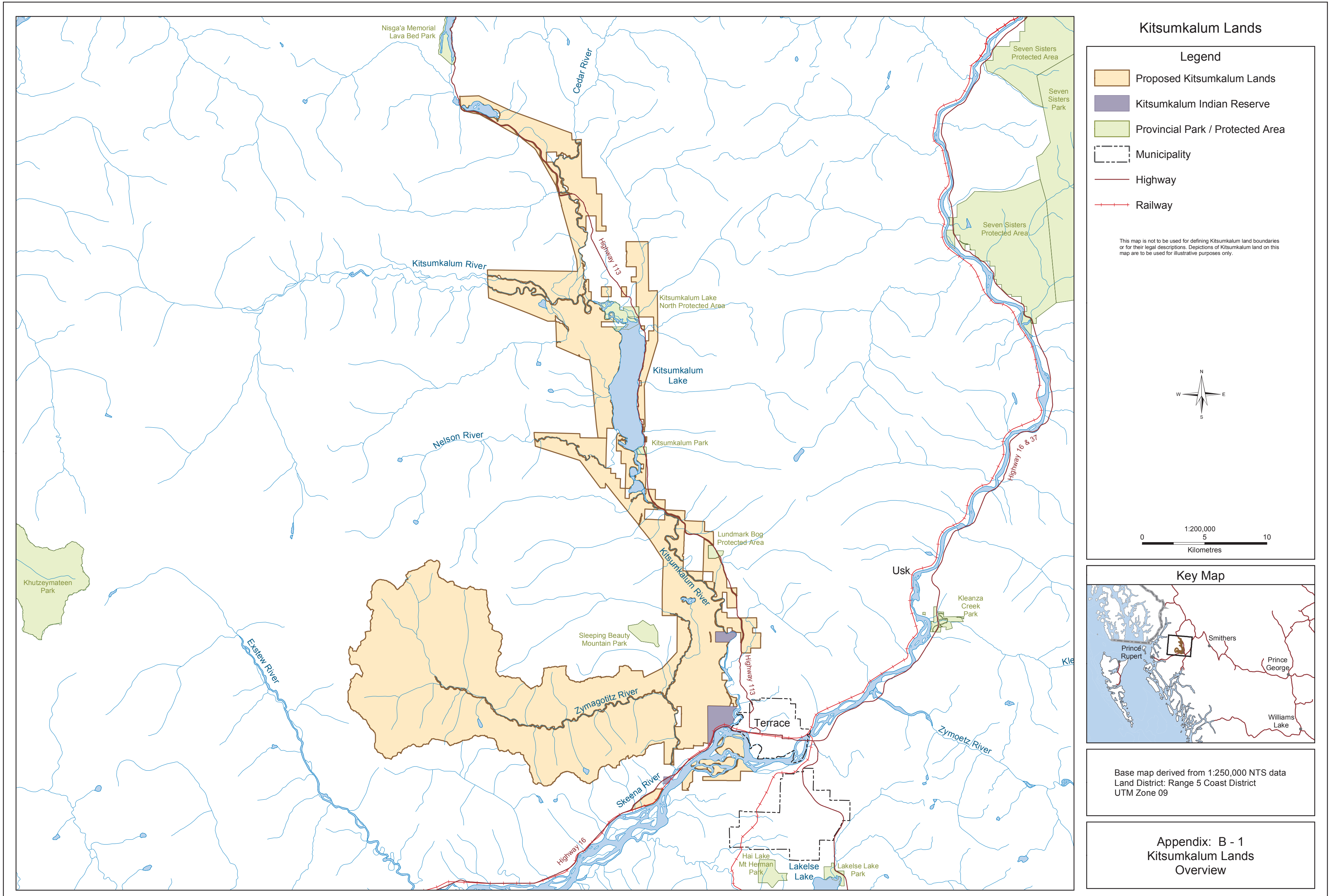
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**Overview Map of Kitsumkalum Lands**

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*Note: The Parties will update the Appendices prior to the Effective Date.*







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**Appendix B-2**

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**Kitsumkalum Indian Reserves**

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**Part 1: Land Descriptions of Kitsumkalum Indian Reserves**

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Kitsumkalum Indian Reserve No. and Name</b>	<b>Land Description</b>
Kitsumkaylum 1	Plan BC162 (INAC Land Identifier No. 07646)
Dalk-ka-gila-quoeux 2	Plan BC162 (INAC Land Identifier No. 07647)
Zimagord 3	Plan BC162 (INAC Land Identifier No. 07648)
Port Essington*	Plan BC 84 (INAC Land Identifier No. 07649)

*\*Port Essington Indian Reserve is currently shared by Kitselas and Kitsumkalum*



**Appendix B-2**

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**Kitsumkalum Indian Reserves**

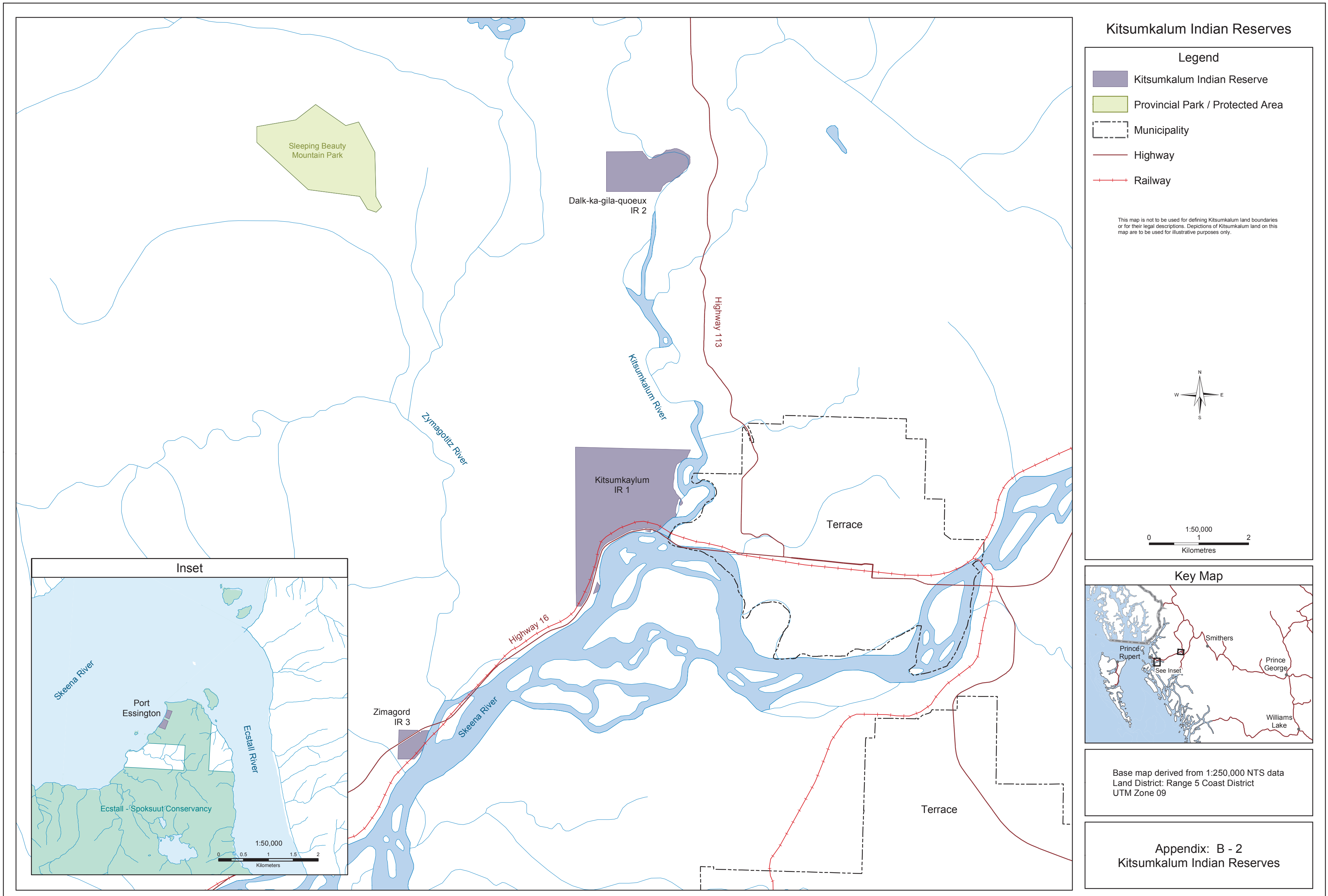
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**Part 2: Map of Kitsumkalum Indian Reserves**

*Note: The Parties will update the Appendices prior to the Effective Date.*









**Appendix B-3**

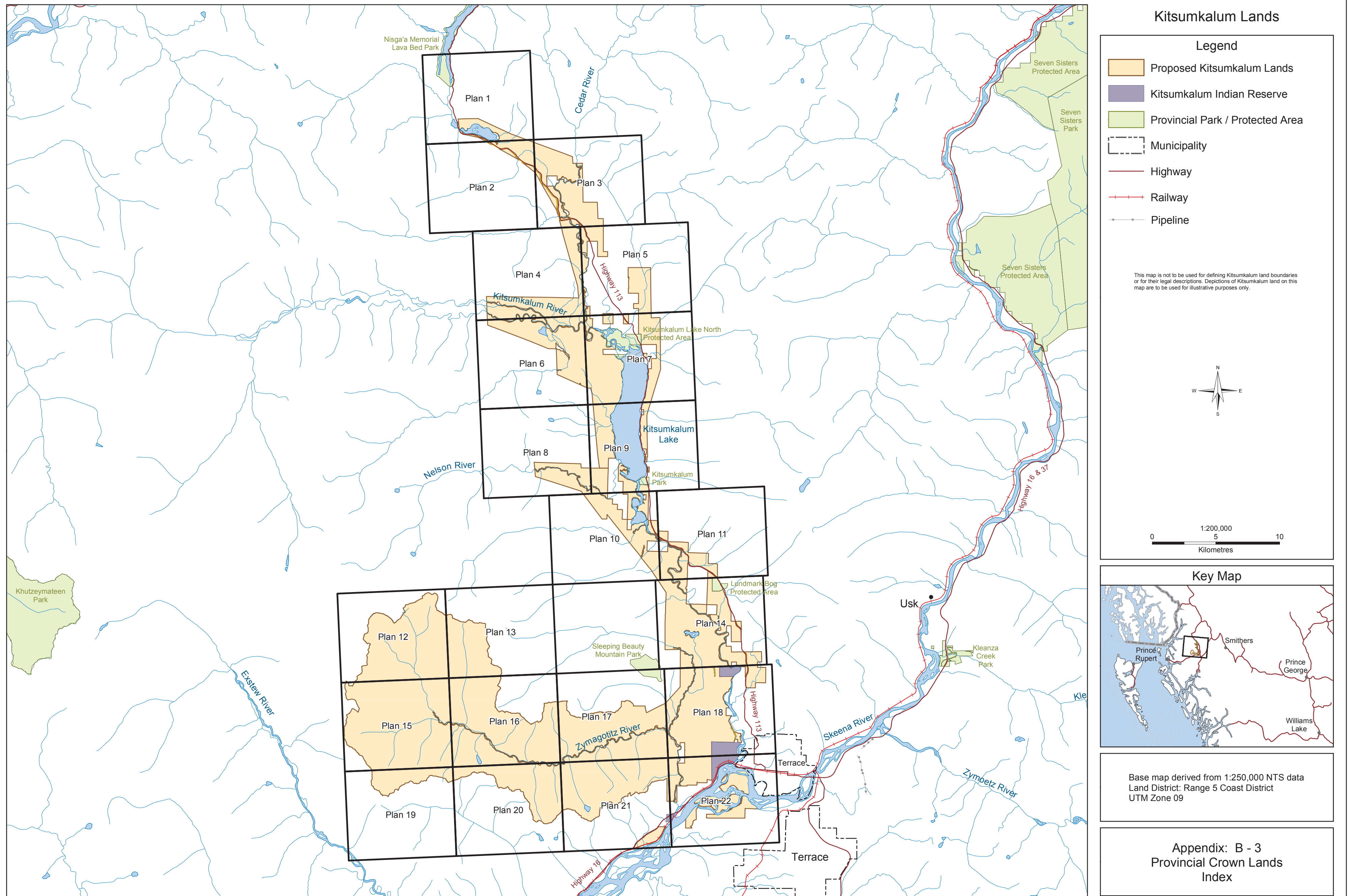
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**Maps of Provincial Crown Lands**

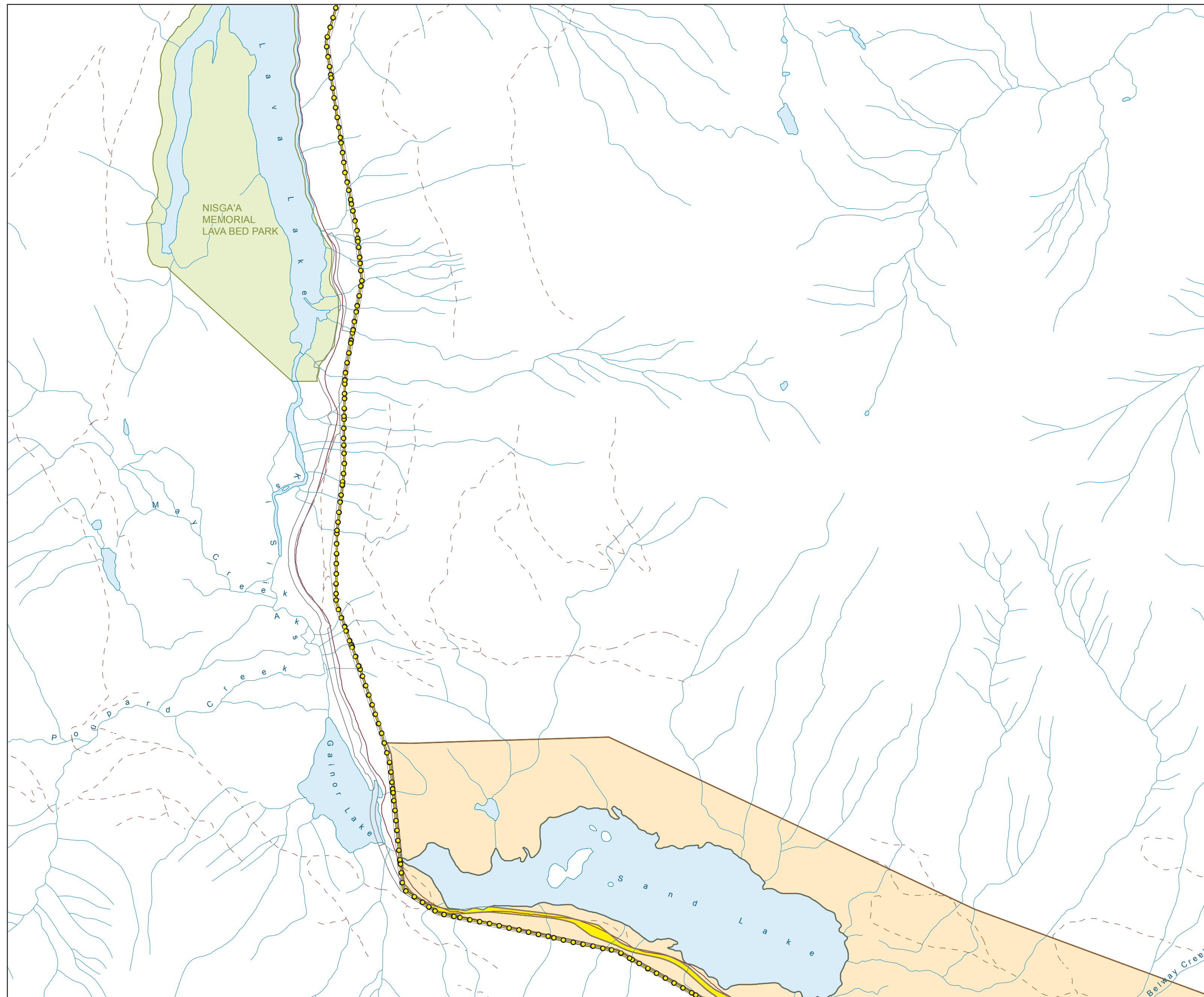
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*Note: The Parties will update the Appendices prior to the Effective Date.*









### Kitsumkalum Lands

#### Legend

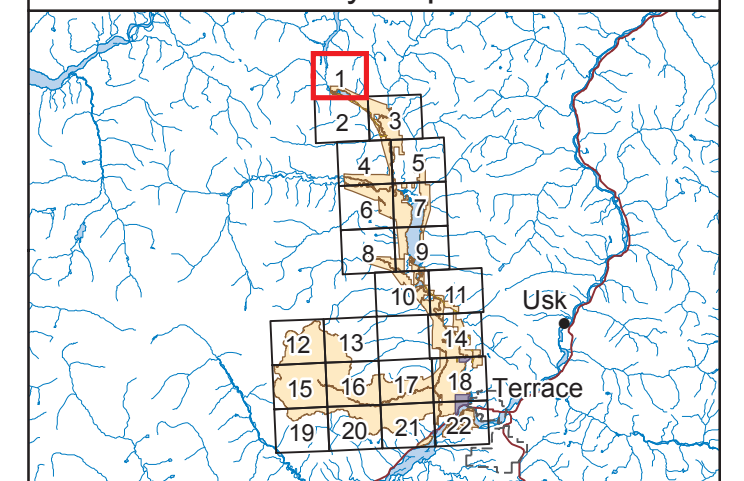
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  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - Railway

This map is not to be used for defining Kitsumkalum land boundaries or for their legal descriptions. Depictions of Kitsumkalum land on this map are to be used for illustrative purposes only.



1:20,000  
0 250 500 750 1,000  
Metres

#### Key Map

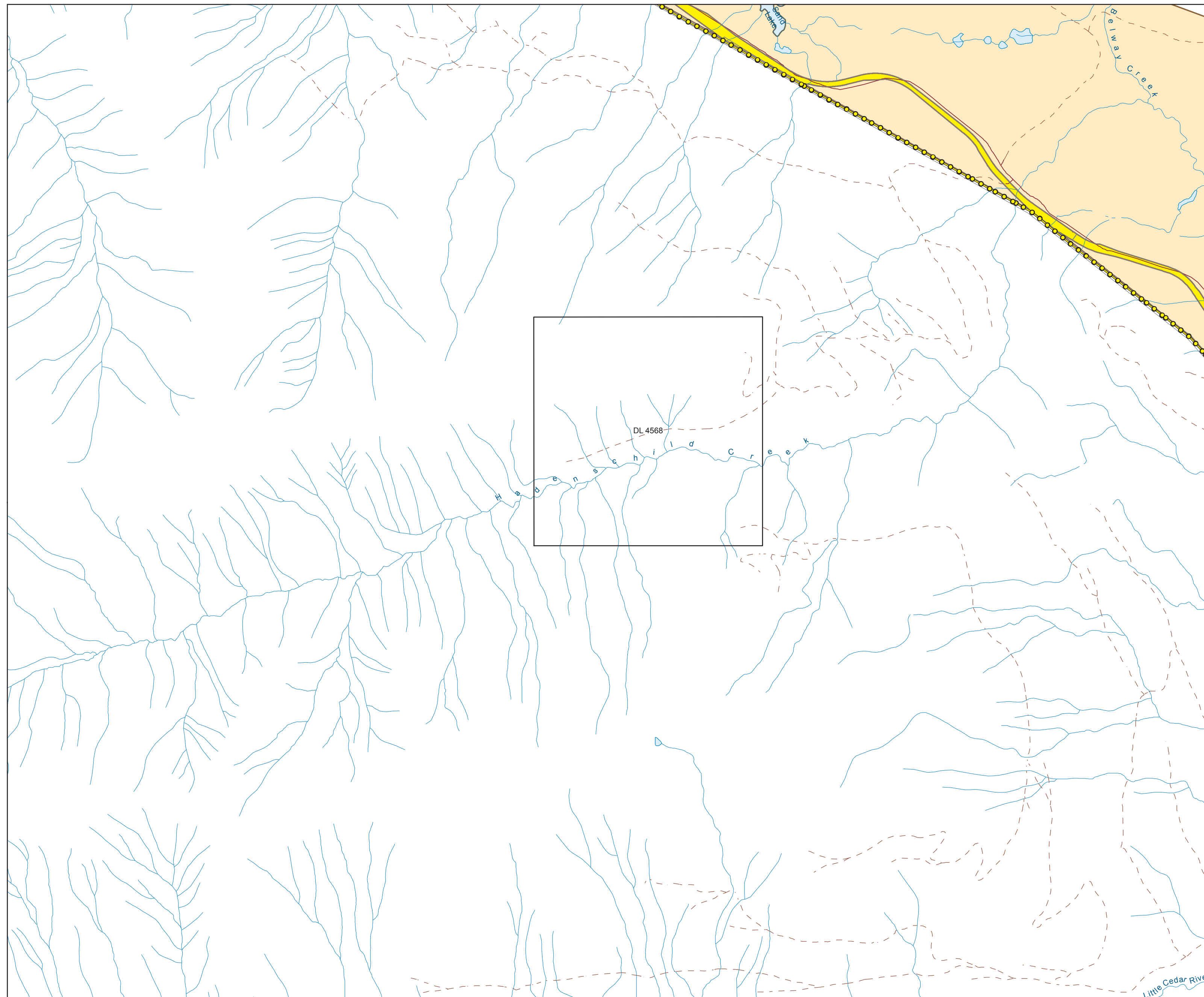


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Services and Land Title Office  
Land District: Range 5 Coast District  
BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 1







### Kitsumkalum Lands

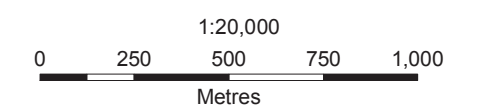
#### Legend

- Proposed Kitsumkalum Lands
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- Municipality
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- BC Hydro Northwest Transmission Line Corridor
- Pipeline
- Road (Paved)
- Road (Gravel)
- Railway

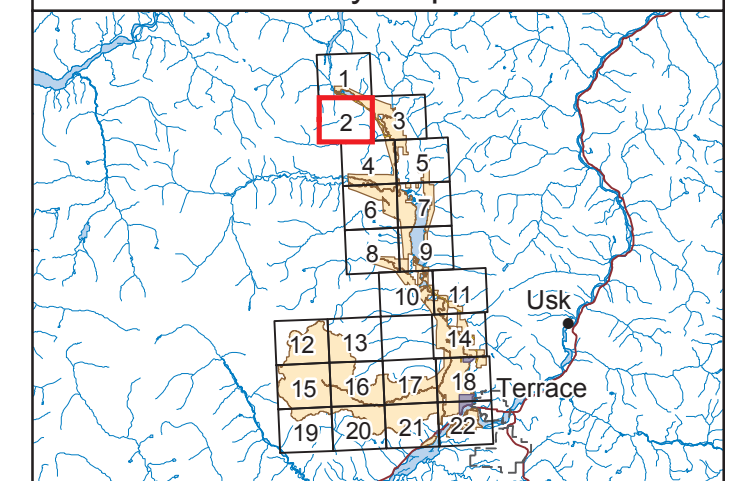
#### Transportation

- Road (Paved)
- Road (Gravel)
- Railway

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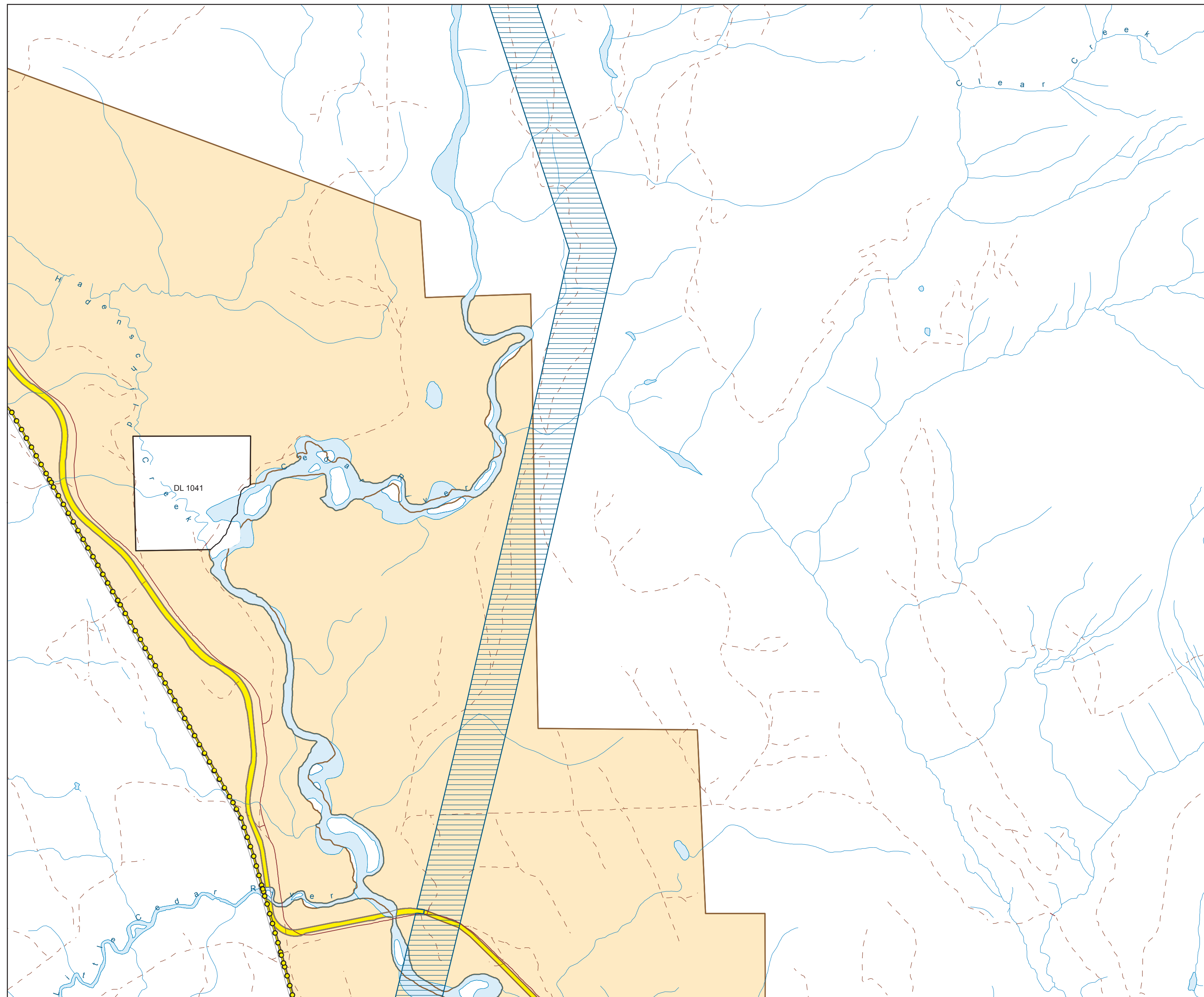
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 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 2





### Kitsumkalum Lands

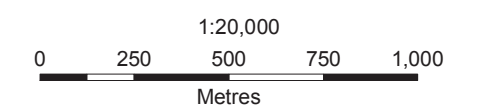
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- Proposed Kitsumkalum Lands
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- Excluded Crown Corridor
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- Municipality
- BC Hydro 138 kv Transmission Line
- BC Hydro Northwest Transmission Line Corridor
- Pipeline
- Road (Paved)
- Road (Gravel)
- Railway

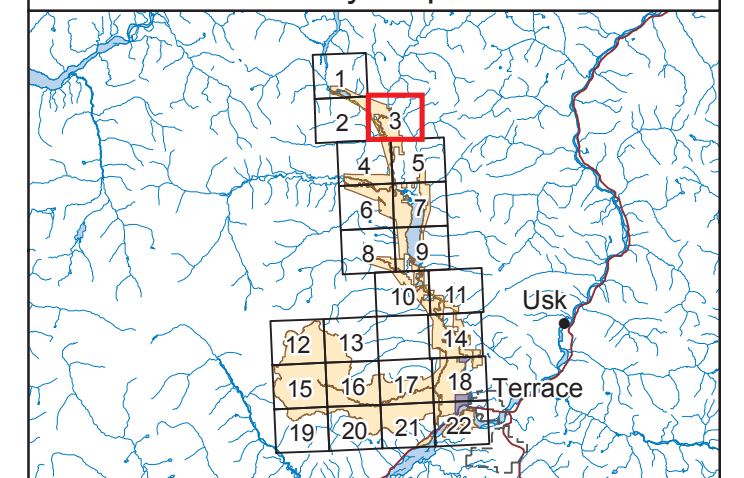
#### Transportation

- Road (Paved)
- Road (Gravel)
- Railway

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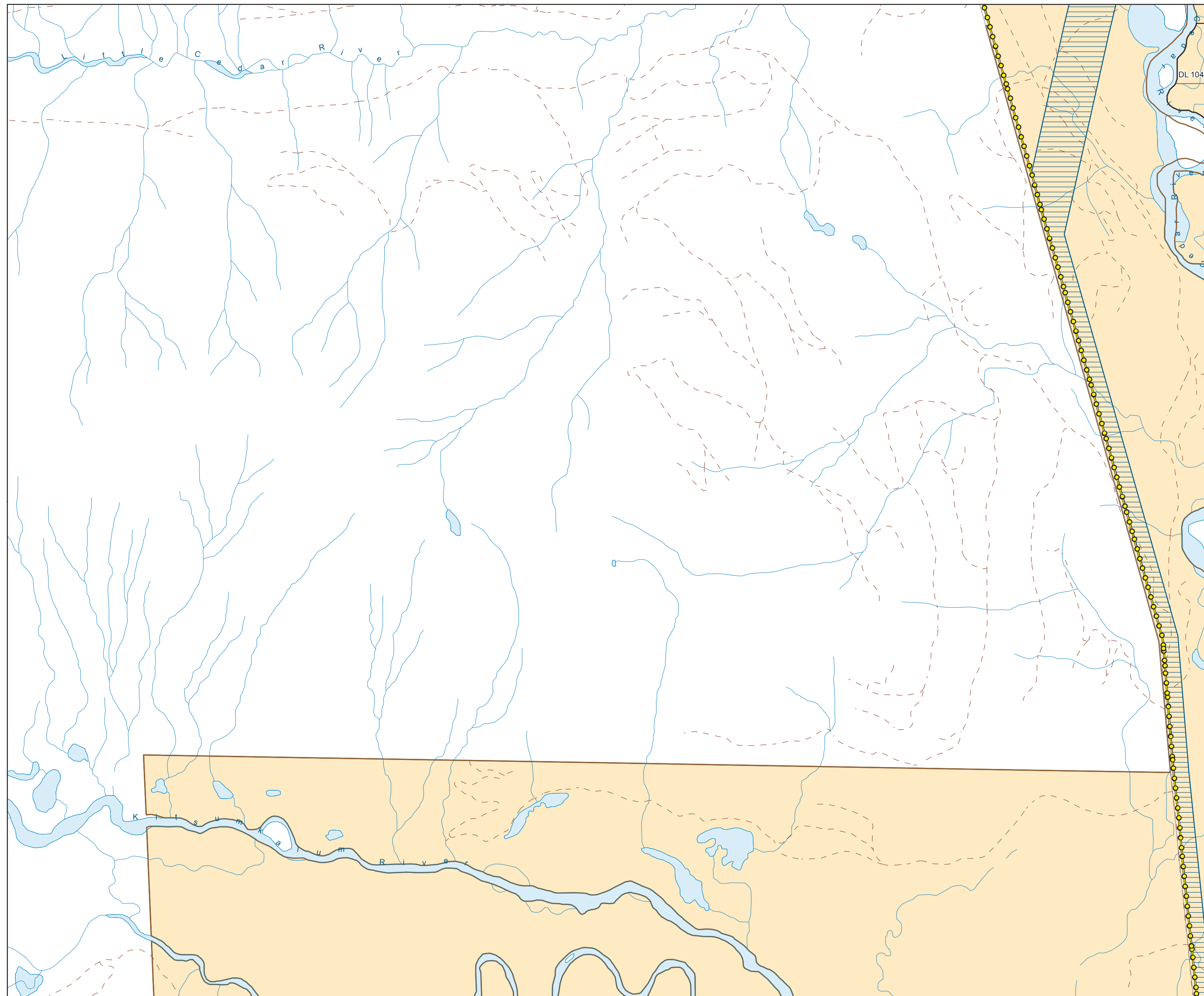
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UTM Zone 09

Appendix: B - 3  
Provincial Crown Lands  
Plan 3



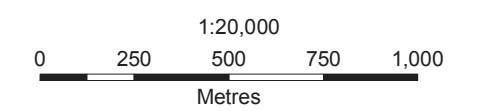


### Kitsumkalum Lands

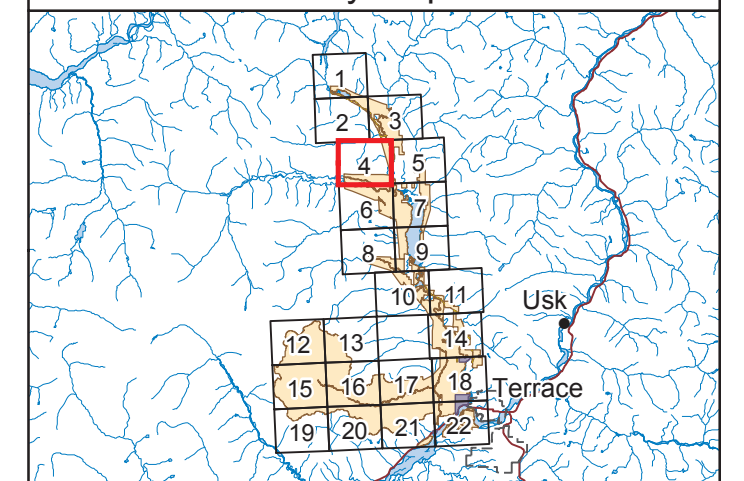
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  - Subdivision Parcel
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  - Municipality
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  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - + Railway

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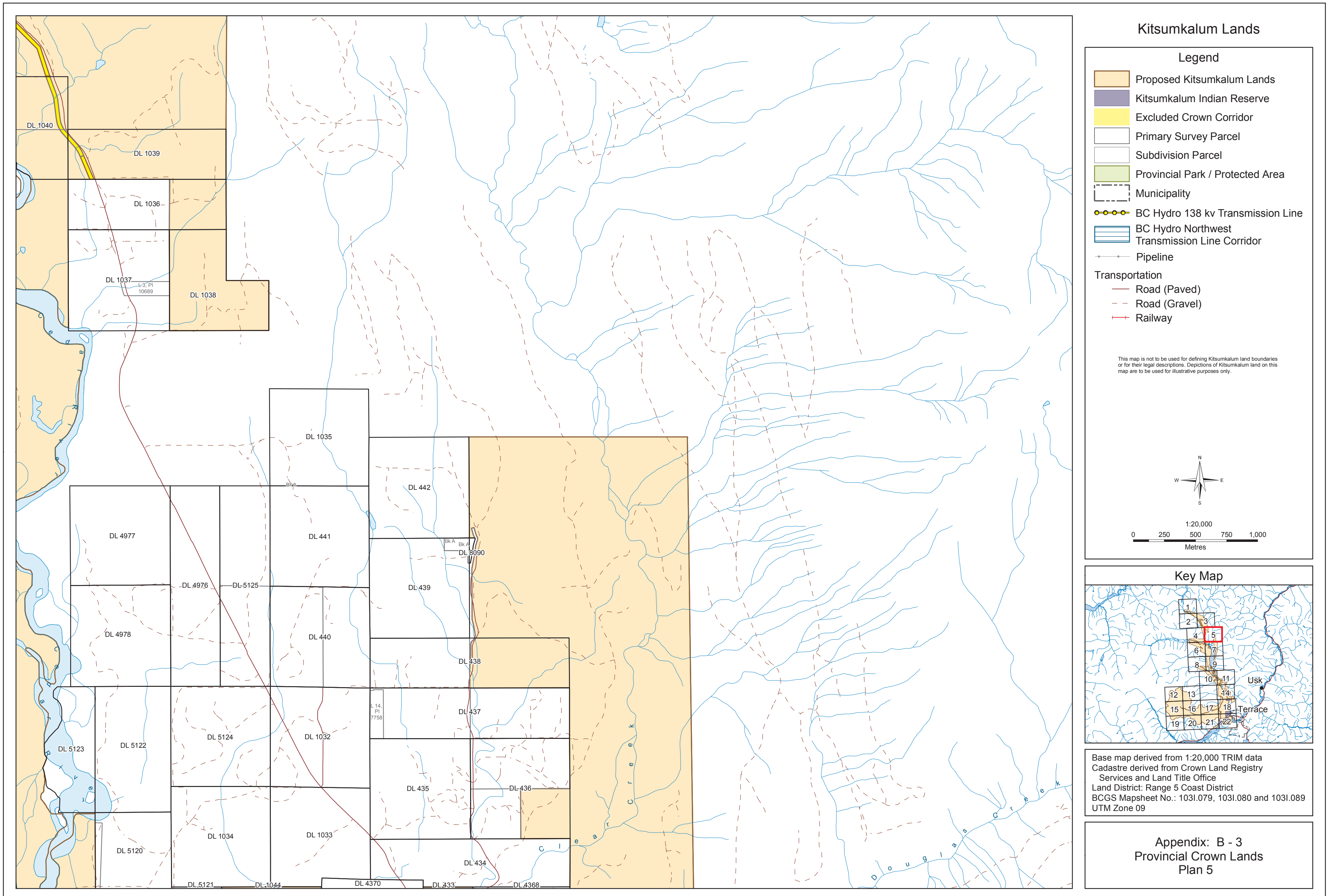
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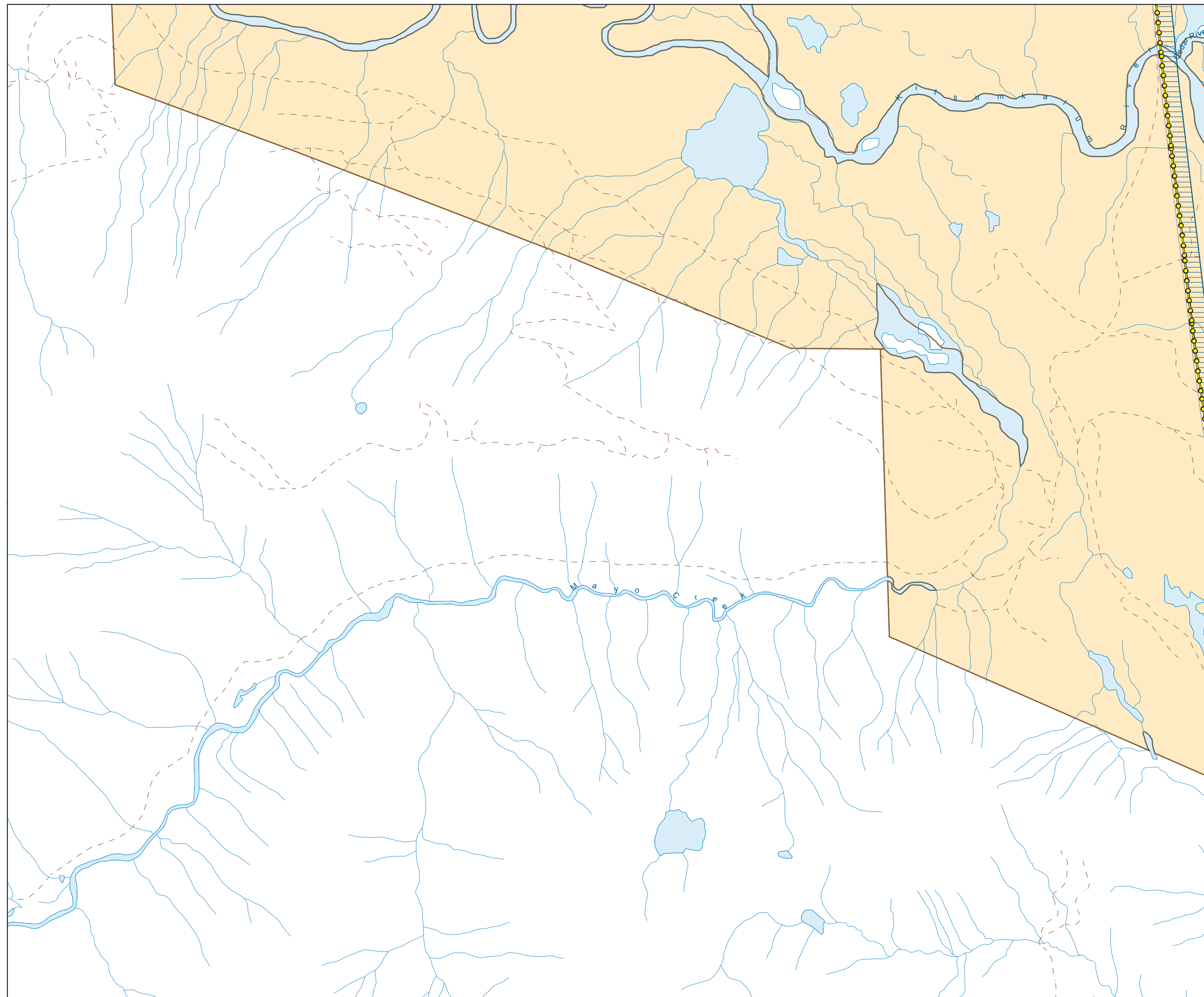
Appendix: B - 3  
 Provincial Crown Lands  
 Plan 4









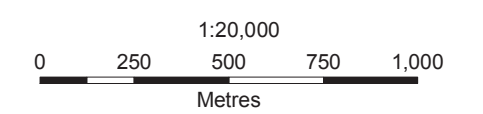


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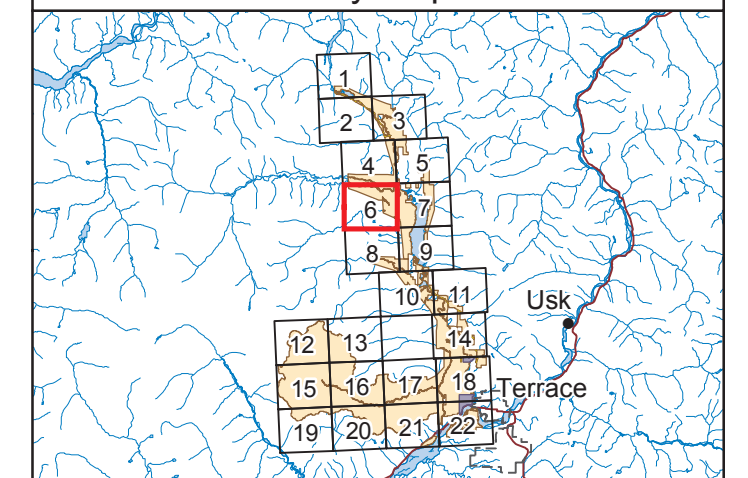
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  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - Railway

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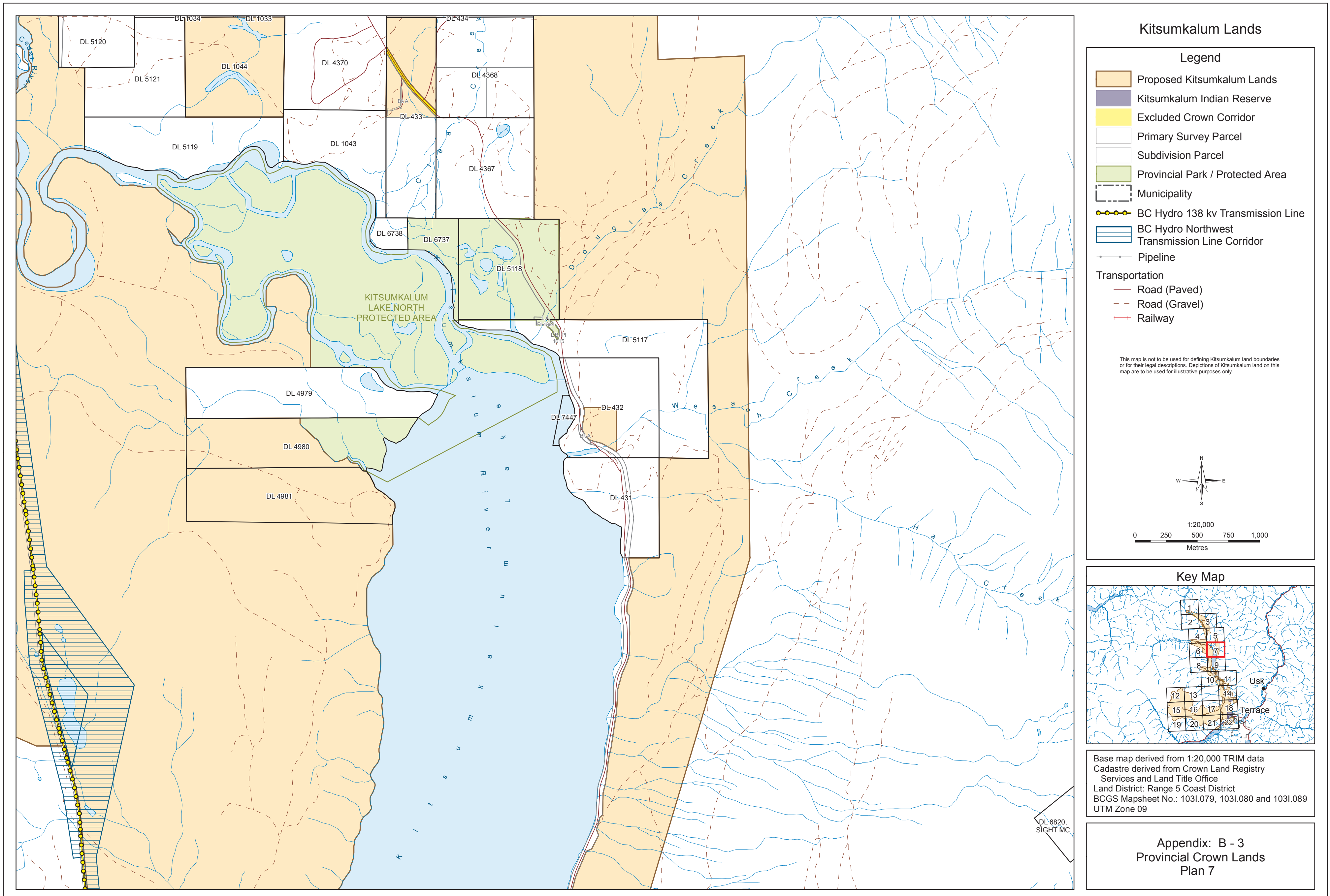
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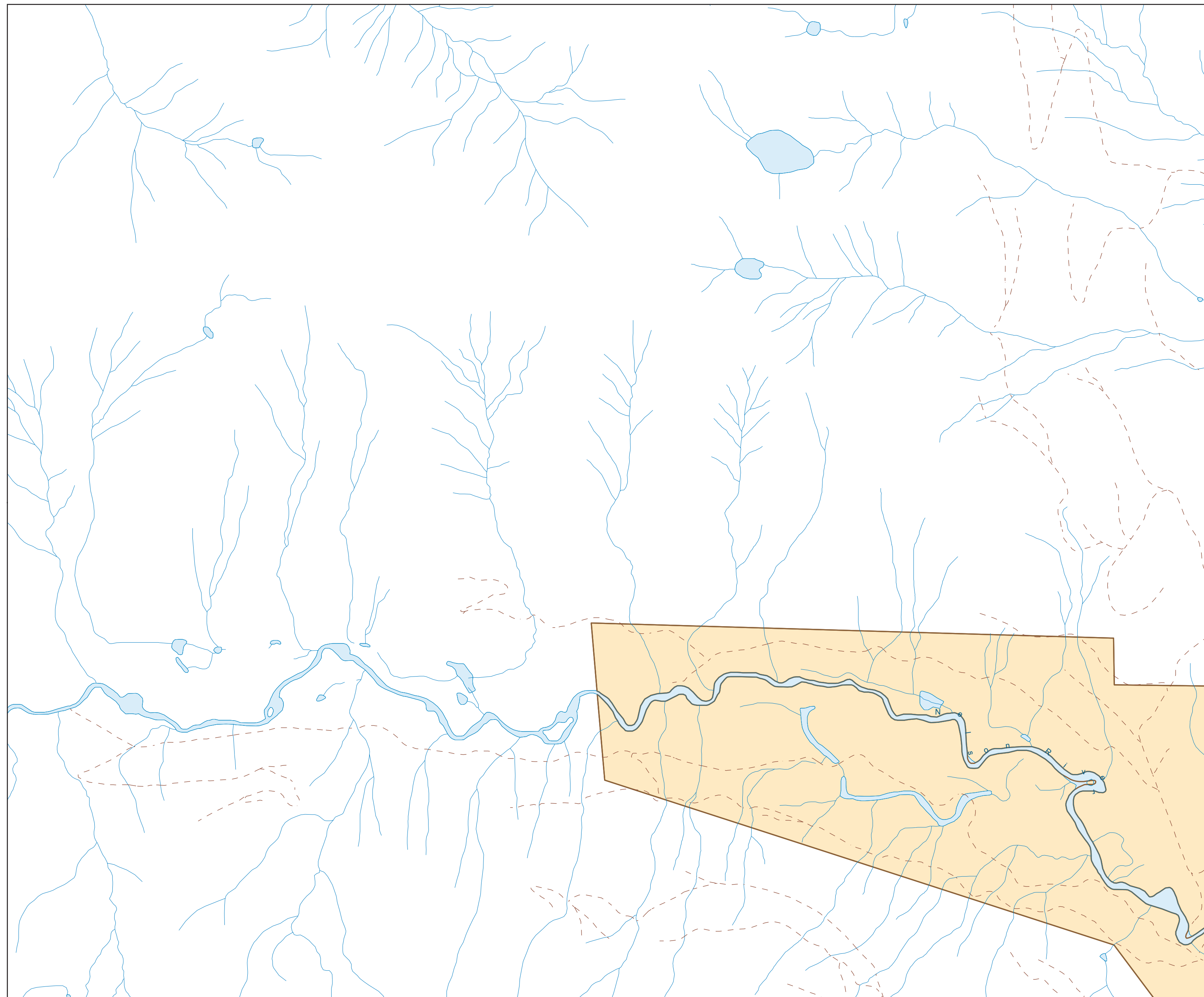
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 UTM Zone 09

Appendix: B - 3  
 Provincial Crown Lands  
 Plan 6







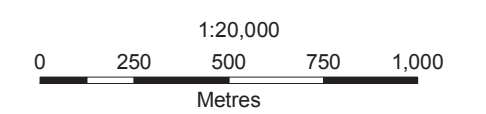


### Kitsumkalum Lands

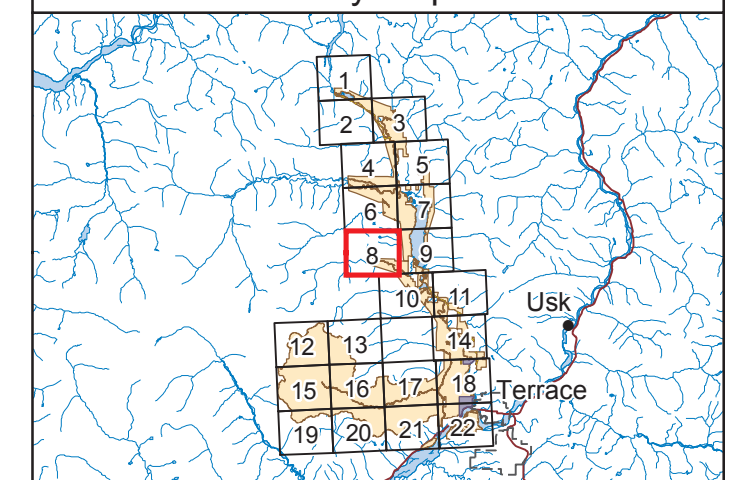
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  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
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  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
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  - Road (Gravel)
  - + Railway

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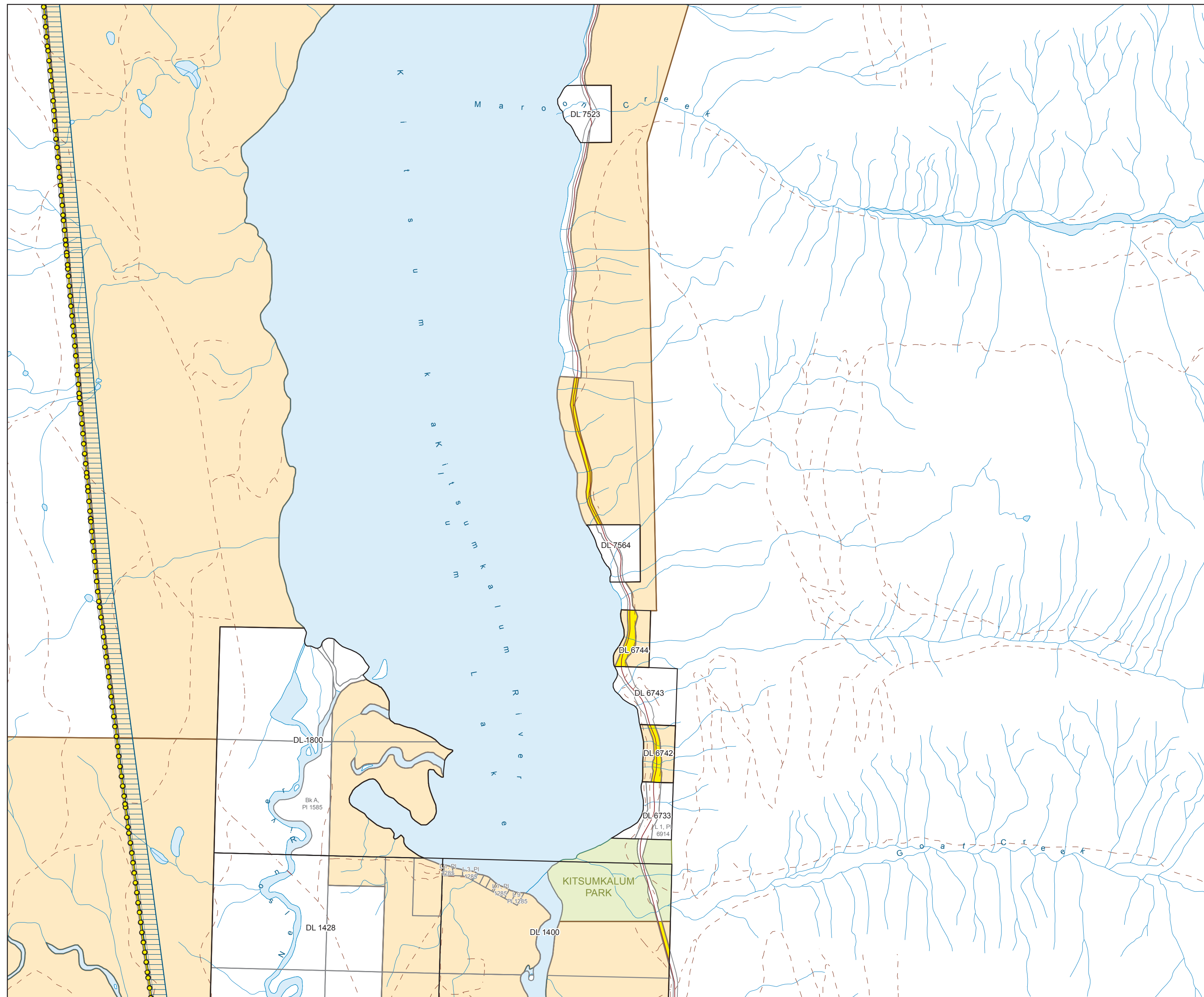
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UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 8





### Kitsumkalum Lands

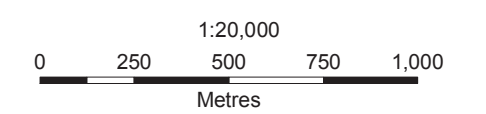
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- Municipality
- BC Hydro 138 kv Transmission Line
- BC Hydro Northwest Transmission Line Corridor
- Pipeline
- Road (Paved)
- Road (Gravel)
- + Railway

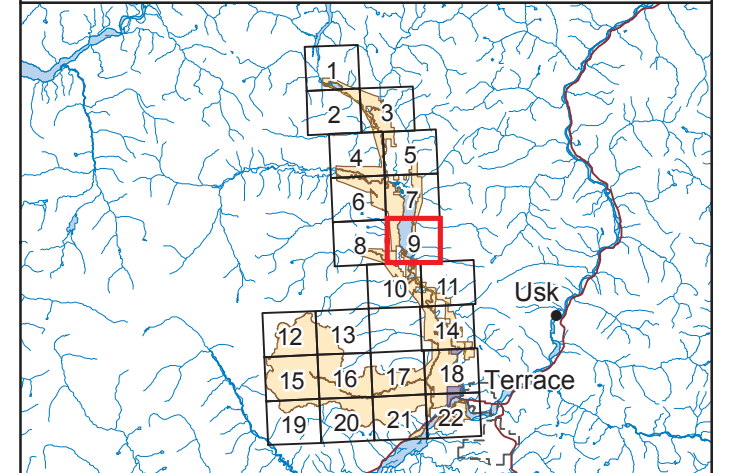
#### Transportation

- Road (Paved)
- Road (Gravel)
- + Railway

This map is not to be used for defining Kitsumkalum land boundaries or for their legal descriptions. Depictions of Kitsumkalum land on this map are to be used for illustrative purposes only.



#### Key Map

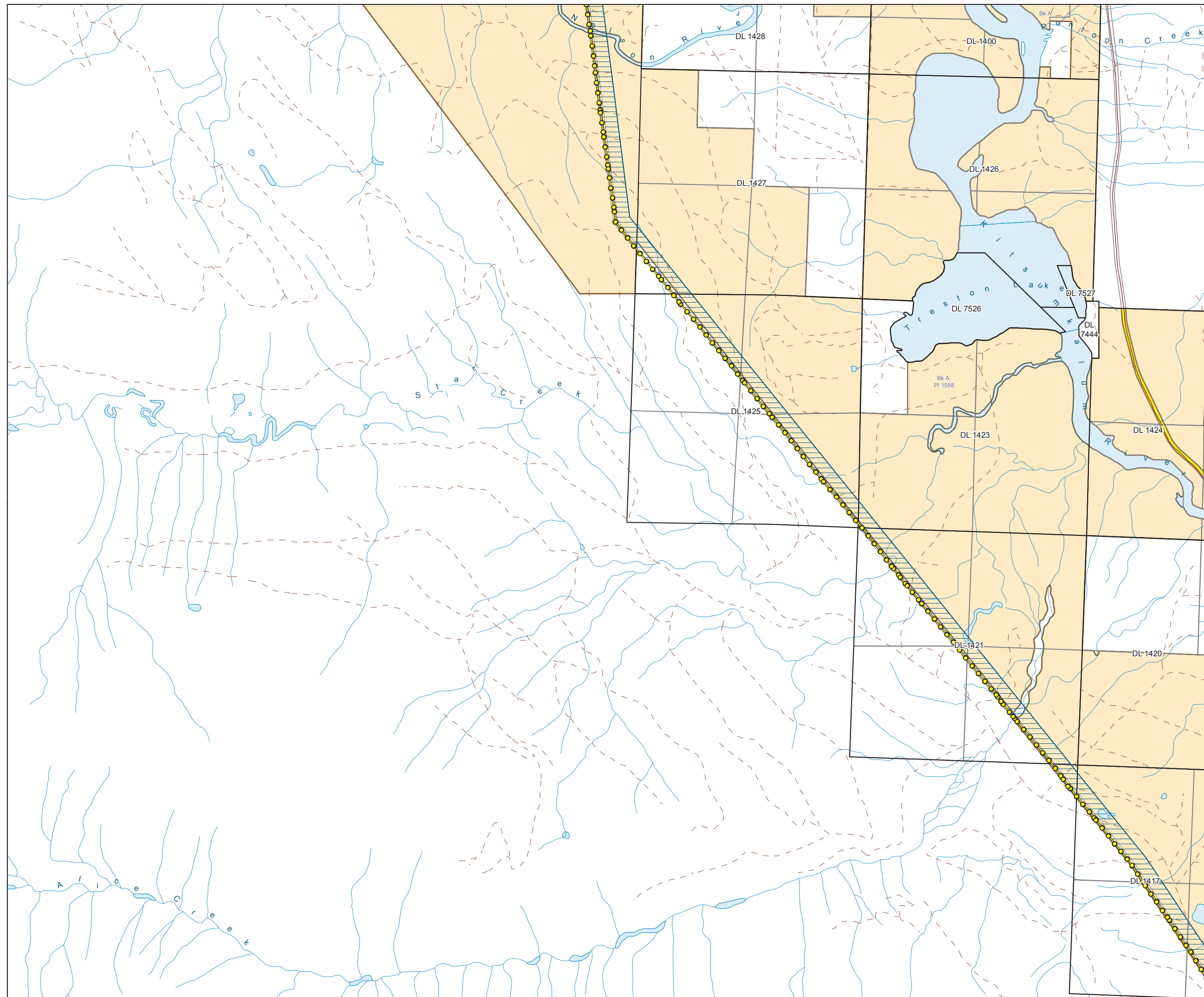


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 Services and Land Title Office  
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 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 9








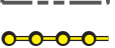









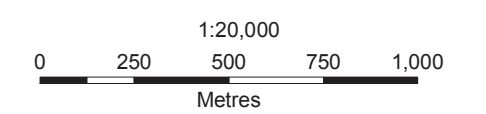


### Kitsumkalum Lands

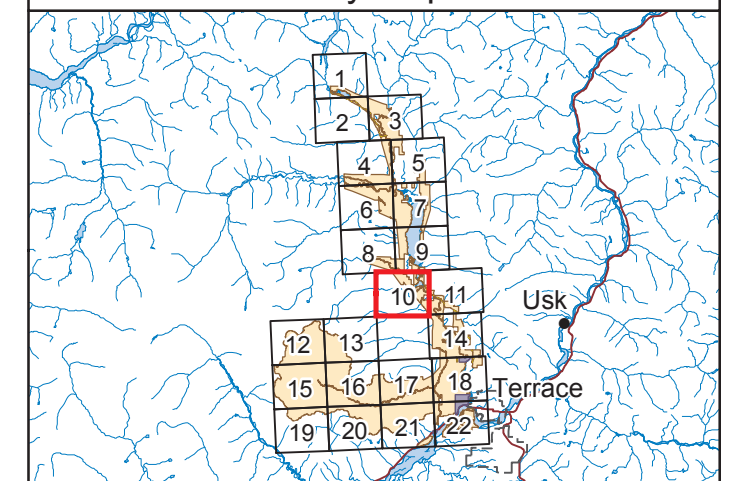
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-  Excluded Crown Corridor
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-  Subdivision Parcel
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-  Pipeline
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-  Road (Gravel)
-  Railway

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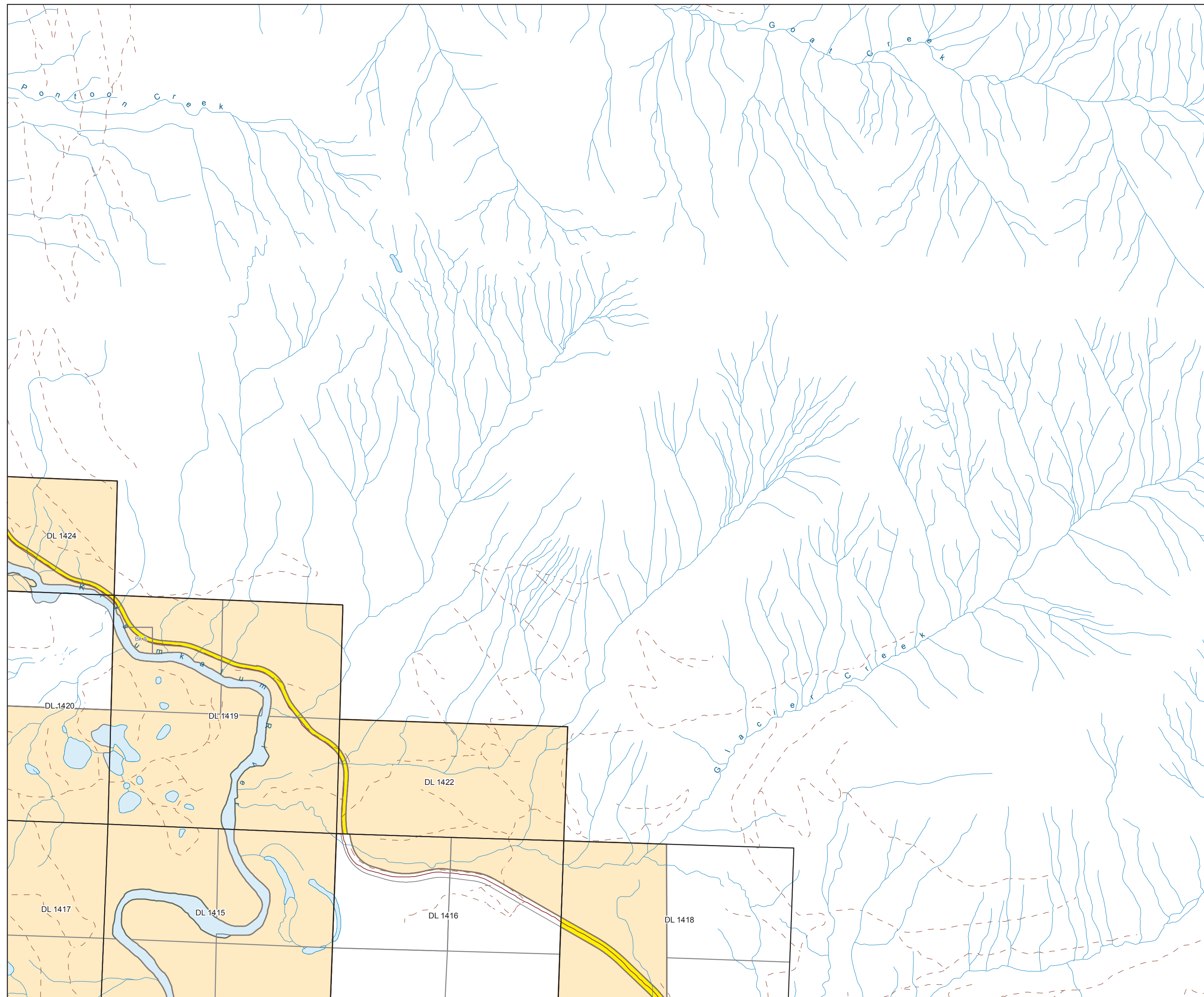
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UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 10



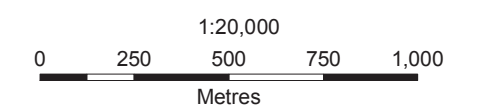


### Kitsumkalum Lands

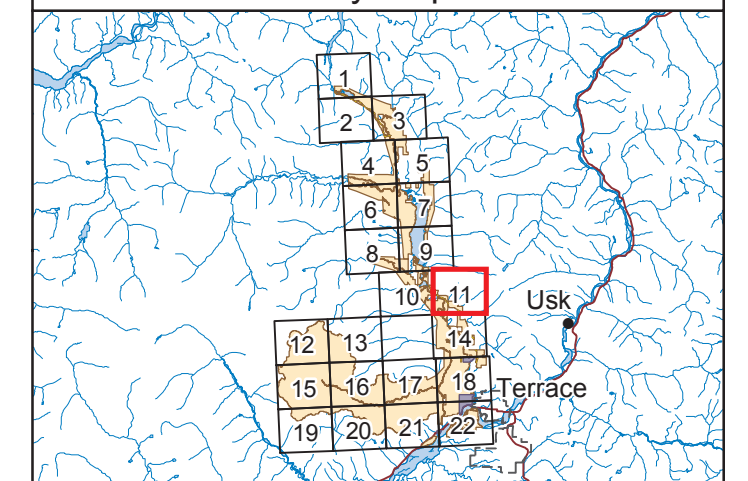
#### Legend

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  - Excluded Crown Corridor
  - Primary Survey Parcel
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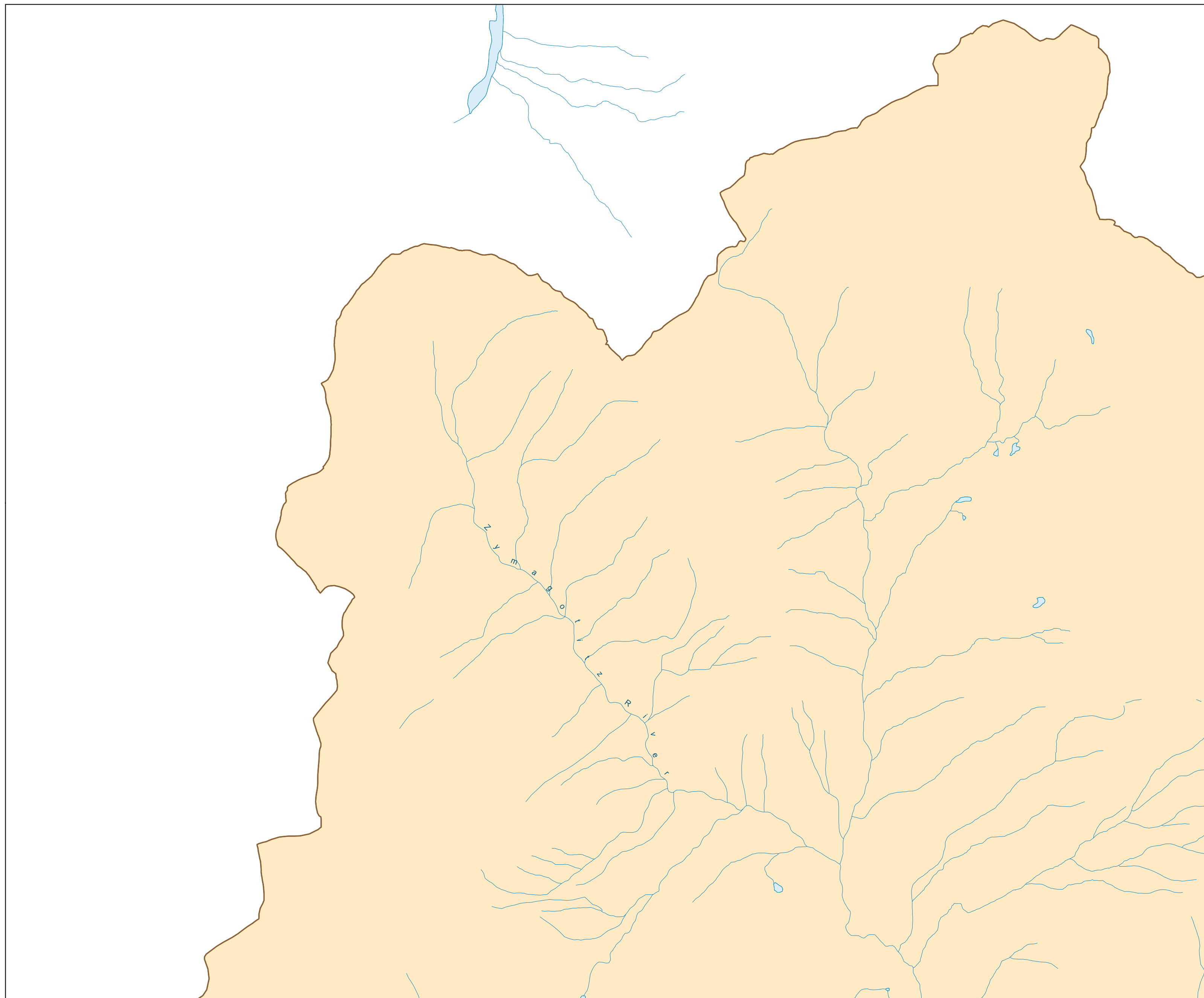
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 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 11



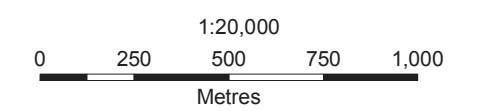


### Kitsumkalum Lands

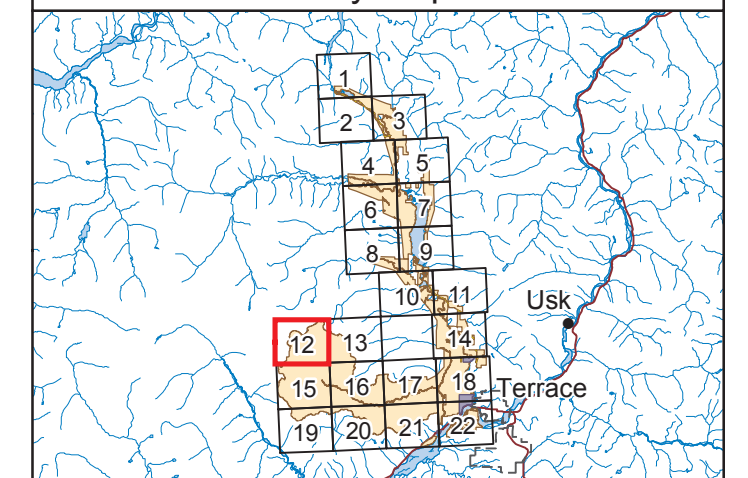
#### Legend

- Proposed Kitsumkalum Lands
  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - +
+
 Railway

This map is not to be used for defining Kitsumkalum land boundaries or for their legal descriptions. Depictions of Kitsumkalum land on this map are to be used for illustrative purposes only.



#### Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 12



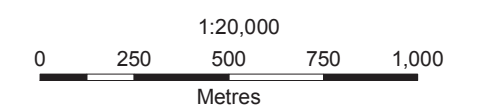


### Kitsumkalum Lands

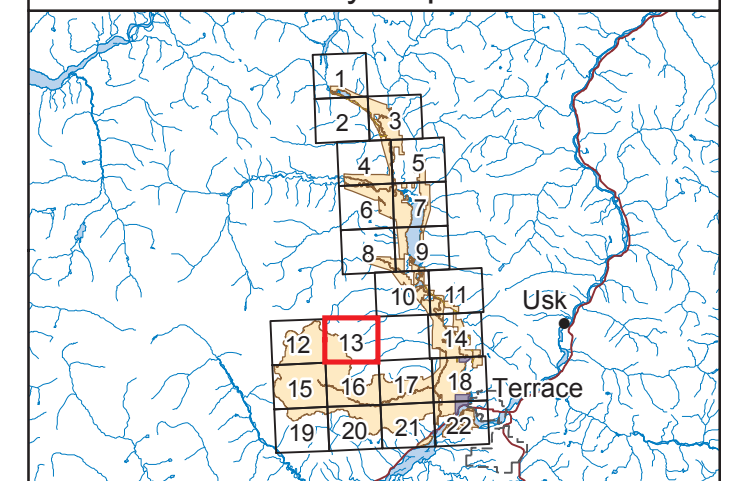
#### Legend

- Proposed Kitsumkalum Lands
  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - + Railway

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#### Key Map

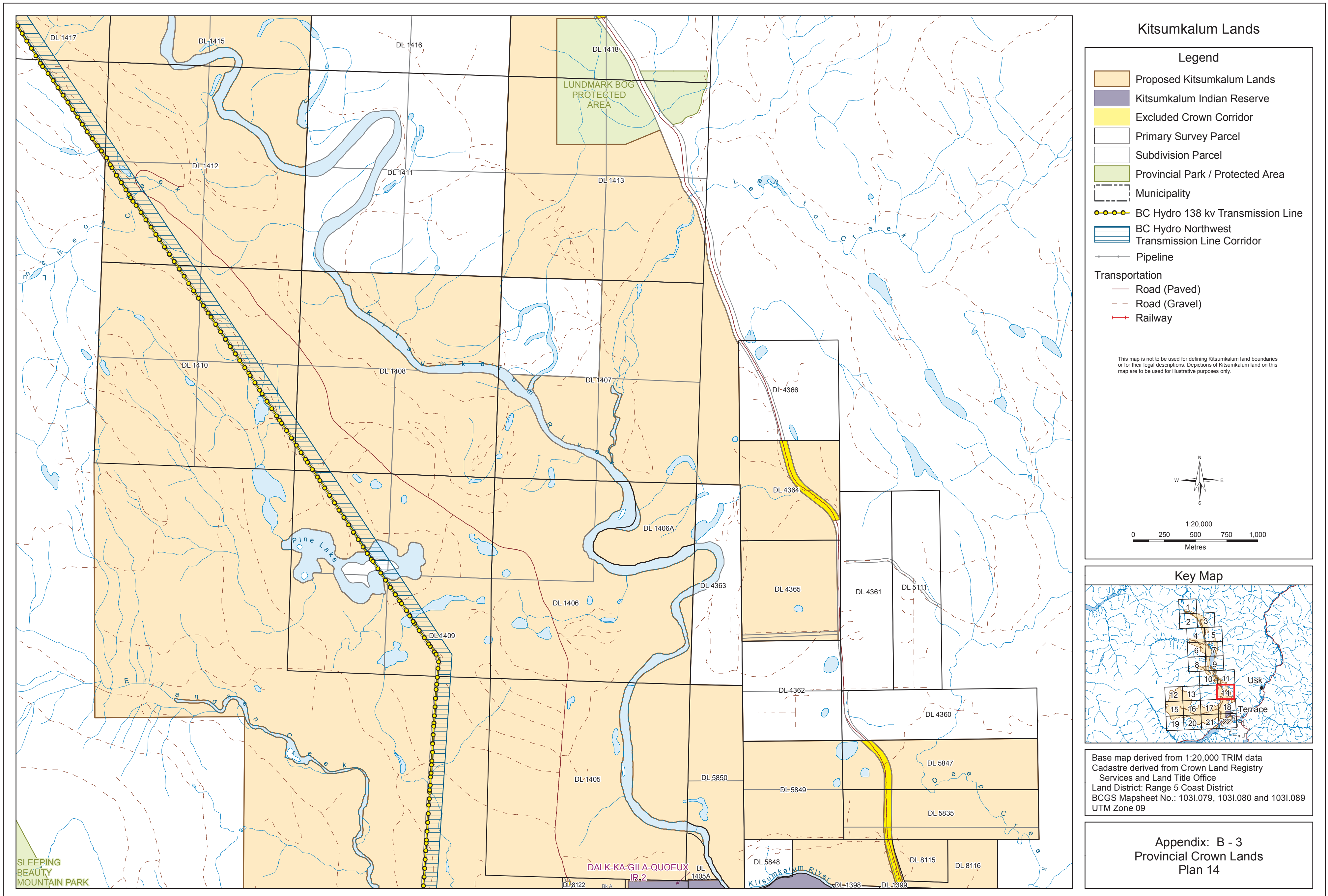


Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

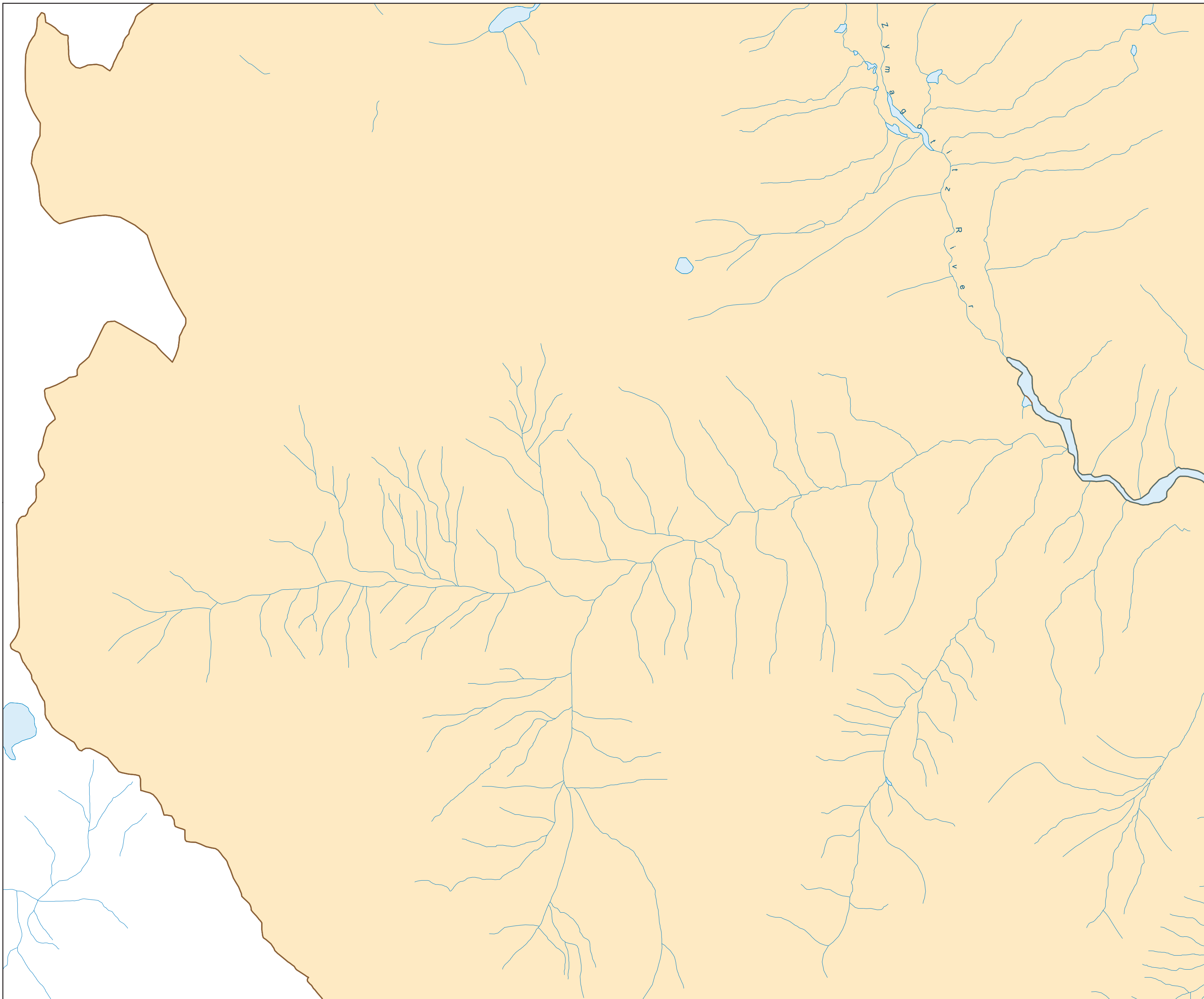
Appendix: B - 3  
 Provincial Crown Lands  
 Plan 13












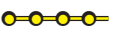











### Kitsumkalum Lands

#### Legend

-  Proposed Kitsumkalum Lands
  -  Kitsumkalum Indian Reserve
  -  Excluded Crown Corridor
  -  Primary Survey Parcel
  -  Subdivision Parcel
  -  Provincial Park / Protected Area
  -  Municipality
  -  BC Hydro 138 kv Transmission Line
  -  BC Hydro Northwest Transmission Line Corridor
  -  Pipeline
- Transportation**
-  Road (Paved)
  -  Road (Gravel)
  -  Railway

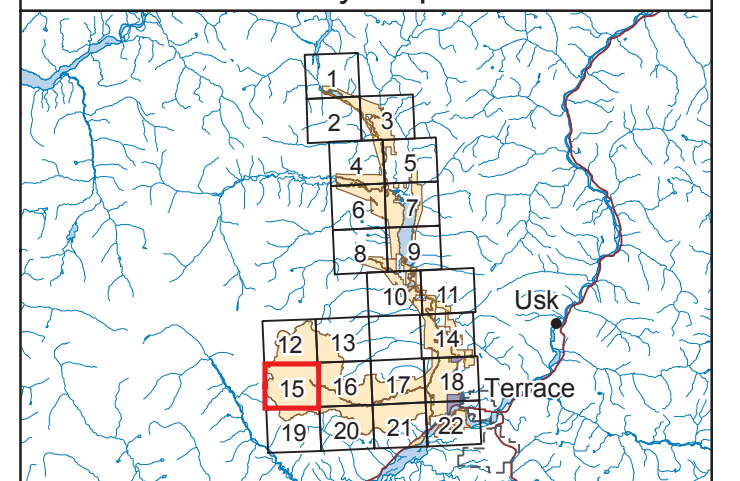
This map is not to be used for defining Kitsumkalum land boundaries or for their legal descriptions. Depictions of Kitsumkalum land on this map are to be used for illustrative purposes only.



1:20,000



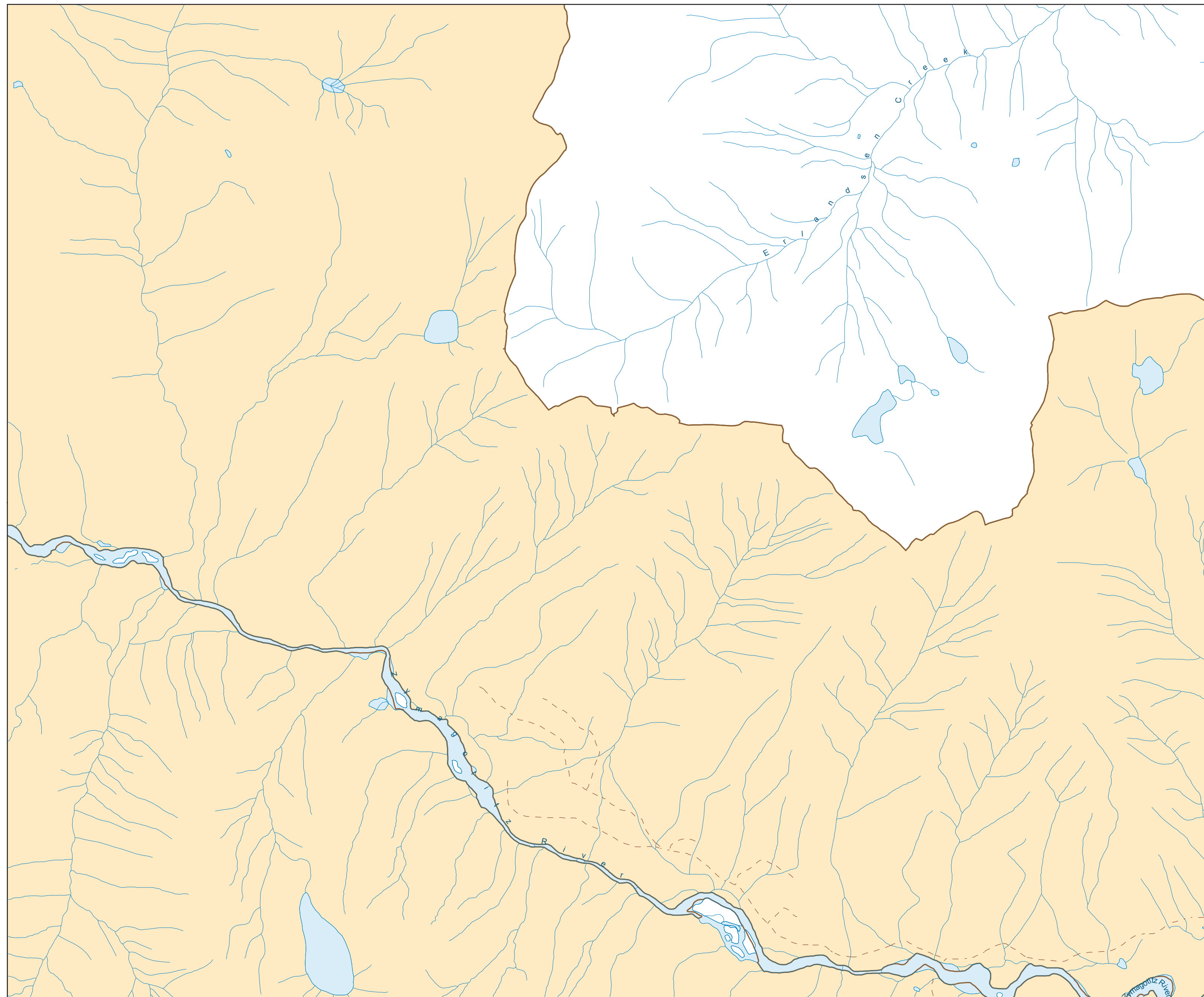
#### Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

Appendix: B - 3  
 Provincial Crown Lands  
 Plan 15



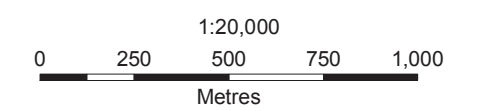


### Kitsumkalum Lands

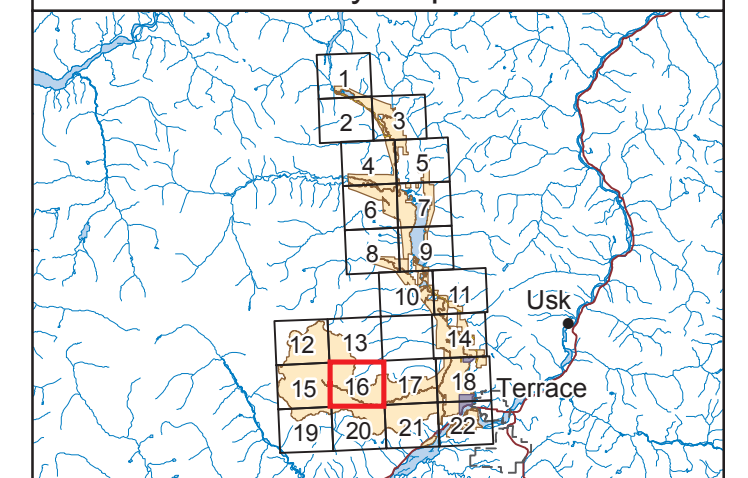
#### Legend

- Proposed Kitsumkalum Lands
  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - Railway

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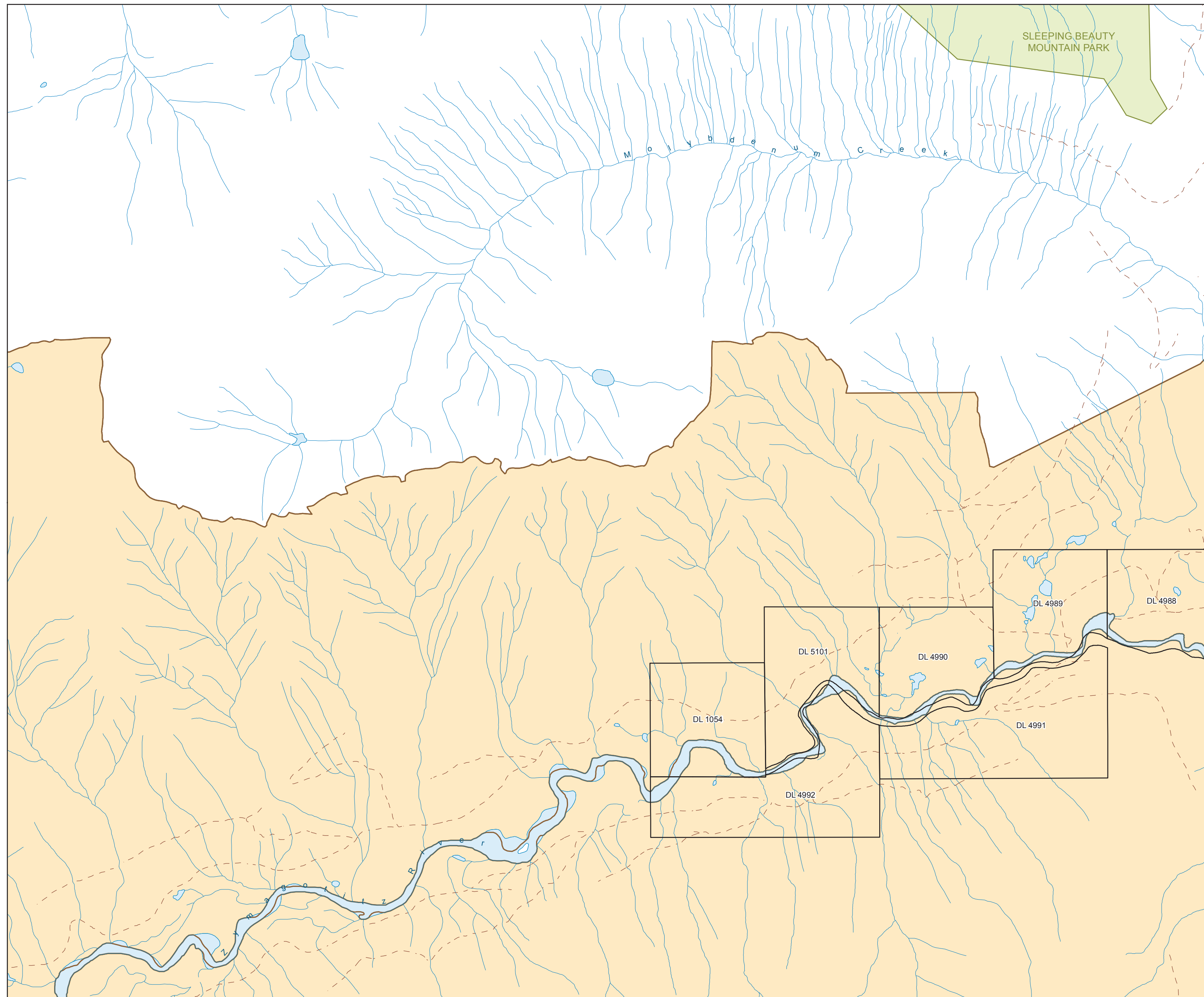
#### Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 16



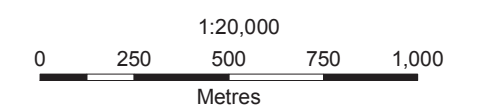


### Kitsumkalum Lands

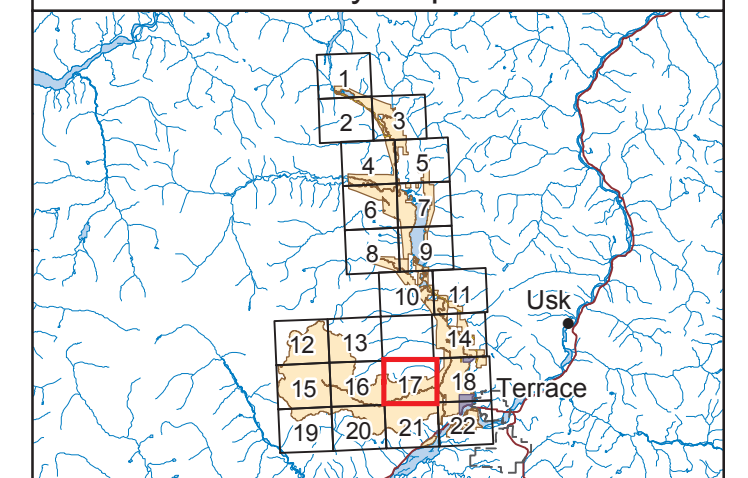
#### Legend

- Proposed Kitsumkalum Lands
  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - + Railway

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#### Key Map

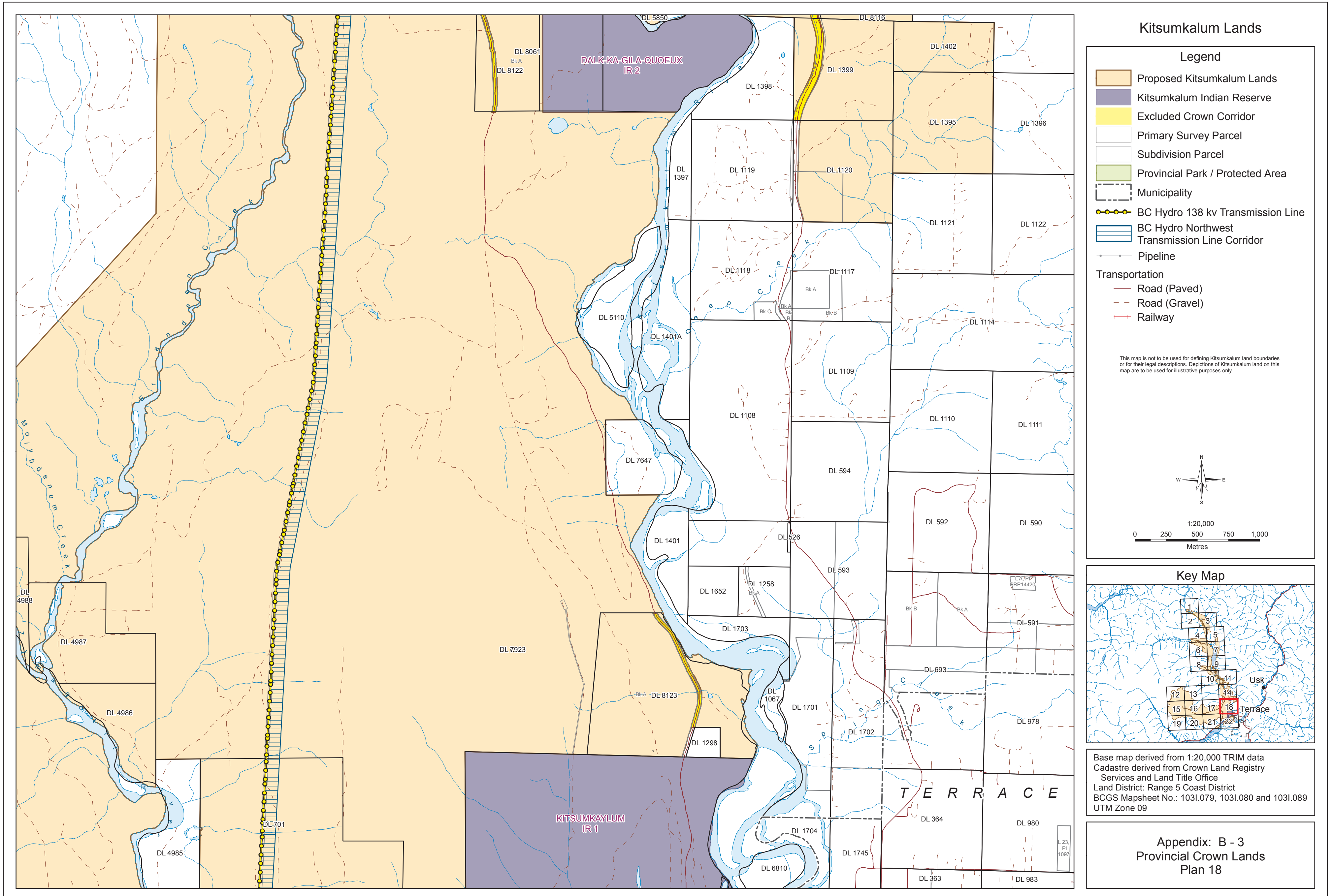


Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 17





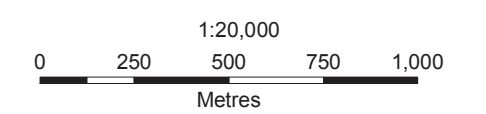


### Kitsumkalum Lands

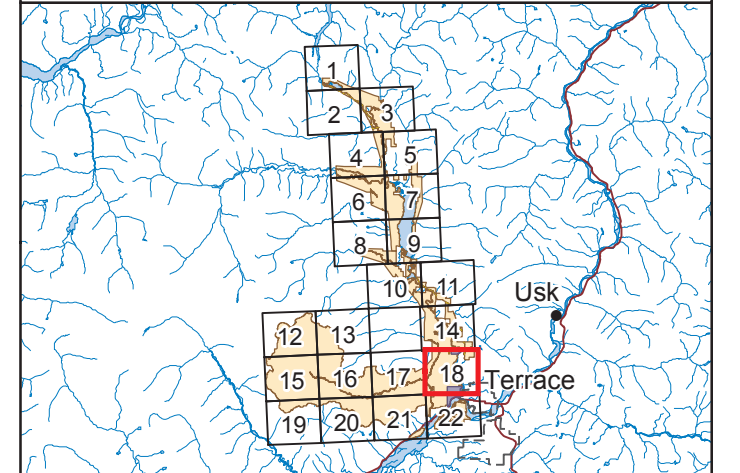
#### Legend

- Proposed Kitsumkalum Lands
  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - Railway

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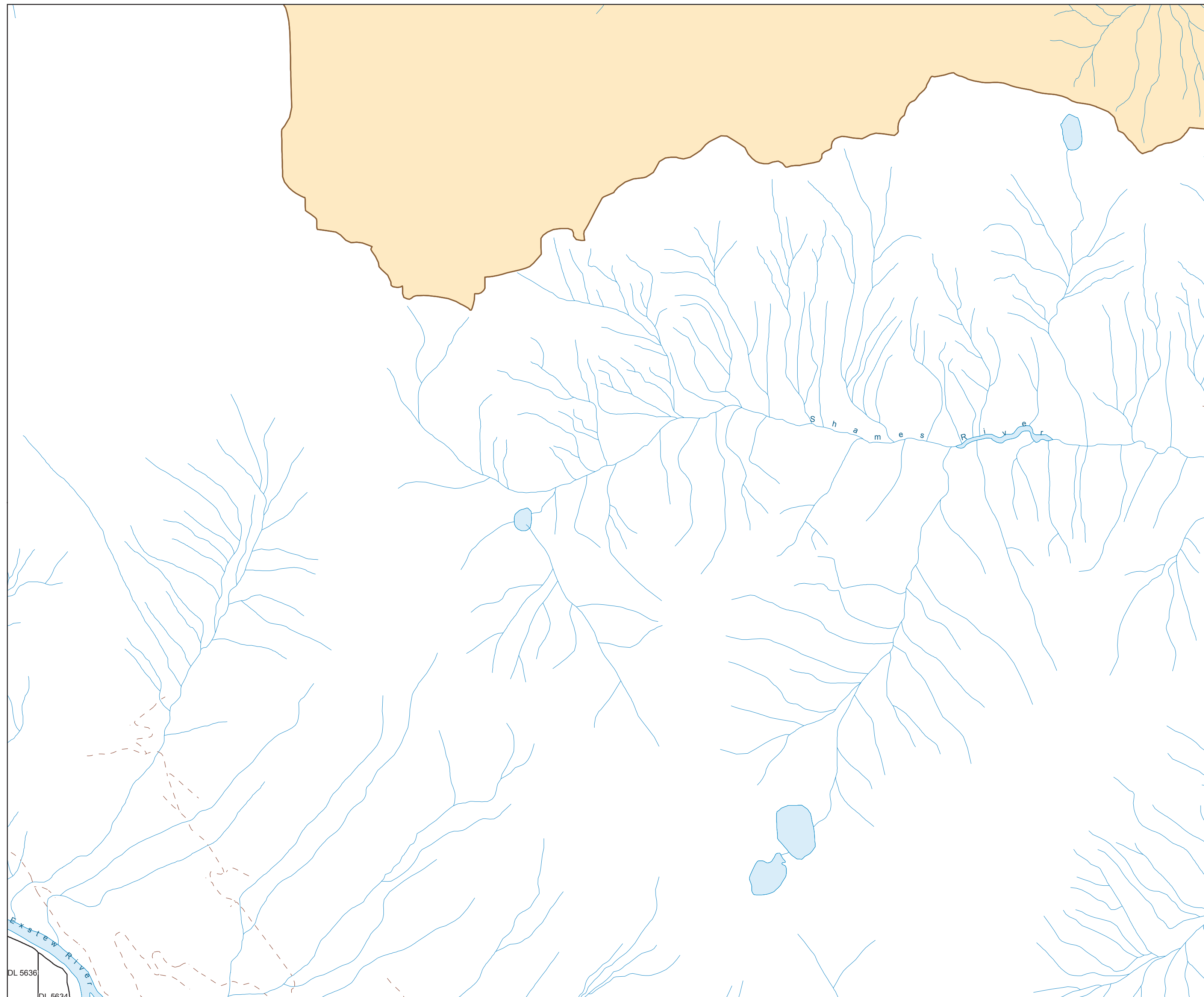
#### Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 18





### Kitsumkalum Lands

#### Legend

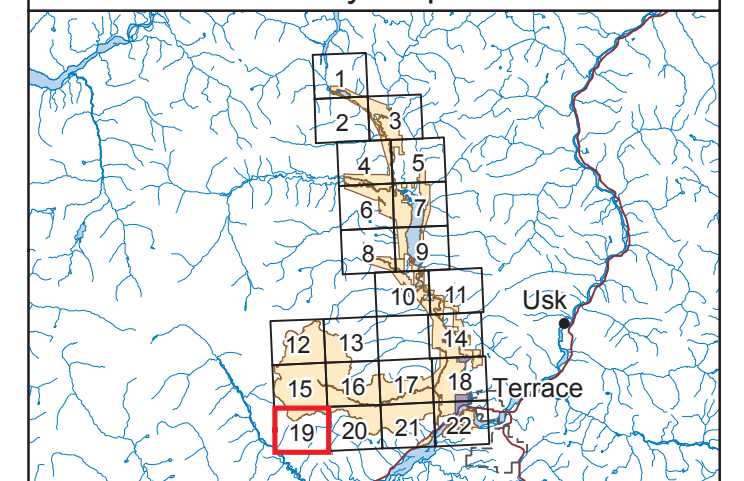
- Proposed Kitsumkalum Lands
- Kitsumkalum Indian Reserve
- Excluded Crown Corridor
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Park / Protected Area
- Municipality
- BC Hydro 138 kv Transmission Line
- BC Hydro Northwest Transmission Line Corridor
- Pipeline
- Transportation**
- Road (Paved)
- Road (Gravel)
- Railway

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1:20,000  
0 250 500 750 1,000  
Metres

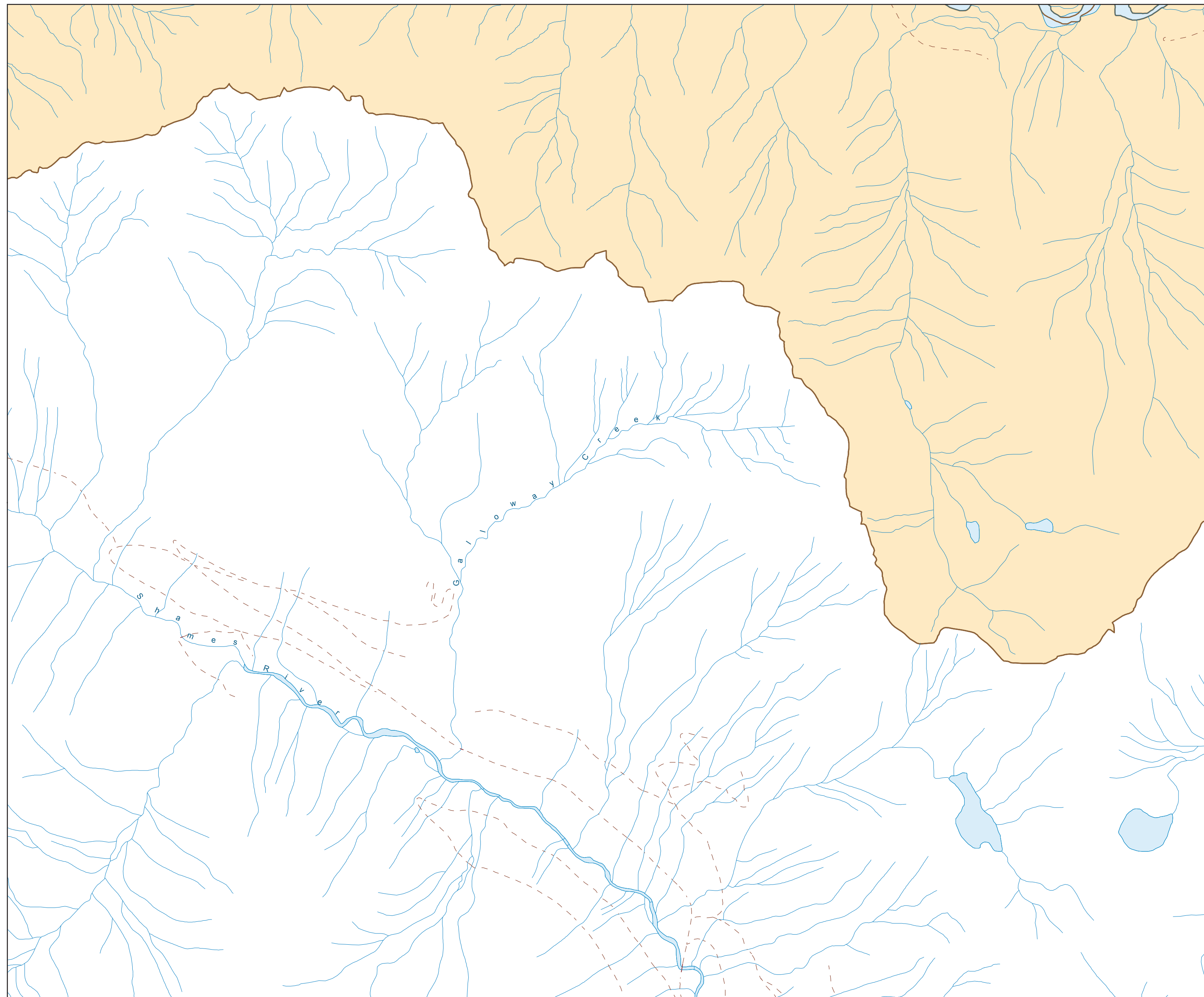
#### Key Map



Base map derived from 1:20,000 TRIM data  
Cadastral derived from Crown Land Registry  
Services and Land Title Office  
Land District: Range 5 Coast District  
BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
UTM Zone 09

Appendix: B - 3  
Provincial Crown Lands  
Plan 19





### Kitsumkalum Lands

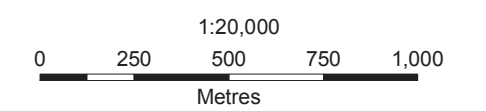
#### Legend

- Proposed Kitsumkalum Lands
- Kitsumkalum Indian Reserve
- Excluded Crown Corridor
- Primary Survey Parcel
- Subdivision Parcel
- Provincial Park / Protected Area
- Municipality
- BC Hydro 138 kv Transmission Line
- BC Hydro Northwest Transmission Line Corridor
- Pipeline
- Road (Paved)
- Road (Gravel)
- + Railway

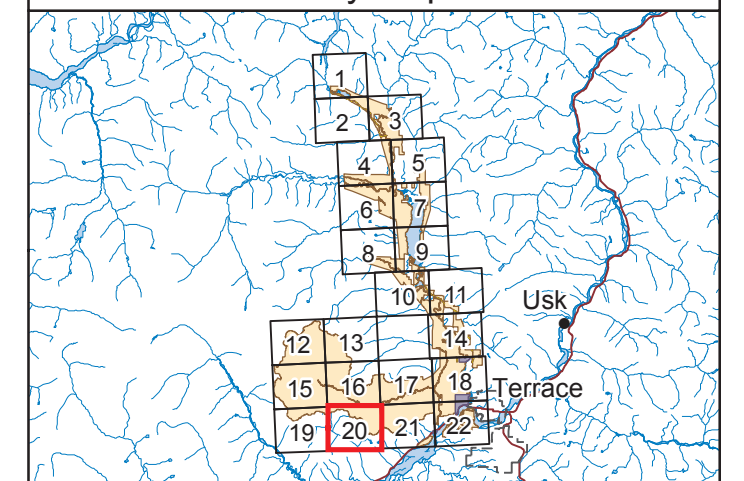
#### Transportation

- Road (Paved)
- Road (Gravel)
- + Railway

This map is not to be used for defining Kitsumkalum land boundaries or for their legal descriptions. Depictions of Kitsumkalum land on this map are to be used for illustrative purposes only.



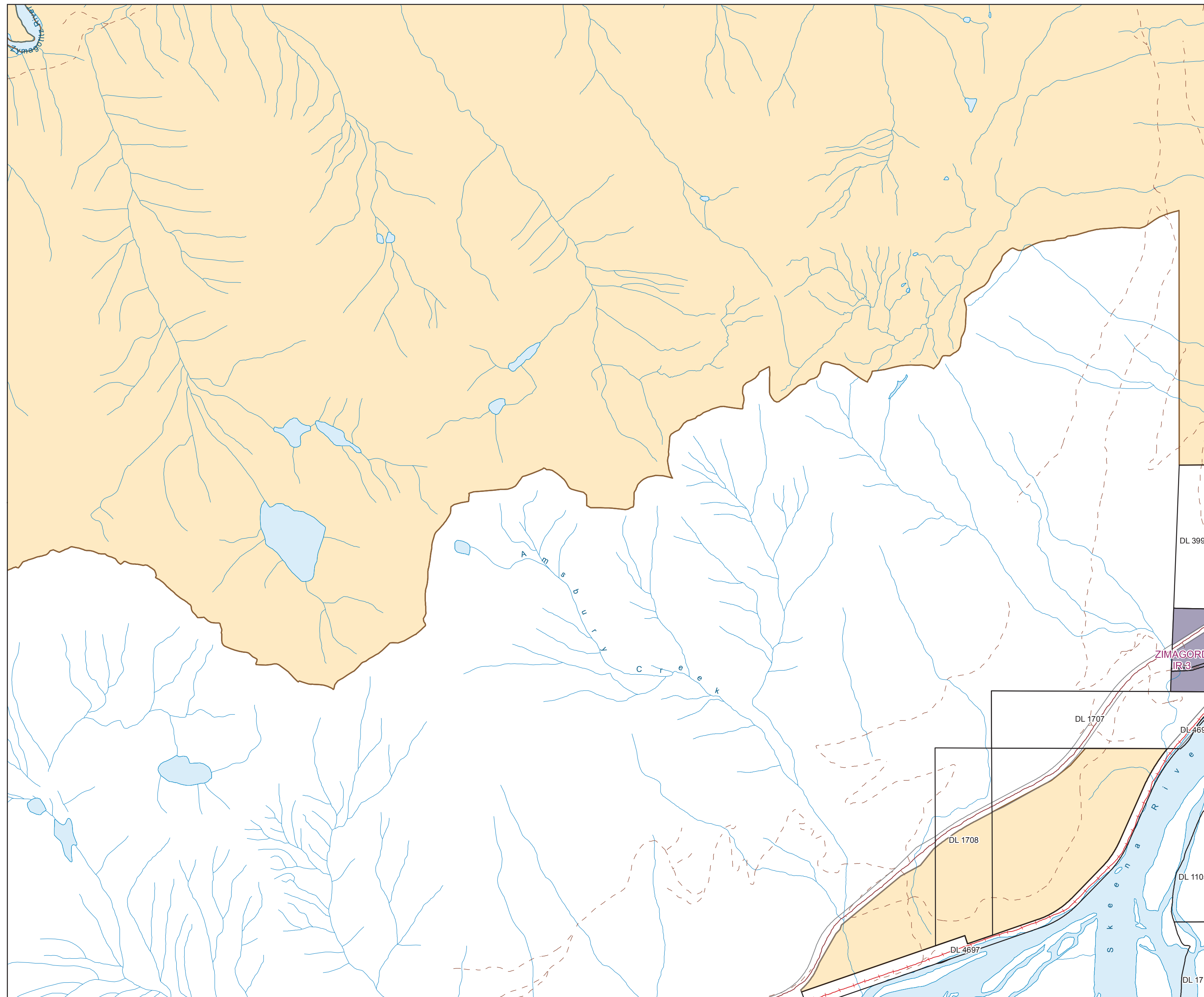
#### Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

### Appendix: B - 3 Provincial Crown Lands Plan 20



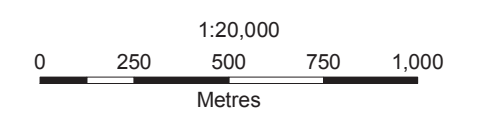


### Kitsumkalum Lands

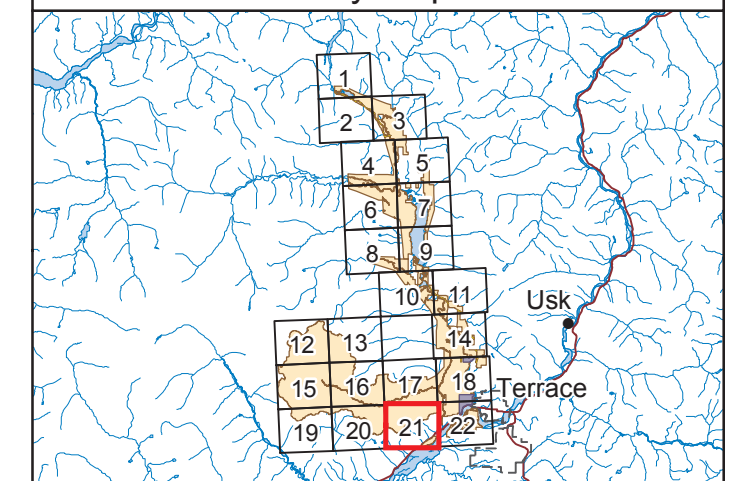
#### Legend

- Proposed Kitsumkalum Lands
  - Kitsumkalum Indian Reserve
  - Excluded Crown Corridor
  - Primary Survey Parcel
  - Subdivision Parcel
  - Provincial Park / Protected Area
  - Municipality
  - BC Hydro 138 kv Transmission Line
  - BC Hydro Northwest Transmission Line Corridor
  - Pipeline
- Transportation**
- Road (Paved)
  - Road (Gravel)
  - Railway

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#### Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Range 5 Coast District  
 BCGS Mapsheet No.: 1031.079, 1031.080 and 1031.089  
 UTM Zone 09

Appendix: B - 3  
 Provincial Crown Lands  
 Plan 21









## Appendix C

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### Interests on Kitsumkalum Lands

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**Appendix C-1 Interests on Kitsumkalum Indian Reserves**

- Part 1: Certificates of Possession and Ownership Under the *First Nations Land Management Act*
- Part 2: Public Utility Works
- Part 3: Other Interests

**Appendix C-2 Interests on Provincial Crown Lands to be Replaced on the Effective Date**

- Part 1: Public Utility Works
- Part 2: Other Interests

**Appendix C-3 Interests to Continue in Accordance with Provincial Law**

- Part 1: Subsurface Tenures Issued Under the *Mineral Tenure Act*
- Part 2: Licences Issues Under the *Water Act*
- Part 3: Traplines Issued Under the *Wildlife Act*
- Part 4: Guide Outfitter Certificates Issued Under the *Wildlife Act*
- Part 5: Recreation Sites and Trails

**Appendix C-4 Interests to be Created on the Effective Date**

- Part 1: Existing Tenures Requiring Private Road Easement over Kitsumkalum Lands
- Part 2: Fee Simple Properties Requiring Private Road Easement over Kitsumkalum Lands
- Part 3: Forest Research Plots

**Appendix C-5 Applicable Forms of Document for Granting Interests**

- Document 1: BC Hydro Statutory Right of Way Agreement – Northwest Transmission Line
- Document 2: BC Hydro Statutory Right of Way Agreement – 138kV Transmission Line



**Appendix C-1**

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**Interests on Kitsumkalum Indian Reserves**

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**Part 1: Certificates of Possession and Ownership  
Under the *First Nations Land Management Act***

*Note: The Parties will update the Appendices prior to the Effective Date.*



**Appendix C-1**

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**Interests on Kitsumkalum Indian Reserves**

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**Part 2: Public Utility Works**

*Note: The Parties will update the Appendices prior to the Effective Date.*





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**Appendix C-1**

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**Interests on Kitsumkalum Indian Reserves**

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**Part 3: Other Interests**

*Note: The Parties will update the Appendices prior to the Effective Date.*



**Appendix C-2**

**Interests on Provincial Crown Lands to be Replaced on the Effective Date**

**Part 1: Public Utility Works**

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>File and Document Number</b>	<b>Interest Holder</b>	<b>Interest</b>	<b>General Location</b>
File No. 0267725 Doc No. 1634	British Columbia Hydro and Power Authority	Right of Way - Utility	Appendix B-3, Plans 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 18 and 22
File No. 6408207 Doc No. N/A	British Columbia Hydro and Power Authority	Right of Way - Utility	Appendix B-3, Plan 7
File No. 6408207 Doc No. 635925	British Columbia Hydro and Power Authority	Right of Way - Utility	Appendix B-3, Plan 7
File No. 6408264 Doc No. 636050	British Columbia Hydro and Power Authority	Right of Way - Utility	Appendix B-3, Plans 2, 3 and 7
File No. 6408277 Doc No. 635958	British Columbia Hydro and Power Authority	Permit - Utility	Appendix B-3, Plans 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 18 and 22
File No. 6408370 Doc No. 636059	British Columbia Hydro and Power Authority	Permit - Transportation	Appendix B-3, Plans 4, 6, 7, 9 and 10
File No. 6408072 Doc No. N/A	C-Free Power Corp.	Permit - Wind Power	Appendix B-3, Plans 1 and 3
File No. 6408073 Doc No. N/A	C-Free Power Corp.	Permit - Wind Power	Appendix B-3, Plans 1 and 3
File No. 6408074 Doc No. N/A	C-Free Power Corp.	Permit - Wind Power	Appendix B-3, Plan 7
File No. 6408151 Doc No. N/A	Kitsumkalum Band	Permit - Water Power	Appendix B-3, Plans 8 and 9
File No. 6408152 Doc No. N/A	Kitsumkalum Band	Permit - Water Power	Appendix B-3, Plan 6
File No. 6408172 Doc No. N/A	Kitsumkalum Band	Permit - Water Power	Appendix B-3, Plans 14 and 18
File No. 6407620 Doc No. N/A	Petursson, Conan; Hanson, Daryl; Hanson, Ryan	Licence of Occupation - Water Power	Appendix B-3, Plan 9

File No. 6408140 Doc No. N/A	Sequoia Energy Inc.	Licence of Occupation - Water Power	Appendix B-3, Plan 8
File No. 6408141 Doc No. N/A	Sequoia Energy Inc.	Licence of Occupation - Water Power	Appendix B-3, Plans 6, 7, 8 and 9
File No. 6404697 Doc No. 635117	Telus Communications Inc.	Licence of Occupation - Communication	Appendix B-3, Plan 14
File No. 6408247 Doc No. 345442	Telus Communications Inc.	Right of Way - Utility	Appendix B-3, Plan 7

**Appendix C-2**

**Interests on Provincial Crown Lands to be Replaced on the Effective Date**

**Part 2: Other Interests**

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>File and Document Number</b>	<b>Interest Holder</b>	<b>Interest</b>	<b>General Location</b>
File No. 6408285 Doc No. 635983	Alfred Hadley and Wiebe Contracting Ltd.	Licence of Occupation - Quarrying	Appendix B-3, Plan 18
File No. 6407511 Doc No. 740801	Doll, Kori	Licence of Occupation - Commercial Recreation	Appendix B-3, Plans 7, 9, 10, 11, 14, 18 and 22
File No. 6408318 Doc No. N/A	Kerby Management Ltd.	Licence of Occupation - Quarrying	Appendix B-3, Plan 18
File No. 6406899 Doc No. N/A	Knox, Greg; Seiler, Fred	Licence of Occupation - Commercial Recreation	Appendix B-3, Plans 21 and 22
File No. 6406892 Doc No. N/A	Roberts, Don	Licence of Occupation - Commercial Recreation	Appendix B-3, Plans 4, 6, 7, 11 and 14
File No. 6402009 Doc No. 632504	Rosswood Community Association	Standard Lease - Community	Appendix B-3, Plan 7
File No. 6406413 Doc No. 634636	Shames Mountain Ski Corp.	Operating Agreement - Alpine Skiing	Appendix B-3, Plans 19 and 20
File No. 6407801 Doc No. 635584	Skeena Valley Expeditions Inc.	Licence of Occupation - Commercial Recreation	Appendix B-3, Plans 10, 11, 14, 18 and 22
File No. 6407510 Doc No. 740802	Skeena Wilderness Fishing Charters Ltd.	Licence of Occupation - Commercial Recreation	Appendix B-3, Plans 7, 9, 10, 11, 14, 18 and 22
File No. 6405914 Doc No. 635665	Spring Creek Aggregates Ltd.	Licence of Occupation - Quarrying	Appendix B-3, Plans 14 and 18
File No. 6406785 Doc No. 635297	Terrace-Kitimat Airport Society	Standard Lease - Transportation	Appendix B-3, Plan 22
File No. 6407554 Doc No. 740858	Thick and Thin Lumber Company Inc.	Licence of Occupation - Industrial	Appendix B-3, Plans 14 and 18
File No. 6406950 Doc No. 705301	True North Heli-Skiing Ltd.	Licence of Occupation - Commercial Recreation	Appendix B-3, Plans 1, 2, 3, 4, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22



**Appendix C-3**

**Interests to Continue in Accordance with Provincial Law**

**Part 1: Subsurface Tenures Issued Under the *Mineral Tenure Act***

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Tenure Number and Claim</b>	<b>Interest Holder</b>	<b>Interest</b>	<b>General Location</b>
399634 YCC 1	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
399635 YCC 2	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
399639 LCR 4	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
399741 YCC 4	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 7
399743 YCC 6	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 9
399744 YCC 7	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 8
399745 YCC 8	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 9
399762 YCC 25	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 8
399763 YCC 26	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 8
399764 YCC 27	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 8
408826 KLM 1	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 7
408827 KLM 2	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 7
414106 A.B.C.	Hendrickson, Harold Thomas	Mineral Claim	Appendix B-3, Plan 3
501170 N/A	BCM Resources Corp.	Mineral Claim	Appendix B-3, Plan 18

508169 N/A	Moll, John Wesley	Mineral Claim	Appendix B-3, Plan 3
514199 Moly Ck	BCM Resources Corp.	Mineral Claim	Appendix B-3, Plan 18
514243 Moly Ck 2	BCM Resources Corp.	Mineral Claim	Appendix B-3, Plan 17
516150 Kalum South 1	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 10
516157 Kalum North 1	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
516160 Kalum North 2	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
516168 Kalum North 3	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
516171 Kalum North 4	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
516172 Kalum North 5	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
516247 LCR East 2	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
516381 N/A	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
516401 N/A	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 8
516404 N/A	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 9
516411 N/A	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 6
516415 N/A	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
603025 Coalmine	Komlos, Andrea Lyn	Mineral Claim	Appendix B-3, Plan 3
639343 Bambinos	Perri, Paulina Rose	Mineral Claim	Appendix B-3, Plan 4
776462 Kalum #1	Bolton, Lawrence Alexander	Mineral Claim	Appendix B-3, Plan 18



776482 Kalum #2	Bolton, Lawrence Alexander	Mineral Claim	Appendix B-3, Plan 18
776502 Kalum #4	Bolton, Lawrence Alexander	Mineral Claim	Appendix B-3, Plan 22
776922 Kalum #3	Bolton, Lawrence Alexander	Mineral Claim	Appendix B-3, Plan 22
789242 Big Cedar Mines	Benzer, Russell William	Mineral Claim	Appendix B-3, Plan 3
832155 Rock 1	Cypress Forest Consultants Ltd.	Mineral Claim	Appendix B-3, Plan 3
834376 LCR	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
834377 LCR	Eagle Plains Resources Ltd.	Mineral Claim	Appendix B-3, Plan 4
845283 Kalum	Kerby, Eric James	Mineral Claim	Appendix B-3, Plan 18
845378 Buddy 1	Munson, Ian George	Mineral Claim	Appendix B-3, Plan 4
845380 Buddy 2	Munson, Ian George	Mineral Claim	Appendix B-3, Plan 4
846081 Kalum 2	Kerby, Eric James	Mineral Claim	Appendix B-3, Plan 18
847448 Money	Perri, Paulina Rose	Mineral Claim	Appendix B-3, Plan 4
847547 Kalum Fill	Kerby, Eric James	Mineral Claim	Appendix B-3, Plan 18
851522 N/A	Mulvey, James	Mineral Claim	Appendix B-3, Plan 7
854156 Kalum Lake	Benzer, Russell William	Mineral Claim	Appendix B-3, Plan 7
854306 N/A	Acerra, Daniela	Mineral Claim	Appendix B-3, Plan 7
864898 N/A	Mulvey, James	Mineral Claim	Appendix B-3, Plan 7
891769 CU	Beck, Garth David	Mineral Claim	Appendix B-3, Plan 3

891809 Waterfront	Beck, Garth David	Mineral Claim	Appendix B-3, Plan 4
897826 N/A	Mulvey, James	Mineral Claim	Appendix B-3, Plan 3
897827 N/A	Mulvey, James	Mineral Claim	Appendix B-3, Plan 3
897828 N/A	Mulvey, James	Mineral Claim	Appendix B-3, Plan 3
898480 MH 1	Peter, Dieter Wolf	Mineral Claim	Appendix B-3, Plan 3
898482 MH 2	Peter, Dieter Wolf	Mineral Claim	Appendix B-3, Plan 3
898483 MH 3	Peter, Dieter Wolf	Mineral Claim	Appendix B-3, Plan 3
922969 1 <sup>st</sup> Place	Beck, Garth David	Mineral Claim	Appendix B-3, Plan 7
926636 North Bound	Beck, Stephanie Patricia	Mineral Claim	Appendix B-3, Plan 7
922989 2 <sup>nd</sup> Place	Beck, Stephanie Patricia	Mineral Claim	Appendix B-3, Plan 7

**Appendix C-3**

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**Interests to Continue in Accordance with Provincial Law**

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**Part 2: Licences Issued Under the *Water Act***

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Water Licence No.</b>	<b>Permit No.</b>	<b>Interest Holder</b>	<b>General Location</b>
C072065	PCL 17157	Hamer, Carman Sherrie	Appendix B-3, Plan 14
C050326	PCL 11465	Kalum Land Holdings Corp.	Appendix B-3, Plan 18
C115500	N/A	Kitsumkalum Indian Band	Appendix B-3, Plan 4



**Appendix C-3**

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**Interests to Continue in Accordance with Provincial Law**

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**Part 3: Guide Outfitter Certificates Issued Under the *Wildlife Act***

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Certificate Number</b>	<b>Certificate Holder</b>	<b>General Location</b>
601036	Milligan, Robert	Appendix B-3, Plans 1 through 22



**Appendix C-3**

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**Interests to Continue in Accordance with Provincial Law**

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**Part 4: Traplines Issued Under the *Wildlife Act***

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Trapline Registration Number</b>	<b>General Location</b>
TR0609T048	Appendix B-3, Plan 22
TR0610T014	Appendix B-3, Plan 22
TR0615T001	Appendix B-3, Plans 16, 20, 21 and 22
TR0615T002	Appendix B-3, Plans 9, 14 and 18
TR0615T005	Appendix B-3, Plans 11, 14, 18 and 22
TR0615T006	Appendix B-3, Plans 12 through 22
TR0615T007	Appendix B-3, Plans 11 and 14
TR0615T008	Appendix B-3, Plans 8, 9, 10 and 11
TR0615T010	Appendix B-3, Plans 14 and 18
TR0615T011	Appendix B-3, Plan 9
TR0615T012	Appendix B-3, Plans 4, 6, 7 and 9
TR0615T015	Appendix B-3, Plans 1, 2, 3, 4, 6, 7 and 9





**Appendix C-3**

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**Interests to Continue in Accordance with Provincial Law**

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**Part 5: Recreation Sites and Trails**

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>File Number</b>	<b>Description</b>	<b>General Location</b>
REC 3505	Pine Lake Trail	Appendix B-3, Plan 14
REC 3525	Pine Lake Recreation Site	Appendix B-3, Plan 14
REC 6321	Sterling Mountain Trail	Appendix B-3, Plan 2
REC 6449	Red Sand Lake Recreation Site	Appendix B-3, Plan 9
REC 15778	Hart Farm Recreation Site	Appendix B-3, Plan 9
REC 15780	Red Sand Intro Trail	Appendix B-3, Plan 9
REC 15781	Red Sand Operations Trail	Appendix B-3, Plan 9
REC 98748	Kalum Lake Boat Launch Recreation Site	Appendix B-3, Plan 7
REC 106496	Mount Remo Trail	Appendix B-3, Plan 21



**Appendix C-4**

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**Interests to be Created on the Effective Date**

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**Part 1: Existing Tenures Requiring Private Road Easement over Kitsumkalum Lands**

*Note: The Parties will update the Appendices prior to the Effective Date.*



**Appendix C-4**

**Interests to be Created on the Effective Date**

**Part 2: Fee Simple Properties Requiring Private Road Easement over Kitsumkalum Lands**

*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Land Title Office Parcel Identifier (PID)</b>	<b>Interest Holder</b>	<b>Description of Land Requiring Access</b>	<b>General Location</b>
015-102-491	All West Trading Ltd.	The southeast quarter of District Lot 1411, Range 5, Coast District	Appendix B-3, Plan 14
027-842-177	Allsop, Ross Edward	Lot A, District Lot 4363, Range 5, Coast District, Plan BCP 40231	Appendix B-3, Plan 14
004-404-467	Canuel, Michael	The northeast quarter of the northwest quarter of District Lot 1427, Range 5, Coast District	Appendix B-3, Plan 10
009-302-999	Carpino, Alessandro; Carpino, Maria	The northeast quarter of District Lot 1420, Range 5, Coast District, except Plan 11733	Appendix B-3, Plan 11
004-404-424	Cher-Noble Enterprises Ltd.	The northeast quarter of District Lot 1427, Range 5, Coast District	Appendix B-3, Plan 10
004-404-220	Coast Tsimshian Resources Ltd.	The fractional northwest quarter of District Lot 1800, Range 5, Coast District	Appendix B-3, Plan 9
004-404-432	Coast Tsimshian Resources Ltd.	The east half of the southeast quarter of District Lot 1427, Range 5, Coast District	Appendix B-3, Plan 10
004-404-548	Coast Tsimshian Resources Ltd.	The southwest quarter of the northeast quarter of District Lot 1428, Range 5, Coast District	Appendix B-3, Plan 10

004-404-572	Coast Tsimshian Resources Ltd.	The south half of the north half of the west half of the fractional northeast quarter of District Lot 1428, Range 5, Coast District	Appendix B-3, Plan 10
004-404-599	Coast Tsimshian Resources Ltd.	The northwest quarter of District Lot 1428, Range 5, Coast District	Appendix B-3, Plan 10
004-404-611	Coast Tsimshian Resources Ltd.	The southwest quarter of District Lot 1800, Range 5, Coast District, except Plan 1585	Appendix B-3, Plan 9
004-404-882	Coast Tsimshian Resources Ltd.	District Lot 4985, Range 5, Coast District	Appendix B-3, Plan 18
015-274-489	Ekman, Carl Oscar and Crane Roberta Christina	District Lot 5848, Range 5, Coast District	Appendix B-3, Plan 14
015-109-721	Grieve, Glenn Donald; Moulton, Stephanie Ann	The northwest 126 acres of District Lot 1411, Range 5, Coast District	Appendix B-3, Plan 14
013-056-271	Hodges, John Webster	The fractional southwest quarter of District Lot 1411, Range 5, Coast District	Appendix B-3, Plan 14
004-404-602	Kerby Management Ltd.	The southwest quarter of District Lot 1428, Range 5, Coast District	Appendix B-3, Plan 10
004-404-386	McAndrew, Donald Angus; McAndrew, Sandra May	Block B (Plan 1588), District Lot 1423, Range 5, Coast District	Appendix B-3, Plan 10
009-303-090	McQuay, Larry Elwood; Newman, Barbara Melodye	The northwest 160 acres of District Lot 1420, Range 5, Coast District	Appendix B-3, Plan 10

015-230-643	Poague, Harley; Dychakowsky, Lena Mickey	District Lot 4363, Range 5, Coast District, except part lying west of the Kitsumkalum River and part subdivided by Plan BCP 40231	Appendix B-3, Plan 14
009-426-833	Roc Holdings Ltd., Inc. No. BC 876163	District Lot 1398, Range 5, Coast District, except Plan 11735	Appendix B-3, Plan 18
004-404-521	Schritt, Clifford Henry	The southeast quarter of District Lot 1428, Range 5, Coast District, except the northeast corner	Appendix B-3, Plan 10
010-349-171	See title	District Lot 1041, Range 5, Coast District	Appendix B-3, Plan 3
015-109-691	The Nature Trust of British Columbia	Block A (Plan 1585), District Lot 1800, Range 5, Coast District	Appendix B-3, Plan 9





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**Appendix C-4**

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**Interests to be Created on the Effective Date**

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**Part 3: Forest Research Plots**

*Note: The Parties will update the Appendices prior to the Effective Date.*

**Growth and Yield Plots**

<b>Plot Descriptor</b>	<b>General Location</b>
64-11-1G	Appendix B-3, Plan 10
64-11-2G	Appendix B-3, Plan 10
64-13-30G	Appendix B-3, Plan 7
64-13-33G	Appendix B-3, Plan 7
64-13-34G	Appendix B-3, Plan 7
64-13-35G	Appendix B-3, Plan 7
64-13-36G	Appendix B-3, Plan 7
64-7-95G	Appendix B-3, Plan 18



**Appendix C-5**

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**Applicable Forms of Document for Granting Interests**

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*Note: The Parties will update the Appendices prior to the Effective Date.*



**Appendix C-5**

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**Applicable Forms of Document for Granting Interests**

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**Document 1: BC Hydro Statutory Right of Way Agreement  
Northwest Transmission Line**



LAND TITLE ACT

FORM C

(Section 233)

Province of

British Columbia

**GENERAL INSTRUMENT – PART 1** *(This area for Land Title Office use)* \_\_\_\_\_ )

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
MAI REMPEL, Solicitor for British Columbia Hydro and Power Authority, 8th Floor - 333  
Dunsmuir Street, Vancouver, BC, V6B 5R3, Telephone: 604-623-4132

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)	(LEGAL DESCRIPTION)
●	●

3. NATURE OF INTEREST: * DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
(a) STATUTORY RIGHT OF WAY – over portions of the Lots _____ shown as “Area A” on Plan _____, a copy of which is attached as Schedule A.	Page 3, paragraph 2.1(a) of _____	TRANSFEEE
(b) STATUTORY RIGHT OF WAY – over parts of Lots _____ shown as “Area A” and “Area B” on Plan _____, a copy of which is attached as Schedule A to this General Instrument.	(b) Page 3, paragraph 2.1(b) of _____	TRANSFEEE
(c) STATUTORY RIGHT OF WAY – over parts of Lots _____ shown as “Area A”, “Area B” and “Area C”, a copy of which is attached as Schedule A to this General Instrument●	(c) Pages 3-5, paragraph 2.1(c) of _____	TRANSFEEE

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4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms  D.F. Number: ● \_\_\_\_\_
- (b) Express Charge Terms  Annexed as Part 2
- (c) Release  There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

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5. TRANSFEROR(S): \*

**KITSUMKALUM FIRST NATION**

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6. TRANSFEREE(S): (including postal address(es) and postal code(s))\*

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, 8th Floor - 333  
Dunsmuir Street, Vancouver, BC, V6B 5R3

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7. ADDITIONAL OR MODIFIED TERMS: \*

N/A

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**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

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Officer Signature(s)

Execution Date

Y	M	D
[Y]	[M]	[D]

Party(ies) Signature(s)

**BRITISH COLUMBIA HYDRO  
AND POWER AUTHORITY**, by  
its authorized signatory(ies):

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Name:

(as to all signatures for British  
Columbia Hydro and Power Authority  
only)

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Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**SCHEDULE "A"**

*Copy of Surveyed Plan of Right of Way Area*



## STANDARD CHARGE TERMS

Filed by: British Columbia Hydro and Power Authority

These Filed Terms are deemed to be included in and form part of every Agreement that incorporates these Filed Terms by an election on the General Instrument.

WHEREAS:

- A. The Grantor, Canada and British Columbia, entered into a Final Agreement, as hereinafter defined; and
- B. In accordance with the Final Agreement, the Grantor wishes to provide the grants, as herein provided, to Hydro with respect to the Grantor's Lands as hereinafter defined.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of ten dollars now paid by Hydro to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereto covenant and agree as follows:

### 1.0 DEFINITIONS

1.1 The following terms shall have the following meanings, respectively, in this Agreement:

- (a) **“Access Improvements”** has the meaning given to it in subparagraph 2.1(c)(v)(A);
- (b) **“Affiliate”** has the meaning given to it in the *Business Corporations Act*, S.B.C. 2002, c. 57;
- (c) **“Agreement”** means these Standard Charge Terms, the General Instrument and all schedules attached to either of them;
- (d) **“Area C”** means the area shown as “Area C” on the Plan;
- (e) **“Area of the Works”** means the Right of Way Area and those portions of the Lands shown as “Area B” on the Plan;
- (f) **“Effective Date”** means the date upon which the Final Agreement will take effect;
- (g) **“Environment”** has the meaning given to it in the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33;
- (h) **“Excluded Right of Way Areas”** means any right of way area or corridor that is not part of the Lands but in whole or in part passes through the Lands or is adjacent to such Lands;

- (i) **"Filed Terms"** means these filed standard charge terms;
- (j) **"Final Agreement"** means the Kitsumkalum First Nation Final Agreement among the Grantor, Canada and British Columbia;
- (k) **"General Instrument"** means the Form C General Instrument – Part I, which refers to these Filed Terms and any other pages attached thereto;
- (l) **"Grantor"** means the person named as the transferor in Item 5 of the General Instrument;
- (m) **"Hydro"** means the person named as the transferee in Item 6 of the General Instrument;
- (n) **"Lands"** means the Area of the Works and Area C, as shown on the Plan;
- (o) **"Plan"** means the Plan attached as Schedule "A" to the General Instrument, as described in section (a) of Item 3 of the General Instrument .
- (p) **"Right of Way Area"** means those portions of the Lands shown as "Area A" on the Plan, as they may be modified from time to time; and
- (q) **"Works"** means all things and components, using any type of technology from time to time, necessary or convenient for the purposes of distributing and/or transmitting electricity, telecommunications or communications by any method or process whatsoever, including poles, towers, antennae (except for monopole free standing antennae), anchors, guy wires, brackets, cross arms, insulators, foundations, overhead and underground conductors, wires, lines, cables and transformers, underground conduits and pipes, access nodes, cabinets, all ancillary appliances and fittings, reasonably required associated protective installations, and related works such as fencing for safety or security, devices and identifying colours for aircraft warning and utility services for the operation of any of the foregoing.

1.2 With respect to any obligation on the part of Hydro under this Agreement, any reference to Hydro includes its respective servants, officers, employees, agents, contractors, sub-contractors, invitees, licensees, successors, assigns, and those for whom Hydro is responsible in law, as and to the extent reasonably applicable.

## **2.0 RIGHTS RELATED TO RIGHT OF WAY AREA**

2.1 The Grantor grants over the Lands to Hydro and its employees, representatives, contractors, agents, licensees, successors and assigns for so long as required the uninterrupted right, liberty and right of way to:

- (a) use the Right of Way Area as follows:

- (i) excavate for, construct, install, erect, string, abandon, replace, extend, upgrade, operate, maintain, remove and repair the Works on, over, under, across and through the Right of Way Area; and
  - (ii) clear the Right of Way Area and keep it cleared (including removal or pruning) of any vegetation, including without limitation trees, at any time located therein; and
- (b) use the Area of the Works as follows:
- (i) enter, work, inspect, pass and re-pass upon, on, and along the Area of the Works;
  - (ii) construct, maintain, repair, replace and use trails, helicopter landing pads, roads, lanes, and bridges on the Area of the Works including in addition any portions reasonably required adjacent to the Area of the Works for the sake of continuity, with or without equipment, machinery and materials, to such extent as may reasonably be required by Hydro in relation to this Agreement;
  - (iii) clear the Area of the Works and keep it cleared of all or any part of any obstruction, improvement or other matter which, in the reasonable opinion of Hydro might interfere with or endanger the Works, disrupt service to Hydro's customers, or pose a hazard to persons or property in relation to the Works; and
  - (iv) clear the Area of the Works and keep it cleared (including removal or pruning) of all or any part of any vegetation, including without limitation trees, which do or might, in the reasonable opinion of Hydro interfere with or endanger the Works, disrupt service to Hydro's customers, or pose a hazard to persons or property in relation to the Works; and
  - (vi) conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of Hydro;
- (c) to enjoy further rights over the Area of the Works and Area C as follows:
- (i) Hydro may cut vegetation if in the opinion of Hydro such vegetation and/or trees, might interfere with or endanger the Works or pose a hazard to persons or property in relation to the Works. Hydro will, except in an emergency, give the Grantor written notice prior to exercising its rights under this subsection;
  - (ii) Hydro may install, maintain and use gates in all fences which are now, or hereafter shall be on the Area of the Works, including fences affecting access to Area C;

- (iii) Hydro may ground any structures, installation or things, by whomsoever owned, from time to time situated anywhere on Area of the Works or Area C where, in the reasonable opinion of Hydro, such grounding will eliminate or reduce hazard to persons or property in relation to the Works;
- (iv) Hydro may pass and re-pass over, and maintain, repair, replace and use all trails, helicopter landing pads, roads, lanes, and bridges on the Area of the Works and Area C with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro in relation to this Agreement;
- (v) where there are no suitable trails, helicopter landing pads, roads, lanes, or bridges under paragraph 2.1(c)(iv), Hydro may either:
  - (A) construct, maintain, repair, replace, use, pass and re-pass over trails, helicopter landing pads, roads, lanes, and bridges on the Area of the Works or Area C (collectively referred to as “Access Improvements”); or
  - (B) pass and re-pass over the Area of the Works or Area C elsewhere than on the Access Improvements, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro in relation to this Agreement, subject to approval of the route by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed, provided that in the case of an emergency or reasonably apprehended emergency Hydro does not require the prior approval of the Grantor under this subsection but will report to the Grantor the purpose and extent of the access as soon as practicable;
- (vi) to conduct vegetation management upon the Area of the Works and Area C, such as the planting of vegetation compatible with the undertakings of Hydro, and the application of herbicides and pesticides; and
- (vii) Hydro may enter onto Area C for the purpose of undertaking works, or to effect other appropriate measures, to protect any Works located within the Right of Way Area or within the Excluded Right of Way Areas, or to protect persons or property that may be at risk from such Works, provided that:
  - (a) Hydro will, before commencing such works, deliver to the Grantor for approval a written work plan describing the proposed work;



- (b) the Grantor will not unreasonably withhold, condition or delay approval of such work plan, and shall take into consideration the effect of the proposed work, the cost of the proposed work compared to the cost of alternate solutions and the extent of the risk of not undertaking the work. If Hydro and the Grantor cannot agree on a work plan requested by Hydro within 30 days of receipt by the Grantor of the proposed work plan, then either party may refer the disagreement to dispute resolution under Article 14 of this Agreement;
  - (c) Hydro will pay compensation for any damage resulting from the work plan, or from any measure taken by Hydro pursuant to this paragraph;
  - (d) if Hydro determines that an emergency exists or there are imminent safety concerns, Hydro may, without the approval of the Grantor, undertake works and take such measures on the Area of the Works and Area C as are reasonably required to be taken immediately in order to protect the Works, or to protect persons or property that may be at risk, and in that event Hydro will as soon as reasonably possible notify the Grantor; and
- (d) generally, do all such other acts or things as may reasonably be necessary or incidental to the business of Hydro in connection with any of the foregoing.

2.2 The rights, liberties and rights of way granted under this Agreement are for so long as required and will terminate, without compensation to Hydro, when Hydro no longer requires the Lands, and:

- (a) Hydro gives 90 days written notice to the Grantor; or
- (b) the Grantor gives 90 days written notice to Hydro.

### **3.0 RIGHT OF WAY AREA**

3.1 [IF WORKS CONSTRUCTED] The parties acknowledge that they have made reasonable efforts to identify all the existing Works and related Right of Way Area as of the date of this Agreement. However, as there may still be some Works that were missed in the identification process the parties agree that for such Works the Grantor grants to Hydro for so long as required, a right of way over those portions of the Lands upon which such Works are located on the following terms:

- (a) for such Works, Hydro holds the same rights, privileges and obligations as apply to Hydro for the use of the Right of Way Area, the Area of the Works and Area C under this Agreement, including the right of reasonable access over the Lands for the purpose of gaining access to such Works; and

- (b) the Grantor may at any time require Hydro to attach a revised survey plan to this Agreement to include those additional portions of the Lands.

3.1 [IF WORKS NOT YET CONSTRUCTED] The parties acknowledge that Hydro has not constructed or installed Works on the Right of Way Area as of the date of this Agreement, and that the Plan represents Hydro's best estimate as to the best location for the Works when constructed. Hydro shall make reasonable efforts to construct and install the Works within Areas A, B and C, as shown on the Plan attached as Schedule "A", but the parties acknowledge and agree that some variation may be necessary due to topography and other considerations. The parties agree to act reasonably and flexibly in considering such variations in the final location of the Works. Hydro will prepare, at its sole expense, a legal as-built survey of the Works when constructed, and, if they are not able to give full force and effect to the process set out in subsection 6.1(a), the parties will enter into an amendment of the Agreement in order to replace Schedule "A" with the as-built legal plan of Areas A, B and C.

#### **4.0 NON-EXCLUSIVE USE**

4.1 This Agreement will not entitle Hydro to exclusive possession of the Area of the Works or Area C, and the Grantor reserves the right to grant other dispositions of any Lands affected by this Agreement, so long as the grant does not materially affect or interfere with the exercise of Hydro's rights under this Agreement.

#### **5.0 PROTECTION OF THE ENVIRONMENT**

5.1 Hydro will undertake activities permitted under this Agreement having regard for the impact on the Environment, and will take prudent measures to minimize the danger or disruption to the Environment.

5.2 Hydro will remediate any contamination it causes to the Lands as a result of the exercise of its vegetation management rights under paragraph 2.1(c)(vi) of this Agreement.

#### **6.0 COVENANTS OF HYDRO**

6.1 Hydro covenants with the Grantor that:

- (a) After the construction of the Works, or any relocation of the Works in accordance with Section 8.1 on or about the Lands, Hydro will cause that portion of the Lands used by Hydro for the Works as contemplated in subsection 2.1(a) to be surveyed by a British Columbia Land Surveyor and will deliver such survey plan to the Grantor. Upon the delivery of such survey plan to the Grantor, that portion of the Lands so surveyed will be deemed to be the Right of Way Area for purposes of interpreting this Agreement and as modified under this Agreement from time to time. The Grantor authorizes Hydro and the registrar of the relevant land title office to do all things necessary in relation to the filing of the survey plan for the Right of Way

Area, including inserting the number assigned by the relevant land title office to such plan;

- (b) Hydro shall pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged to the account of Hydro which relate to the Works and which Hydro is liable to pay;
- (c) Hydro shall keep the portions of the Lands used by Hydro under this Agreement in a safe, clean and sanitary condition to the extent the condition relates to the use or occupation of the Lands by Hydro, and on written notice from the Grantor, to make safe, clean, and sanitary any portion of them that contravene the provisions of this covenant, provided that Hydro has no obligation to keep any portion of the Lands suitable for use by anyone except Hydro;
- (d) Hydro shall bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
- (e) Hydro shall take all reasonable steps and precautions to minimize disturbance of any archaeological material discovered by Hydro on the Lands, and to immediately notify the Grantor;
- (f) Hydro shall not bury debris or rubbish of any kind on the Lands in excavations or backfill, and to remove shoring and similar temporary structures as backfilling proceeds;
- (g) Hydro shall not commit or suffer any wilful or voluntary waste, spoil or destruction on the Lands, or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to the Grantor, except to the extent required by Hydro acting reasonably, to exercise its rights under this Agreement; and
- (h) Hydro shall permit the Grantor to enter upon the Right of Way Area at any time to examine its condition.

## **7.0 WORK PLANS**

7.1 Except in the case of an emergency or reasonably apprehended emergency, Hydro will provide to the Grantor a written work plan describing the proposed work located on, outside or related to the Lands prior to undertaking any of the following work under this Agreement:

- (a) construction of any new Works;
- (b) relocation of any Works; and
- (c) construction or relocation of any Access Improvements.

In accordance with this Section 7.1, prior to undertaking any work, Hydro will deliver a copy of the work plan to the Grantor for its review and comment by the Grantor. The Grantor will, no more than thirty (30) days after receiving the work plan, provide to Hydro in writing any comments that it may have, and Hydro will use reasonable efforts to accommodate any suggestions or requests made by the Grantor to Hydro provided they do not result in delays, increased costs or technical difficulties.

## **8.0 RELOCATION OF WORKS DUE TO CHANGE**

8.1 If a material change occurs to the Lands, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area or the Excluded Right of Way Area unsuitable for any of the Works, then the Grantor will consent, without charge, to the relocation and replacement of such Works to a new location on the Lands, as follows:

- (a) Hydro will before undertaking any work, deliver a work plan to the Grantor indicating the contemplated relocation of the Works for approval by the Grantor, which approval will not be unreasonably withheld, delayed or conditioned;
- (b) Hydro will take into account any likely material effect of the relocated Works on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by Hydro for the relocated Works in relation to alternative locations;
- (c) the relocated Works will be covered by the terms and conditions of this Agreement; and
- (d) provided the Grantor is not responsible for Hydro having to relocate the Works, Hydro will pay the Grantor any difference between:
  - (i) the then current fair market value of the new Right of Way Area, and,
  - (ii) the then current fair market value of any area to be removed from the Right of Way Area, or the Excluded Right of Way Area.

## **9.0 RELOCATION OF WORKS AT THE REQUEST OF THE GRANTOR**

9.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, Hydro will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

- (a) the new location is, in the reasonable opinion of Hydro, suitable for use for the relocated Works considering engineering feasibility, construction, maintenance and operation, and cost factors;
- (b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;

- (c) the Grantor agrees to pay all reasonable costs and expenses, including costs of design, supervision and construction (before any relocation, the Grantor will pay the costs and expenses as estimated by Hydro, with appropriate adjustments based on actuals after the relocation is complete); and
- (d) the rights, liberties and rights of way under this Agreement will extend to the relocated Works and associated areas, so that it has similar priority over other charges and encumbrances, and Hydro will thereafter surrender its interest in the portion of the Lands no longer required.

## **10.0 REMOVAL OF WORKS**

10.1 If Hydro no longer requires all or a portion of the Right of Way Area, then Hydro shall, in respect of such Right of Way Area:

- (a) quit peaceably such Right of Way Area;
- (b) remove any Access Improvements no longer required in relation to such Right of Way Area;
- (c) remove all above ground Works from such Right of Way Area within a reasonable period of time and any Works remaining on that portion of the Right of Way Area will be absolutely forfeited to and become the property of the Grantor. If the Grantor removes any remaining above ground Works within four (4) years, Hydro will, on demand by the Grantor, reimburse the Grantor for all reasonable costs of removal; and
- (d) remain liable for any environmental damage to the Lands arising from any below ground Works that remain on or in such Right of Way Area, except if the Grantor uses or authorizes the use of any of the remaining below ground Works for any purpose then Hydro will not be liable for any environmental damage caused by the Grantor's use, or authorized use; and to the extent necessary, this covenant will survive the termination of this Agreement.

## **11.0 COVENANTS OF THE GRANTOR**

11.1 The Grantor covenants with Hydro that:

- (a) Hydro shall and may peaceably enjoy and hold its rights under this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any other person lawfully claiming from or under the Grantor, and by the exercise of any authority under the Final Agreement, provided however that nothing in this subsection 11.1(a) shall limit the Grantor's right of inspection pursuant to subsection 6.1(h);
- (b) without limiting the generality of subsection 11.1(a), the Grantor agrees that Hydro, in carrying out its rights and obligations under this Agreement, is only subject to industry standards, and applicable statutes, regulations, by-laws and

lawful requirements of any one or combination of federal and/or provincial authorities;

- (c) if the Grantor passes and attempts to enforce against Hydro any law, regulation, standard or requirement in relation to the Works or its rights under this Agreement that is in excess of any federal or provincial law, regulation or prevailing industry standard, and which results in a material increase to any or all of Hydro's costs than Hydro would otherwise incur in respect of all activities or things necessary or incidental to the business of Hydro and operation of the Works pursuant to this Agreement, then the Grantor shall indemnify and hold harmless Hydro for any additional costs required or incurred to comply with such law, regulation, standard, or requirement;
- (d) the Grantor will not permit or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, fill, pile of material, obstruction, equipment, thing or inflammable substance, or plant any vegetation upon the Area of the Works, if any such action or thing, in the reasonable opinion of Hydro:
  - (i) may interfere with or endanger the Works or any part thereof or the installation, operation, maintenance, removal or replacement of the Works or any part thereof;
  - (ii) may obstruct access to the Works or any part thereof by those authorized by Hydro; or
  - (iii) may by its operation, use, maintenance or existence on the Area of the Works, create or increase any hazard to persons or property in relation to the Works;
- (e) the Grantor will not diminish or increase the ground elevation in the Right of Way Area by any method, including piling any material or creating any excavation, drain, or ditch in the Right of Way Area, unless permission in writing from Hydro has first been received, which permission will not be unreasonably withheld, conditioned or delayed;
- (f) the Grantor will not carry out blasting or aerial logging operations on or adjacent to the Area of the Works without prior written permission from Hydro, in its sole discretion;
- (g) the Grantor will not use or authorize the use of the portions of the Right of Way Area for the regular, or organized parking of vehicles without the prior written permission from Hydro, in its sole determination, provided that nothing in this subsection is intended to prevent safe temporary parking of vehicles;
- (h) the Grantor will not park, or authorize to be parked on the Right of Way Area any vehicle or equipment if the parking of such vehicle does not comply with

the requirements of the Canadian Standards Association's Canadian Electrical Code, as may be amended from time to time; and

- (i) the Grantor will not use, or authorize the use of the Right of Way Area for fuelling any vehicle or equipment;
- (j) the Grantor will not intentionally do or authorize any act or thing that injures or endangers the Works;
- (k) the Grantor will not use or authorize the use of the Right of Way Area for any purpose, including the construction of any improvements, that in the sole opinion of Hydro would be unsafe or would interfere with Hydro's use of the Right of Way Area; and
- (l) except for the consideration payable by Hydro on the execution of this Agreement in the amount of \$10, the Grantor will not assess any fee, charge, toll, levy or expense on or in connection with the rights herein granted.

## **12.0 COMPENSATION FOR DAMAGES**

12.1 Subject to the rights granted in this Agreement, Hydro covenants with the Grantor that if Hydro or its contractors, damage any structures, buildings, fixtures, improvements, or chattels outside of the Area of the Works, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, trails, bridges, or roads on the Lands, and such damage or contamination is not caused as a result of the Grantor's breach of the terms of this Agreement or the negligence or wilful act of the Grantor or its contractors, agents or permittees, that Hydro will:

- (a) compensate the Grantor for such damages, to the extent caused by Hydro; or
- (b) within a reasonable period of time, repair in a good and workman-like manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.

12.2 Compensation paid to the Grantor for merchantable timber pursuant to Section 12.1 will be in accordance with generally accepted principles of timber valuation and the parties agree that on payment, title to any timber cut on the Lands under this Agreement will vest in Hydro.

## **13.0 INDEMNITY**

13.1 Hydro will save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

- (a) any breach, violation or non-performance by Hydro of any of Hydro's covenants, conditions or obligations under this Agreement; and

- (b) any act or omission on the part of Hydro in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, but only to the extent any such matter is found to be the responsibility of Hydro and was not contributed to by the negligence of, or breach, violation or non-performance by the Grantor or by those for whom the Grantor is responsible at law, and not for any matters based on nuisance or the rule in *Rylands v. Fletcher* unless Hydro was negligent.

## **14.0 DISPUTE RESOLUTION**

14.1 Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- (a) the parties will attempt to resolve disputes by negotiations, including timely disclosure of all relevant facts, information and documents;
- (b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;
- (c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution, in accordance with the *Commercial Arbitration Act* [RSBC 1996] c. 54. If the parties do not agree to arbitration, then any party may refer the matter to a court of competent jurisdiction; except that it is not incompatible with this subsection for a party to apply to a court of competent jurisdiction at any time for interim or conservatory relief and for the court to grant that relief.

## **15.0 RUNS WITH THE LAND**

15.1 This Agreement runs with and binds the Lands to the extent necessary to give full force and effect to this Agreement.

## **16.0 NOTICE**

16.1 Whenever it is required or permitted that notice or demand be given by any party to the other, the same will be in writing and will be forwarded to the following addresses:

To the Grantor:  
Kitsumkalum First Nation  
P.O. Box 544  
Terrace, British Columbia  
V8G 4B5

Fax: (250) 635-4622



To Hydro:  
Manager, Properties  
BC Hydro  
8th Floor – 333 Dunsmuir Street  
Vancouver, British Columbia  
V6B 5R3

Fax: (604) 623-3951

- (a) If any question arises as to the date on which such notice was communicated to any party, it will be deemed to have been given on the earlier of:
  - (i) if it was delivered personally or by courier, on the next business day;
  - (ii) if it was sent by fax, on the next business day; or
  - (iii) if it was sent by mail, on the sixth day after the notice was mailed.

In the event of postal disruption or an anticipated postal disruption, notices may not be given by mail.

- (b) A change of address by any party may be given to the others in accordance with this provision.

## **17.0 GENERAL**

- 17.1 A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.
- 17.2 No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.
- 17.3 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties and their respective successors and assigns.
- 17.4 Hydro may grant licences respecting its rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor provided that no licence will act as a release of any of Hydro's obligations set out in this Agreement.
- 17.5 A delegate appointed by the Grantor may provide Hydro with all commentary, authorizations and approvals required pursuant to this Agreement including without limitation, all commentary, authorizations or approvals required in relation to work plans, approval of access routes, and relocations or replacements of any Works, as contemplated in this Agreement.

- 17.6 Nothing in this Agreement will be interpreted or construed to limit or restrict the rights of Hydro as a Public Utility under the Final Agreement.
- 17.7 The Grantor agrees to execute an amendment of this Agreement, at the request of Hydro, in order to:
- (a) extend the application of this Agreement to any additional lands that are acquired by the Grantor after the Effective Date of the Final Agreement, on which Works are located, provided such additional lands are treaty settlement lands within the meaning of the Final Agreement, or
  - (b) reflect any adjustment that may be needed in the description of the Lands as a result of a re-survey of the Lands, or a portion thereof.

Hydro will be responsible for the cost of preparing any documentation that may be necessary to amend the Agreement, and for any related costs of filing the document in the appropriate land registry.

- 17.8 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings, communications and agreements between the parties hereto with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, either express or implied, between the parties other than as expressly set forth in this Agreement.
- 17.9 This Agreement may not be modified or amended, nor any provision waived, discharged or terminated, except by an instrument in writing signed by the parties.

## **18.0 INTERPRETATION**

18.1 In this Agreement:

- (a) all attached schedules form an integral part of this Agreement;
- (b) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of this Agreement;
- (c) a reference to “party” or “parties” in this Agreement is a reference to Grantor or Hydro, or both, as the context requires;
- (d) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination;
- (e) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;

- (f) any reference to a statute means that statute and any regulations made under it, all as amended or replaced from time to time; and
- (g) any reference to an Article, Section, subsection, paragraph or subparagraph means the appropriate part of this Agreement, which for ease of reference is illustrated as follows:

1.00 Article;

1.1 Section;

(a) subsection;

(i) paragraph; and

(A) subparagraph.



**Appendix C-5**

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**Applicable Forms of Document for Granting Interests**

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**Document 2: BC Hydro Statutory Right of Way Agreement  
138kV Transmission Line**



LAND TITLE ACT

FORM C

(Section 233)

Province of

British Columbia

GENERAL INSTRUMENT – PART 1 (This area for Land Title Office use)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
MAI REMPEL, Solicitor for British Columbia Hydro and Power Authority, 8th Floor - 333  
Dunsmuir Street, Vancouver, BC, V6B 5R3, Telephone: 604-623-4132

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

•

•

3. NATURE OF INTEREST: \*

DESCRIPTION

DOCUMENT REFERENCE  
(page and paragraph)

PERSON ENTITLED TO  
INTEREST

(a) STATUTORY RIGHT  
OF WAY – over portions of  
the Lots \_\_\_\_\_  
shown as “Area A” on Plan  
\_\_\_\_\_, a copy  
of which is attached as  
Schedule A.

Page 3, paragraph 2.1(a) of  
\_\_\_\_\_

TRANSFeree

(b) STATUTORY RIGHT  
OF WAY – over parts of  
Lots \_\_\_\_\_  
shown as “Area A” and  
“Area B” on Plan \_\_\_\_\_, a  
copy of which is attached as  
Schedule A to this General  
Instrument.

(b) Page 3, paragraph 2.1(b) of  
\_\_\_\_\_

TRANSFeree

(c) STATUTORY RIGHT  
OF WAY – over parts of  
Lots \_\_\_\_\_ shown  
as “Area A”, “Area B” and  
“Area C”, a copy of which is  
attached as Schedule A to  
this General Instrument•

(c) Pages 3-5, paragraph 2.1(c) of  
\_\_\_\_\_

TRANSFeree

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4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms  D.F. Number: ● \_\_\_\_\_
- (b) Express Charge Terms  Annexed as Part 2
- (c) Release  There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

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5. TRANSFEROR(S): \*

**KITSUMKALUM FIRST NATION**

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6. TRANSFEREE(S): (including postal address(es) and postal code(s))\*

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, 8th Floor - 333  
Dunsmuir Street, Vancouver, BC, V6B 5R3

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7. ADDITIONAL OR MODIFIED TERMS: \*

N/A

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## GENERAL INSTRUMENT

8. EXECUTION(S):\*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
<hr/>	[Y]	[M]	[D]	<b>KITSUMKALUM FIRST NATION</b> , by its authorized signatory(ies): <hr/>
(as to all signatures for Kitsumkalum First Nation only)				Name: <hr/>
				Name: <hr/>



**SCHEDULE “A”**

*Copy of Surveyed Plan of Right of Way Area*



## STANDARD CHARGE TERMS

Filed by: British Columbia Hydro and Power Authority

These Filed Terms are deemed to be included in and form part of every Agreement that incorporates these Filed Terms by an election on the General Instrument.

### WHEREAS:

- A. The Grantor, Canada and British Columbia, entered into a Final Agreement, as hereinafter defined; and
- B. In accordance with the Final Agreement, the Grantor wishes to provide the grants, as herein provided, to Hydro with respect to the Grantor's Lands as hereinafter defined.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of ten dollars now paid by Hydro to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereto covenant and agree as follows:

### 1.0 DEFINITIONS

- 1.1 The following terms shall have the following meanings, respectively, in this Agreement:
  - (a) **“Access Improvements”** has the meaning given to it in subparagraph 2.1(c)(v)(A);
  - (b) **“Affiliate”** has the meaning given to it in the *Business Corporations Act*, S.B.C. 2002, c. 57;
  - (c) **“Agreement”** means these Standard Charge Terms, the General Instrument and all schedules attached to either of them;
  - (d) **“Area C”** means the area shown as “Area C” on the Plan;
  - (e) **“Area of the Works”** means the Right of Way Area and those portions of the Lands shown as “Area B” on the Plan;
  - (f) **“Effective Date”** means the date upon which the Final Agreement will take effect;
  - (g) **“Environment”** has the meaning given to it in the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33;
  - (h) **“Excluded Right of Way Areas”** means any right of way area or corridor that is not part of the Lands but in whole or in part passes through the Lands or is adjacent to such Lands;

- (i) **"Filed Terms"** means these filed standard charge terms;
- (j) **"Final Agreement"** means the Kitsumkalum First Nation Final Agreement among the Grantor, Canada and British Columbia;
- (k) **"General Instrument"** means the Form C General Instrument – Part I, which refers to these Filed Terms and any other pages attached thereto;
- (l) **"Grantor"** means the person named as the transferor in Item 5 of the General Instrument;
- (m) **"Hydro"** means the person named as the transferee in Item 6 of the General Instrument;
- (n) **"Lands"** means the Area of the Works and Area C, as shown on the Plan;
- (o) **"Plan"** means the Plan attached as Schedule "A" to the General Instrument, as described in section (a) of Item 3 of the General Instrument .
- (p) **"Right of Way Area"** means those portions of the Lands shown as "Area A" on the Plan, as they may be modified from time to time; and
- (q) **"Works"** means all things and components, using any type of technology from time to time, necessary or convenient for the purposes of distributing and/or transmitting electricity, telecommunications or communications by any method or process whatsoever, including poles, towers, antennae (except for monopole free standing antennae), anchors, guy wires, brackets, cross arms, insulators, foundations, overhead and underground conductors, wires, lines, cables and transformers, underground conduits and pipes, access nodes, cabinets, all ancillary appliances and fittings, reasonably required associated protective installations, and related works such as fencing for safety or security, devices and identifying colours for aircraft warning and utility services for the operation of any of the foregoing.

1.2 With respect to any obligation on the part of Hydro under this Agreement, any reference to Hydro includes its respective servants, officers, employees, agents, contractors, sub-contractors, invitees, licensees, successors, assigns, and those for whom Hydro is responsible in law, as and to the extent reasonably applicable.

## **2.0 RIGHTS RELATED TO RIGHT OF WAY AREA**

2.1 The Grantor grants over the Lands to Hydro and its employees, representatives, contractors, agents, licensees, successors and assigns for so long as required the uninterrupted right, liberty and right of way to:

- (a) use the Right of Way Area as follows:

- (i) excavate for, construct, install, erect, string, abandon, replace, extend, upgrade, operate, maintain, remove and repair the Works on, over, under, across and through the Right of Way Area; and
  - (ii) clear the Right of Way Area and keep it cleared (including removal or pruning) of any vegetation, including without limitation trees, at any time located therein; and
- (b) use the Area of the Works as follows:
- (i) enter, work, inspect, pass and re-pass upon, on, and along the Area of the Works;
  - (ii) construct, maintain, repair, replace and use trails, helicopter landing pads, roads, lanes, and bridges on the Area of the Works including in addition any portions reasonably required adjacent to the Area of the Works for the sake of continuity, with or without equipment, machinery and materials, to such extent as may reasonably be required by Hydro in relation to this Agreement;
  - (iii) clear the Area of the Works and keep it cleared of all or any part of any obstruction, improvement or other matter which, in the reasonable opinion of Hydro might interfere with or endanger the Works, disrupt service to Hydro's customers, or pose a hazard to persons or property in relation to the Works; and
  - (iv) clear the Area of the Works and keep it cleared (including removal or pruning) of all or any part of any vegetation, including without limitation trees, which do or might, in the reasonable opinion of Hydro interfere with or endanger the Works, disrupt service to Hydro's customers, or pose a hazard to persons or property in relation to the Works; and
  - (vi) conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of Hydro;
- (c) to enjoy further rights over the Area of the Works and Area C as follows:
- (i) Hydro may cut vegetation if in the opinion of Hydro such vegetation and/or trees, might interfere with or endanger the Works or pose a hazard to persons or property in relation to the Works. Hydro will, except in an emergency, give the Grantor written notice prior to exercising its rights under this subsection;
  - (ii) Hydro may install, maintain and use gates in all fences which are now, or hereafter shall be on the Area of the Works, including fences affecting access to Area C;

- (iii) Hydro may ground any structures, installation or things, by whomsoever owned, from time to time situated anywhere on Area of the Works or Area C where, in the reasonable opinion of Hydro, such grounding will eliminate or reduce hazard to persons or property in relation to the Works;
- (iv) Hydro may pass and re-pass over, and maintain, repair, replace and use all trails, helicopter landing pads, roads, lanes, and bridges on the Area of the Works and Area C with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro in relation to this Agreement;
- (v) where there are no suitable trails, helicopter landing pads, roads, lanes, or bridges under paragraph 2.1(c)(iv), Hydro may either:
  - (A) construct, maintain, repair, replace, use, pass and re-pass over trails, helicopter landing pads, roads, lanes, and bridges on the Area of the Works or Area C (collectively referred to as “Access Improvements”); or
  - (B) pass and re-pass over the Area of the Works or Area C elsewhere than on the Access Improvements, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro in relation to this Agreement, subject to approval of the route by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed, provided that in the case of an emergency or reasonably apprehended emergency Hydro does not require the prior approval of the Grantor under this subsection but will report to the Grantor the purpose and extent of the access as soon as practicable;
- (vi) to conduct vegetation management upon the Area of the Works and Area C, such as the planting of vegetation compatible with the undertakings of Hydro, and the application of herbicides and pesticides; and
- (vii) Hydro may enter onto Area C for the purpose of undertaking works, or to effect other appropriate measures, to protect any Works located within the Right of Way Area or within the Excluded Right of Way Areas, or to protect persons or property that may be at risk from such Works, provided that:
  - (a) Hydro will, before commencing such works, deliver to the Grantor for approval a written work plan describing the proposed work;



- (b) the Grantor will not unreasonably withhold, condition or delay approval of such work plan, and shall take into consideration the effect of the proposed work, the cost of the proposed work compared to the cost of alternate solutions and the extent of the risk of not undertaking the work. If Hydro and the Grantor cannot agree on a work plan requested by Hydro within 30 days of receipt by the Grantor of the proposed work plan, then either party may refer the disagreement to dispute resolution under Article 14 of this Agreement;
  - (c) Hydro will pay compensation for any damage resulting from the work plan, or from any measure taken by Hydro pursuant to this paragraph;
  - (d) if Hydro determines that an emergency exists or there are imminent safety concerns, Hydro may, without the approval of the Grantor, undertake works and take such measures on the Area of the Works and Area C as are reasonably required to be taken immediately in order to protect the Works, or to protect persons or property that may be at risk, and in that event Hydro will as soon as reasonably possible notify the Grantor; and
- (d) generally, do all such other acts or things as may reasonably be necessary or incidental to the business of Hydro in connection with any of the foregoing.

2.2 The rights, liberties and rights of way granted under this Agreement are for so long as required and will terminate, without compensation to Hydro, when Hydro no longer requires the Lands, and:

- (a) Hydro gives 90 days written notice to the Grantor; or
- (b) the Grantor gives 90 days written notice to Hydro.

### **3.0 RIGHT OF WAY AREA**

3.1 [IF WORKS CONSTRUCTED] The parties acknowledge that they have made reasonable efforts to identify all the existing Works and related Right of Way Area as of the date of this Agreement. However, as there may still be some Works that were missed in the identification process the parties agree that for such Works the Grantor grants to Hydro for so long as required, a right of way over those portions of the Lands upon which such Works are located on the following terms:

- (a) for such Works, Hydro holds the same rights, privileges and obligations as apply to Hydro for the use of the Right of Way Area, the Area of the Works and Area C under this Agreement, including the right of reasonable access over the Lands for the purpose of gaining access to such Works; and

- (b) the Grantor may at any time require Hydro to attach a revised survey plan to this Agreement to include those additional portions of the Lands.

3.1 [IF WORKS NOT YET CONSTRUCTED] The parties acknowledge that Hydro has not constructed or installed Works on the Right of Way Area as of the date of this Agreement, and that the Plan represents Hydro's best estimate as to the best location for the Works when constructed. Hydro shall make reasonable efforts to construct and install the Works within Areas A, B and C, as shown on the Plan attached as Schedule "A", but the parties acknowledge and agree that some variation may be necessary due to topography and other considerations. The parties agree to act reasonably and flexibly in considering such variations in the final location of the Works. Hydro will prepare, at its sole expense, a legal as-built survey of the Works when constructed, and, if they are not able to give full force and effect to the process set out in subsection 6.1(a), the parties will enter into an amendment of the Agreement in order to replace Schedule "A" with the as-built legal plan of Areas A, B and C.

#### **4.0 NON-EXCLUSIVE USE**

4.1 This Agreement will not entitle Hydro to exclusive possession of the Area of the Works or Area C, and the Grantor reserves the right to grant other dispositions of any Lands affected by this Agreement, so long as the grant does not materially affect or interfere with the exercise of Hydro's rights under this Agreement.

#### **5.0 PROTECTION OF THE ENVIRONMENT**

5.1 Hydro will undertake activities permitted under this Agreement having regard for the impact on the Environment, and will take prudent measures to minimize the danger or disruption to the Environment.

5.2 Hydro will remediate any contamination it causes to the Lands as a result of the exercise of its vegetation management rights under paragraph 2.1(c)(vi) of this Agreement.

#### **6.0 COVENANTS OF HYDRO**

6.1 Hydro covenants with the Grantor that:

- (a) After the construction of the Works, or any relocation of the Works in accordance with Section 8.1 on or about the Lands, Hydro will cause that portion of the Lands used by Hydro for the Works as contemplated in subsection 2.1(a) to be surveyed by a British Columbia Land Surveyor and will deliver such survey plan to the Grantor. Upon the delivery of such survey plan to the Grantor, that portion of the Lands so surveyed will be deemed to be the Right of Way Area for purposes of interpreting this Agreement and as modified under this Agreement from time to time. The Grantor authorizes Hydro and the registrar of the relevant land title office to do all things necessary in relation to the filing of the survey plan for the Right of Way

Area, including inserting the number assigned by the relevant land title office to such plan;

- (b) Hydro shall pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged to the account of Hydro which relate to the Works and which Hydro is liable to pay;
- (c) Hydro shall keep the portions of the Lands used by Hydro under this Agreement in a safe, clean and sanitary condition to the extent the condition relates to the use or occupation of the Lands by Hydro, and on written notice from the Grantor, to make safe, clean, and sanitary any portion of them that contravene the provisions of this covenant, provided that Hydro has no obligation to keep any portion of the Lands suitable for use by anyone except Hydro;
- (d) Hydro shall bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
- (e) Hydro shall take all reasonable steps and precautions to minimize disturbance of any archaeological material discovered by Hydro on the Lands, and to immediately notify the Grantor;
- (f) Hydro shall not bury debris or rubbish of any kind on the Lands in excavations or backfill, and to remove shoring and similar temporary structures as backfilling proceeds;
- (g) Hydro shall not commit or suffer any wilful or voluntary waste, spoil or destruction on the Lands, or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to the Grantor, except to the extent required by Hydro acting reasonably, to exercise its rights under this Agreement; and
- (h) Hydro shall permit the Grantor to enter upon the Right of Way Area at any time to examine its condition.

## **7.0 WORK PLANS**

7.1 Except in the case of an emergency or reasonably apprehended emergency, Hydro will provide to the Grantor a written work plan describing the proposed work located on, outside or related to the Lands prior to undertaking any of the following work under this Agreement:

- (a) construction of any new Works;
- (b) relocation of any Works; and
- (c) construction or relocation of any Access Improvements.

In accordance with this Section 7.1, prior to undertaking any work, Hydro will deliver a copy of the work plan to the Grantor for its review and comment by the Grantor. The Grantor will, no more than thirty (30) days after receiving the work plan, provide to Hydro in writing any comments that it may have, and Hydro will use reasonable efforts to accommodate any suggestions or requests made by the Grantor to Hydro provided they do not result in delays, increased costs or technical difficulties.

## **8.0 RELOCATION OF WORKS DUE TO CHANGE**

8.1 If a material change occurs to the Lands, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area or the Excluded Right of Way Area unsuitable for any of the Works, then the Grantor will consent, without charge, to the relocation and replacement of such Works to a new location on the Lands, as follows:

- (a) Hydro will before undertaking any work, deliver a work plan to the Grantor indicating the contemplated relocation of the Works for approval by the Grantor, which approval will not be unreasonably withheld, delayed or conditioned;
- (b) Hydro will take into account any likely material effect of the relocated Works on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by Hydro for the relocated Works in relation to alternative locations;
- (c) the relocated Works will be covered by the terms and conditions of this Agreement; and
- (d) provided the Grantor is not responsible for Hydro having to relocate the Works, Hydro will pay the Grantor any difference between:
  - (i) the then current fair market value of the new Right of Way Area, and,
  - (ii) the then current fair market value of any area to be removed from the Right of Way Area, or the Excluded Right of Way Area.

## **9.0 RELOCATION OF WORKS AT THE REQUEST OF THE GRANTOR**

9.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, Hydro will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

- (a) the new location is, in the reasonable opinion of Hydro, suitable for use for the relocated Works considering engineering feasibility, construction, maintenance and operation, and cost factors;
- (b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;

- (c) the Grantor agrees to pay all reasonable costs and expenses, including costs of design, supervision and construction (before any relocation, the Grantor will pay the costs and expenses as estimated by Hydro, with appropriate adjustments based on actuals after the relocation is complete); and
- (d) the rights, liberties and rights of way under this Agreement will extend to the relocated Works and associated areas, so that it has similar priority over other charges and encumbrances, and Hydro will thereafter surrender its interest in the portion of the Lands no longer required.

## **10.0 REMOVAL OF WORKS**

10.1 If Hydro no longer requires all or a portion of the Right of Way Area, then Hydro shall, in respect of such Right of Way Area:

- (a) quit peaceably such Right of Way Area;
- (b) remove any Access Improvements no longer required in relation to such Right of Way Area;
- (c) remove all above ground Works from such Right of Way Area within a reasonable period of time and any Works remaining on that portion of the Right of Way Area will be absolutely forfeited to and become the property of the Grantor. If the Grantor removes any remaining above ground Works within four (4) years, Hydro will, on demand by the Grantor, reimburse the Grantor for all reasonable costs of removal; and
- (d) remain liable for any environmental damage to the Lands arising from any below ground Works that remain on or in such Right of Way Area, except if the Grantor uses or authorizes the use of any of the remaining below ground Works for any purpose then Hydro will not be liable for any environmental damage caused by the Grantor's use, or authorized use; and to the extent necessary, this covenant will survive the termination of this Agreement.

## **11.0 COVENANTS OF THE GRANTOR**

11.1 The Grantor covenants with Hydro that:

- (a) Hydro shall and may peaceably enjoy and hold its rights under this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any other person lawfully claiming from or under the Grantor, and by the exercise of any authority under the Final Agreement, provided however that nothing in this subsection 11.1(a) shall limit the Grantor's right of inspection pursuant to subsection 6.1(h);
- (b) without limiting the generality of subsection 11.1(a), the Grantor agrees that Hydro, in carrying out its rights and obligations under this Agreement, is only subject to industry standards, and applicable statutes, regulations, by-laws and

lawful requirements of any one or combination of federal and/or provincial authorities;

- (c) if the Grantor passes and attempts to enforce against Hydro any law, regulation, standard or requirement in relation to the Works or its rights under this Agreement that is in excess of any federal or provincial law, regulation or prevailing industry standard, and which results in a material increase to any or all of Hydro's costs than Hydro would otherwise incur in respect of all activities or things necessary or incidental to the business of Hydro and operation of the Works pursuant to this Agreement, then the Grantor shall indemnify and hold harmless Hydro for any additional costs required or incurred to comply with such law, regulation, standard, or requirement;
- (d) the Grantor will not permit or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, fill, pile of material, obstruction, equipment, thing or inflammable substance, or plant any vegetation upon the Area of the Works, if any such action or thing, in the reasonable opinion of Hydro:
  - (i) may interfere with or endanger the Works or any part thereof or the installation, operation, maintenance, removal or replacement of the Works or any part thereof;
  - (ii) may obstruct access to the Works or any part thereof by those authorized by Hydro; or
  - (iii) may by its operation, use, maintenance or existence on the Area of the Works, create or increase any hazard to persons or property in relation to the Works;
- (e) the Grantor will not diminish or increase the ground elevation in the Right of Way Area by any method, including piling any material or creating any excavation, drain, or ditch in the Right of Way Area, unless permission in writing from Hydro has first been received, which permission will not be unreasonably withheld, conditioned or delayed;
- (f) the Grantor will not carry out blasting or aerial logging operations on or adjacent to the Area of the Works without prior written permission from Hydro, in its sole discretion;
- (g) the Grantor will not use or authorize the use of the portions of the Right of Way Area for the regular, or organized parking of vehicles without the prior written permission from Hydro, in its sole determination, provided that nothing in this subsection is intended to prevent safe temporary parking of vehicles;
- (h) the Grantor will not park, or authorize to be parked on the Right of Way Area any vehicle or equipment if the parking of such vehicle does not comply with

the requirements of the Canadian Standards Association's Canadian Electrical Code, as may be amended from time to time; and

- (i) the Grantor will not use, or authorize the use of the Right of Way Area for fuelling any vehicle or equipment;
- (j) the Grantor will not intentionally do or authorize any act or thing that injures or endangers the Works;
- (k) the Grantor will not use or authorize the use of the Right of Way Area for any purpose, including the construction of any improvements, that in the sole opinion of Hydro would be unsafe or would interfere with Hydro's use of the Right of Way Area; and
- (l) except for the consideration payable by Hydro on the execution of this Agreement in the amount of \$10, the Grantor will not assess any fee, charge, toll, levy or expense on or in connection with the rights herein granted.

## **12.0 COMPENSATION FOR DAMAGES**

12.1 Subject to the rights granted in this Agreement, Hydro covenants with the Grantor that if Hydro or its contractors, damage any structures, buildings, fixtures, improvements, or chattels outside of the Area of the Works, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, trails, bridges, or roads on the Lands, and such damage or contamination is not caused as a result of the Grantor's breach of the terms of this Agreement or the negligence or wilful act of the Grantor or its contractors, agents or permittees, that Hydro will:

- (a) compensate the Grantor for such damages, to the extent caused by Hydro; or
- (b) within a reasonable period of time, repair in a good and workman-like manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.

12.2 Compensation paid to the Grantor for merchantable timber pursuant to Section 12.1 will be in accordance with generally accepted principles of timber valuation and the parties agree that on payment, title to any timber cut on the Lands under this Agreement will vest in Hydro.

## **13.0 INDEMNITY**

13.1 Hydro will save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

- (a) any breach, violation or non-performance by Hydro of any of Hydro's covenants, conditions or obligations under this Agreement; and

- (b) any act or omission on the part of Hydro in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, but only to the extent any such matter is found to be the responsibility of Hydro and was not contributed to by the negligence of, or breach, violation or non-performance by the Grantor or by those for whom the Grantor is responsible at law, and not for any matters based on nuisance or the rule in *Rylands v. Fletcher* unless Hydro was negligent.

## **14.0 DISPUTE RESOLUTION**

14.1 Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- (a) the parties will attempt to resolve disputes by negotiations, including timely disclosure of all relevant facts, information and documents;
- (b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;
- (c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution, in accordance with the *Commercial Arbitration Act* [RSBC 1996] c. 54. If the parties do not agree to arbitration, then any party may refer the matter to a court of competent jurisdiction; except that it is not incompatible with this subsection for a party to apply to a court of competent jurisdiction at any time for interim or conservatory relief and for the court to grant that relief.

## **15.0 RUNS WITH THE LAND**

15.1 This Agreement runs with and binds the Lands to the extent necessary to give full force and effect to this Agreement.

## **16.0 NOTICE**

16.1 Whenever it is required or permitted that notice or demand be given by any party to the other, the same will be in writing and will be forwarded to the following addresses:

To the Grantor:  
Kitsumkalum First Nation  
P.O. Box 544  
Terrace, British Columbia  
V8G 4B5

Fax: (250) 635-4622



To Hydro:  
Manager, Properties  
BC Hydro  
8th Floor – 333 Dunsmuir Street  
Vancouver, British Columbia  
V6B 5R3

Fax: (604) 623-3951

- (a) If any question arises as to the date on which such notice was communicated to any party, it will be deemed to have been given on the earlier of:
  - (i) if it was delivered personally or by courier, on the next business day;
  - (ii) if it was sent by fax, on the next business day; or
  - (iii) if it was sent by mail, on the sixth day after the notice was mailed.

In the event of postal disruption or an anticipated postal disruption, notices may not be given by mail.

- (b) A change of address by any party may be given to the others in accordance with this provision.

## **17.0 GENERAL**

- 17.1 A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.
- 17.2 No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.
- 17.3 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties and their respective successors and assigns.
- 17.4 Hydro may grant licences respecting its rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor provided that no licence will act as a release of any of Hydro's obligations set out in this Agreement.
- 17.5 A delegate appointed by the Grantor may provide Hydro with all commentary, authorizations and approvals required pursuant to this Agreement including without limitation, all commentary, authorizations or approvals required in relation to work plans, approval of access routes, and relocations or replacements of any Works, as contemplated in this Agreement.

- 17.6 Nothing in this Agreement will be interpreted or construed to limit or restrict the rights of Hydro as a Public Utility under the Final Agreement.
- 17.7 The Grantor agrees to execute an amendment of this Agreement, at the request of Hydro, in order to:
- (a) extend the application of this Agreement to any additional lands that are acquired by the Grantor after the Effective Date of the Final Agreement, on which Works are located, provided such additional lands are treaty settlement lands within the meaning of the Final Agreement, or
  - (b) reflect any adjustment that may be needed in the description of the Lands as a result of a re-survey of the Lands, or a portion thereof.

Hydro will be responsible for the cost of preparing any documentation that may be necessary to amend the Agreement, and for any related costs of filing the document in the appropriate land registry.

- 17.8 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings, communications and agreements between the parties hereto with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, either express or implied, between the parties other than as expressly set forth in this Agreement.
- 17.9 This Agreement may not be modified or amended, nor any provision waived, discharged or terminated, except by an instrument in writing signed by the parties.

## **18.0 INTERPRETATION**

18.1 In this Agreement:

- (a) all attached schedules form an integral part of this Agreement;
- (b) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of this Agreement;
- (c) a reference to “party” or “parties” in this Agreement is a reference to Grantor or Hydro, or both, as the context requires;
- (d) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination;
- (e) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;

- (f) any reference to a statute means that statute and any regulations made under it, all as amended or replaced from time to time; and
- (g) any reference to an Article, Section, subsection, paragraph or subparagraph means the appropriate part of this Agreement, which for ease of reference is illustrated as follows:

1.00 Article;

1.1 Section;

(a) subsection;

(i) paragraph; and

(A) subparagraph.



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**Appendix D**

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**Exclusions to Kitsumkalum Lands**

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*Note: The Parties will update the Appendices prior to the Effective Date.*

<b>Crown Corridor</b>	<b>General Location</b>
FSR 7817	Appendix B-3, Plans 2, 3, 4, 7, 9, 10, 11, 14, 18 and 22
Nisga'a Highway 113	Appendix B-3, Plans 1, 2, 3, 5, 7, 9, 10, 11, 14, 18 and 22
Yellowhead Highway 16	Appendix B-3, Plans 21 and 22



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## Appendix E

### Expropriation

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#### Part 1: Federal Expropriation

*Note: The Parties will update the Appendices prior to the Effective Date.*

1. The Governor-in-Council may consent to an expropriation of an interest in Kitsumkalum Lands if the expropriation is justifiable in accordance with paragraph 3 and necessary for a public purpose.
2. For greater certainty, for the purposes of paragraph 1, an expropriation is necessary for a public purpose if it is authorized by federal legislation.
3. Where a fee simple interest in a parcel of Kitsumkalum Land is held by a Person other than Kitsumkalum, a Kitsumkalum Corporation, or a Kitsumkalum Institution, this Appendix does not apply to the expropriation of any interest in that parcel and, for greater certainty, any such interest may be expropriated under federal legislation.
4. The Governor-in-Council may consent to any expropriation of an interest in Kitsumkalum Lands only if the Governor-in-Council is satisfied that, in addition to any other legal requirements that may apply, that the expropriation is justifiable such that the following requirements have been met:
  - a) there is no other reasonably feasible alternative land to acquire that is not Kitsumkalum Lands;
  - b) reasonable efforts have been made by the Federal Expropriating Authority to acquire the interest in Kitsumkalum Lands through agreement with Kitsumkalum;
  - c) the most limited interest in Kitsumkalum Lands necessary is expropriated for the shortest time possible; and
  - d) information relevant to the expropriation, other than documents that would be protected from disclosure pursuant to federal legislation, has been provided to Kitsumkalum.
5. Prior to the Governor-in-Council issuing an order consenting to the expropriation of an interest in Kitsumkalum Lands, the Federal Expropriating Authority will provide to Kitsumkalum, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements set out in paragraph 4.
6. If Kitsumkalum objects to a proposed expropriation of an interest in Kitsumkalum Lands, it may, within 60 days after the report has been provided to Kitsumkalum in accordance with paragraph 5, by providing notice in writing to the Federal Expropriating Authority refer the matter directly to neutral evaluation under Stage Two of the Dispute Resolution Chapter for review of the steps taken to satisfy the requirements set out in paragraph 4.
7. The Federal Expropriating Authority may not seek Governor-in-Council consent to the expropriation of an interest in Kitsumkalum Lands:

- a) before the expiration of the period referred to in paragraph 6;
  - b) if Kitsumkalum has referred the matter to a neutral evaluator in accordance with paragraph 6, before the neutral evaluator has delivered an opinion on the matter, such opinion to be rendered within 60 days of the referral being made; or
  - c) within such additional time as Kitsumkalum and the Federal Expropriating Authority may agree.
8. Without limiting the generality of the Dispute Resolution Chapter, the opinion of the neutral evaluator/facilitator under subparagraph 7(b):
- a) is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and Kitsumkalum in court or in any other forum;
  - b) will not be admissible in any legal proceedings, unless otherwise required by law; and
  - c) is not binding on the Governor-in-Council under paragraphs 1 and 4.
9. If a fee simple interest in a parcel of Kitsumkalum Lands is expropriated by a Federal Expropriating Authority, the Federal Expropriating Authority will make reasonable efforts to identify replacement land within the Kitsumkalum Area, being Crown land or land available on a willing-seller willing-buyer basis of equivalent or greater size and comparable value and, if acceptable to Kitsumkalum, to acquire and offer the replacement land to Kitsumkalum as partial or full compensation for the expropriation. If the Federal Expropriating Authority and Kitsumkalum are unable to agree on the provision of replacement land as compensation, the Federal Expropriating Authority will provide Kitsumkalum with other compensation in accordance with this Agreement.
10. Subject to paragraph 12, if the replacement land identified by the Federal Expropriating Authority would result in the total size of Kitsumkalum Lands being less than at the Effective Date and Kitsumkalum does not agree that the replacement land is of comparable value to the interest in Kitsumkalum Lands being expropriated, Kitsumkalum may refer the issue of whether the replacement land is of comparable value to the interest in Kitsumkalum Lands being expropriated to be finally determined by arbitration under the Dispute Resolution Chapter.
11. The total value of compensation for an interest in Kitsumkalum Lands expropriated by a Federal Expropriating Authority pursuant to this Appendix will be based upon the following factors:
- a) the market value of the expropriated interest or of the Kitsumkalum Lands in which an interest has been expropriated;
  - b) the replacement value of any improvement to the Kitsumkalum Lands in which an interest has been expropriated;
  - c) any expenses or losses resulting from the disturbance directly attributable to the expropriation;
  - d) any reduction in the value of any interest in Kitsumkalum Lands that is not expropriated which directly relates to the expropriation;



- e) any adverse effect on any cultural or other special value of Kitsumkalum Lands in which an interest has been expropriated provided that the cultural or other special value is only applied to an interest in Kitsumkalum Lands recognized in law and held by Kitsumkalum, and provided that there will be no increase in the total value of compensation on account of any Aboriginal rights, title or interest; and
  - f) the value of any special economic advantage arising out of or incidental to the occupation or use of the Kitsumkalum Lands by Kitsumkalum to the extent that the value is not otherwise compensated.
12. Subject to paragraph 13, if the total value of compensation cannot be agreed upon between the Federal Expropriating Authority and Kitsumkalum, or if there is disagreement on whether the combination of replacement land and cash is equal to the total value of compensation, the Federal Expropriating Authority or Kitsumkalum may refer the matter of the total value of compensation for dispute resolution under the Dispute Resolution Chapter.
  13. A dispute on the valuation of replacement land under paragraph 9, or on the total value of compensation under paragraph 11, or on the terms and conditions of the return of land under paragraph 22, will not delay the expropriation.
  14. Interest is payable on compensation from the Effective Date of an expropriation at the interest rate payable in accordance with federal legislation.
  15. If a Federal Expropriating Authority expropriates or otherwise acquires a fee simple interest in a parcel of Kitsumkalum Lands, the land will no longer be Kitsumkalum Lands.
  16. If a Federal Expropriating Authority expropriates less than a fee simple interest in a parcel of Kitsumkalum Lands:
    - a) the parcel of land retains its status as Kitsumkalum Lands;
    - b) the parcel of land remains subject to Kitsumkalum Law that are otherwise applicable, except to the extent that such laws are inconsistent with or interferes with the use of the parcel of land for which the expropriation took place; and
    - c) Kitsumkalum may continue to use and occupy the parcel of land, except to the extent the use or occupation is inconsistent with or interferes with the expropriation in the view of the Federal Expropriating Authority.
  17. Canada and British Columbia will consent to replacement land, transferred by a Federal Expropriating Authority to Kitsumkalum as part of the compensation in accordance with paragraph 8, being added to Kitsumkalum Lands if:
    - a) the replacement land is located in an area that is free from overlap with:
      - i. other First Nations that have claims of legal interests,
      - ii. an area subject to treaty negotiations,
 unless that First Nation consents; and
    - b) the addition of replacement land to Kitsumkalum Lands will not result in Canada or British Columbia being required to assume financial or other obligations.

18. If an expropriated interest in a parcel of Kitsumkalum Lands is no longer required for the purpose for which it was expropriated, the federal department, agency, or other entity, or its successors or assigns, will ensure that the interest in land is returned to Kitsumkalum, on the terms and conditions negotiated in accordance with paragraph 23.
19. If a fee simple interest in a parcel of land is returned to Kitsumkalum in accordance with this section, the parcel of land will become Kitsumkalum Lands on the date of the transfer of the fee simple interest in the parcel of land to Kitsumkalum.
20. If a parcel of Kitsumkalum Lands is no longer Kitsumkalum Lands under paragraph 14, or if replacement lands are added to Kitsumkalum Lands under paragraph 16, or if land is returned to Kitsumkalum under paragraph 17, Appendix B will be amended in accordance with the process set out in the Final Agreement.
21. The consent of the Governor-in-Council is not required to give effect to a reversion under paragraph 18, and the federal department, agency or other entity who holds the expropriated interest will determine the disposition of any improvements made to the land in a manner consistent with the agreement reached pursuant to paragraph 22.
22. Kitsumkalum agrees that the return of an interest in Kitsumkalum Lands in accordance with paragraph 18 will not result in Canada or British Columbia assuming financial or other obligations, unless agreed to in writing at the time of the expropriation.
23. At the time of the expropriation, Kitsumkalum and the Federal Expropriating Authority will negotiate the terms and conditions of the return of an expropriated interest in Kitsumkalum Lands, including:
  - a) requirements relating to financial considerations based on market value principles;
  - b) the condition of the land to be returned; and
  - c) the process for resolving any disputes around the implementation of these terms and conditions.
24. Where the terms and conditions of the return of an expropriated interest in Kitsumkalum Lands cannot be agreed upon by Kitsumkalum and the Federal Expropriating Authority at the time of the expropriation, either Kitsumkalum or the Federal Expropriating Authority, may refer the issue to be finally determined by arbitration under the Dispute Resolution Chapter.
25. Except as otherwise provided in paragraphs 6, 10, 12 and 24 of this Appendix, no conflict or dispute between the Parties respecting the interpretation, application or implementation of paragraphs 62 to 66 of the Lands Chapter or this Appendix will go to dispute resolution under the Dispute Resolution Chapter.
26. For greater certainty, except to the extent that the Lands Chapter and the provisions of this Appendix modify the application of federal legislation relating to an expropriation of Kitsumkalum Lands, all federal legislation relating to expropriation will apply to an expropriation of Kitsumkalum Lands under the Lands Chapter and the provisions of this Appendix.

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**Appendix E**  
**Expropriation**

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**Part 2: Provincial Expropriation**

*Note: The Parties will update the Appendices prior to the Effective Date.*



**Appendix F**  
**Map of Harvest Area**

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*Note: The Parties will update the Appendices prior to the Effective Date.*









**Appendix G**  
**Kitsumkalum Private Lands**

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*Note: The Parties will update the Appendices prior to the Effective Date.*



## **Appendix H**

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### **Map of Watersheds in the Kitsumkalum Area**

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*Note: The Parties will update the Appendices prior to the Effective Date.*



**Appendix I**  
**Sites of Cultural Significance**

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*Note: The Parties will update the Appendices prior to the Effective Date.*



## **Appendix J**

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### **Dispute Resolution Procedures**

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**Appendix J-1 Collaborative Negotiations**

**Appendix J-2 Mediation**

**Appendix J-3 Technical Advisory Panel**

**Appendix J-4 Neutral Evaluation**

**Appendix J-5 Arbitration**





## Appendix J-1

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### Collaborative Negotiations

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#### Definitions

1. In this Appendix:
  - a) "**Chapter**" means the Dispute Resolution Chapter of the Final Agreement;
  - b) "**Party**" means a participating Party to collaborative negotiations under this Appendix; and
  - c) "**Section**" means a Section in this Appendix.

#### General

2. Collaborative negotiations commence:
  - a) on the date of delivery of a written notice requiring the commencement of collaborative negotiations; or
  - b) in the case of negotiations in the circumstances described in subparagraph 7(c) of the Chapter, on the date of the first negotiation meeting.

#### Notice

3. A notice under paragraph 15 of the Chapter requiring the commencement of collaborative negotiations will include the following:
  - a) the names of the Parties directly engaged in the Disagreement;
  - b) a brief summary of the particulars of the Disagreement;
  - c) a description of the efforts made to date to resolve the Disagreement;
  - d) the names of the individuals involved in those efforts; and
  - e) any other information that will help the Parties.

#### Representation

4. A Party may attend collaborative negotiations with or without legal counsel.
5. At the commencement of the first negotiation meeting, each Party will advise the other Parties of any limitations on the authority of its representatives.

#### Negotiation Process

6. The Parties will convene their first negotiation meeting in collaborative negotiations, other than those described in subparagraph 7(c) of the Chapter, within 21 days after the commencement of the collaborative negotiations.
7. Before the first scheduled negotiation meeting, the Parties will discuss and attempt to reach agreement on any procedural issues that will facilitate the collaborative negotiations, including the requirements of paragraph 26 of the Chapter.
8. For purposes of subparagraph 26(a) of the Chapter, "timely disclosure" means disclosure made within 15 days after a request for disclosure by a Party.

9. The Parties will make a serious attempt to resolve the Disagreement by
  - a) identifying underlying interests;
  - b) isolating points of agreement and Disagreement;
  - c) exploring alternative solutions;
  - d) considering compromises or accommodations; and
  - e) taking any other measures that will assist in resolution of the Disagreement.
10. No transcript or recording will be kept of collaborative negotiations, but this does not prevent a person from keeping notes of the negotiations.

### **Confidentiality**

11. In order to assist in the resolution of a Disagreement, collaborative negotiations will not be open to the public.
12. The Parties, and all persons, will keep confidential:
  - a) all oral and written information disclosed in the collaborative negotiations; and
  - b) the fact that this information has been disclosed.
13. The Parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the collaborative negotiations, any oral or written information disclosed in or arising from the collaborative negotiations, including:
  - a) any documents of other Parties produced in the course of the collaborative negotiations that are not otherwise produced or producible in that proceeding;
  - b) any views expressed, or suggestions made, by any Party in respect of a possible settlement of the Disagreement;
  - c) any admissions made by any Party in the course of the collaborative negotiations, unless otherwise stipulated by the admitting Party; and
  - d) the fact that any Party has indicated a willingness to make or accept a proposal for settlement.
14. Sections 12 and 13 do not apply:
  - a) in any proceeding for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of the collaborative negotiation;
  - b) if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
  - c) if the oral or written information referred to in these Sections is in the public forum.

### **Right to Withdraw**

15. A Party may withdraw from collaborative negotiations at any time.

## **Termination of Collaborative Negotiations**

16. Collaborative negotiations are terminated when any of the following occurs:
  - a) the expiration of:
    - i. 30 days, or
    - ii. in the case of collaborative negotiations in the circumstances described in subparagraph 7(c) of the Chapter, 120 days after the first scheduled negotiation meeting, or any longer period agreed to by the Parties in writing;
  - b) a Party directly engaged in the Disagreement withdraws from the collaborative negotiations under Section 15;
  - c) the Parties agree in writing to terminate the collaborative negotiations; or
  - d) the Parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.



## Appendix J-2

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### Mediation

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#### Definitions

1. In this Appendix:
  - a) "**Chapter**" means the Dispute Resolution Chapter of the Final Agreement;
  - b) "**Party**" means a participating Party to a mediation under this Appendix; and
  - c) "**Section**" means a Section in this Appendix.

#### General

2. A mediation commences on the date the Parties directly engaged in the Disagreement have agreed in writing to use mediation, or are deemed to have agreed to use mediation, under paragraph 24 of the Chapter.

#### Appointment of Mediator

3. A mediation will be conducted by one mediator jointly appointed by the Parties.
4. A mediator will be:
  - a) an experienced and skilled mediator, preferably with unique qualities or specialized knowledge that would be of assistance in the circumstances of the Disagreement; and
  - b) independent and impartial.
5. If the Parties fail to agree on a mediator within 15 days after commencement of a mediation, the appointment will be made by the Neutral Appointing Authority on the written request of a Party that is copied to the other Parties.
6. Subject to any limitations agreed to by the Parties, a mediator may employ reasonable and necessary administrative or other support services.

#### Requirement to Withdraw

7. At any time a Party may give the mediator and the other Parties a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the Party has justifiable doubts as to the mediator's independence or impartiality.
8. On receipt of a written notice under Section 7, the mediator must immediately withdraw from the mediation.
9. A person who is a Kitsumkalum Member, or related to a Kitsumkalum Member, must not be required to withdraw under Section 7 solely on the grounds of being a Kitsumkalum Member or of that relationship to a Member.

## **End of Appointment**

10. A mediator's appointment terminates if:
  - a. the mediator is required to withdraw under Section 8;
  - b. the mediator withdraws from office for any reason; or
  - c. the Parties agree to the termination.
11. If a mediator's appointment terminates, a replacement mediator will be appointed using the procedure in Sections 3 to 5 and the required time period commences from the date of termination of the appointment.

## **Representation**

12. A Party may attend a mediation with or without legal counsel.
13. If a mediator is a lawyer, the mediator must not act as legal counsel for any Party.
14. At the commencement of the first meeting of a mediation, each Party will advise the mediator and the other Parties of any limitations on the authority of its representatives.

## **Conduct of Mediation**

15. The Parties will:
  - a) make a serious attempt to resolve the Disagreement by:
    - i. identifying underlying interests,
    - ii. isolating points of agreement and Disagreement,
    - iii. exploring alternative solutions, and
    - iv. considering compromises or accommodations; and
  - b) cooperate fully with the mediator and give prompt attention to, and respond to, all communications from the mediator.
16. A mediator may conduct a mediation in any manner the mediator considers necessary and appropriate to assist the Parties to resolve the Disagreement in a fair, efficient and cost-effective manner.
17. Within 7 days of appointment of a mediator, each Party will deliver a brief written summary to the mediator of the relevant facts, the issues in the Disagreement, and its viewpoint in respect of them and the mediator will deliver copies of the summaries to each Party at the end of the 7 day period.
18. A mediator may conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting the Parties.
19. Disclosures made by any Party to a mediator in private caucus must not be disclosed by the mediator to any other Party without the consent of the disclosing Party.
20. No transcript or recording will be kept of a mediation meeting but this does not prevent a person from keeping notes of the negotiations.

## **Confidentiality**

21. In order to assist in the resolution of a Disagreement, a mediation will not be open to the public.
22. The Parties, and all persons, will keep confidential:
  - a) all oral and written information disclosed in the mediation; and
  - b) the fact that this information has been disclosed.
23. The Parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the mediation, any oral or written information disclosed in or arising from the mediation, including:
  - a) any documents of other Parties produced in the course of the mediation that are not otherwise produced or producible in that proceeding;
  - b) any views expressed, or suggestions, or proposals made in respect of a possible settlement of the Disagreement;
  - c) any admissions made by any Party in the course of the mediation, unless otherwise stipulated by the admitting Party;
  - d) any recommendations for settlement made by the mediator; and
  - e) the fact that any Party has indicated a willingness to make or accept a proposal or recommendation for settlement.
24. Sections 22 and 23 do not apply:
  - a) in any proceeding for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of a mediation;
  - b) if the adjudicator in any proceeding determines that the interests of public or the administration of justice outweigh the need for confidentiality; or
  - c) if the oral or written information referred to in those Sections is in the public forum.
25. A mediator, or anyone retained or employed by the mediator, is not compellable in any proceeding to give evidence about any oral and written information acquired or opinion formed by that person as a result of the mediation, and all Parties will oppose any effort to have that person or that information subpoenaed.
26. A mediator, or anyone retained or employed by the mediator, is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Party to the mediation.

## **Referral of Issues to Other Processes**

27. During a mediation the Parties may agree to refer particular issues in the Disagreement to independent fact-finders, expert panels or other processes for opinions or findings that may assist them in the resolution of the Disagreement, and in that event, the Parties must specify:
  - a) the terms of Reference for the process;

- b) the time within which the process must be concluded; and
  - c) how the costs of the process are to be allocated to the Parties.
28. The time specified for concluding a mediation will be extended for 15 days following receipt of the findings or opinions rendered in a process described under Section 27.

### **Right to Withdraw**

29. A Party may withdraw from a mediation at any time by giving written notice of its intent to the mediator.
30. Before a withdrawal is effective, the withdrawing Party will:
- a) speak with the mediator;
  - b) disclose its reasons for withdrawing; and
  - c) give the mediator the opportunity to discuss the consequences of withdrawal.

### **Termination of Mediation**

31. A mediation is terminated when any of the following occurs:
- a) subject to Section 28, the expiration of 30 days after the appointment of the mediator, or any longer period agreed by the Parties in writing;
  - b) the Parties have agreed in writing to terminate the mediation or not to appoint a replacement mediator under Section 11;
  - c) a Party directly engaged in the Disagreement withdraws from the mediation under Section 29; or
  - d) the Parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

### **Mediator Recommendation**

32. If a mediation is terminated without the Parties reaching agreement, the Parties may agree to request the mediator to give a written non-binding recommendation for settlement, but the mediator may decline the request without reasons.
33. Within 15 days after delivery of any mediator's recommendation under Section 32, the Parties will meet with the mediator to attempt to resolve the Disagreement.

### **Costs**

34. A Party withdrawing from a mediation under Section 29 is not responsible for any costs of the mediation that are incurred after the date that Party's withdrawal takes effect.



## Appendix J-3

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### Technical Advisory Panel

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#### Definitions

2. In this Appendix:
  - a) "**Chapter**" means the Dispute Resolution Chapter of the Final Agreement;
  - b) "**Member**" means a Member of the Panel;
  - c) "**Panel**" means a technical advisory panel appointed under this Appendix;
  - d) "**Party**" means a participating Party to a Reference under this Appendix;
  - e) "**Reference**" means a reference of a Disagreement to the Panel; and
  - f) "**Section**" means a Section in this Appendix.

#### General

2. A question of law may not be referred to a Panel.
3. A Reference commences on the date the Parties directly engaged in the Disagreement have agreed in writing to use a technical advisory Panel under paragraph 24 of the Chapter.

#### Appointment of Panel Members

4. A Panel will have three Members unless the Parties agree on a Panel of five Members.
5. A Member will be skilled and knowledgeable in the technical or scientific subject matter or issues of the Disagreement.
6. If there are two Parties, then the Panel will have:
  - a) three Members, each Party will appoint one Member and the two appointed Members will jointly appoint the third Member; or
  - b) five Members, each Party will appoint two Members and the four appointed Members will jointly appoint the fifth Member.
7. If there are three Parties and the Panel will have:
  - a) three Members, each Party will appoint one Member; or
  - b) five Members, each Party will appoint one Member and the three appointed Members will jointly appoint the fourth and fifth Members.
8. In the appointment procedures under Sections 6 and 7, if:
  - a) a Party fails to appoint the required number of Members within 30 days after commencement of the Reference; or
  - b) the appointing Members fail to appoint the required number of additional Members within 15 days after the last appointing Member was appointedthen required appointments will be made by the Neutral Appointing Authority on the written request of a Party that is copied to the other Parties.

## **End of Appointment**

9. The appointment of a Member who is jointly appointed by the Parties, by the appointing Members, or by the Neutral Appointing Authority, terminates if:
  - a) the Member withdraws from office for any reason; or
  - b) the Parties agree to the termination.
10. The appointment of a Member appointed by one Party, or by the Neutral Appointing Authority in place of the Party, terminates if:
  - a) the Member withdraws from office for any reason; or
  - b) the appointing Party terminates the appointment.
11. If the appointment of a Member jointly appointed by the Parties, by the appointing Members, or by the Neutral Appointing Authority in place of the Parties or Members, terminates, a replacement Member will be appointed under Section 6 or 7, as applicable, within the required time commencing from the termination of the former Member's appointment.
12. Subject to Section 13, if the appointment of a Member appointed by one Party or by the Neutral Appointing Authority in place of the Party terminates, a replacement Member will be appointed under Section 6 or 7, as applicable, within the required time commencing from the termination of the former Member's appointment.
13. A Party may elect not to replace a Member it had appointed but the Party may not withdraw from the Reference except as permitted under Sections 31 to 35.

## **Terms of Reference**

14. Not more than 15 days after the appointment of the last Member of a Panel, the Parties must provide the Panel with written terms of Reference that set out at least the following:
  - a) the Parties to the Disagreement;
  - b) the subject matter or issues of the Disagreement;
  - c) the kind of assistance that the Parties request from the Panel, including giving advice, making determinations, finding facts, conducting, evaluating and reporting on studies and making recommendations;
  - d) the time period within which the Parties request the assistance to be provided;
  - e) the time periods or stages of the Reference at the conclusion of which the Panel must provide the Parties with written interim reports on the Panel's progress on the referral and on expenditures under the budget described in Section 16 as they relate to that progress;
  - f) the time within which the Panel must provide the Parties with the budget described in Section 16; and
  - g) any limitations on the application of Sections 36 to 42 to the Reference.
15. The Parties may discuss the proposed terms of Reference with the Panel before they are finally settled.

16. Within the time referred to in Section 14(f), the Panel will provide the Parties with a budget for the costs of conducting the Reference, including:
  - a) fees to be paid to the Members who have been jointly appointed by the Parties, or by appointing Members;
  - b) costs of required travel, food and accommodation of Members who have been jointly appointed by the Parties, or by appointing Members;
  - c) costs of any required administrative assistance; and
  - d) costs of any studies.
17. The Parties will consider the budget submitted by the Panel and approve that budget with any agreed upon amendments before the Panel undertakes any activities under the Reference.
18. The Parties are not responsible for any costs incurred by the Panel that are in excess of those approved under Section 17, and the Panel is not authorized to incur any costs beyond that amount without obtaining prior written approval from all the Parties.
19. The Parties may amend the written terms of Reference or the budget from time to time as they consider necessary, or on recommendation of the Panel.

#### **Conduct of Reference to Panel**

20. The Parties will:
  - a) cooperate fully with the Panel;
  - b) comply with any requests made by the Panel as permitted or required under this Appendix; and
  - c) give prompt attention to and respond to all communications from the Panel.
21. Subject to any limitations or requirements given in the terms of Reference and the limits of the budget approved under Sections 17 to 19, the Panel may conduct its Reference using any procedure it considers necessary or appropriate, including holding a hearing.
22. If a hearing is held, the hearing must be conducted as efficiently as possible and in the manner the Panel specifies, after consultation with the Parties.
23. If a hearing is held, the Panel must give the Parties reasonable written notice of the hearing date, which notice must, in any event, be not less than 7 days.
24. No transcript or recording will be kept of a hearing, but this does not prevent a person attending the hearing from keeping notes of the hearing.
25. The legal rules of evidence do not apply to a hearing before the Panel.
26. The Panel will give the Parties the interim and final written reports specified in its terms of Reference within the required times.
27. A report of the Panel is not binding on the Parties.

## **Panel Business**

28. A Panel will appoint one of its Members to act as its chair.
29. The Panel chair is responsible for all communications between the Panel, the Parties and any other person to whom the Panel wishes to communicate, but this does not preclude a Member from communicating informally with a Party.
30. A Panel will make every reasonable effort to conduct its business, and fulfill its obligations under its terms of Reference, by consensus, but:
  - a) if consensus is not possible, by actions approved by a majority of its Members; or
  - b) if a majority is not possible, by actions approved by the Panel chair

## **Right to Withdraw**

31. If one of two Parties to a Reference, or two of three Parties to a Reference, are not satisfied with the progress of the Reference:
  - a) after receipt of an interim report; or
  - b) as a result of the Panel's failure to submit an interim report within the required time

the dissatisfied Party or Parties, as the case may be, may give written notice to the Panel and the other Party that the Party or Parties are withdrawing from the Reference and that the Reference is terminated.
32. If one of three Parties to a Reference is not satisfied with the progress of the Reference:
  - a) after receipt of an interim report; or
  - b) as a result of the Panel's failure to submit an interim report within the required time

the dissatisfied Party may give written notice to the Panel and the other Parties that it is withdrawing from the Reference.
33. Two Parties who receive a notice under Section 32 will advise the Panel in writing that they have agreed:
  - a) to terminate the Reference; or
  - b) to continue the Reference.
34. If no Party gives a notice under Section 31 or 32 within 10 days after:
  - a) receipt of an interim report; or
  - b) the time required to submit an interim report

all Parties will be deemed to be satisfied with the progress of the Reference until submission of the next required interim report.
35. No Party may withdraw from a Reference except as permitted under Sections 31 to 34.

## **Confidentiality**

36. The Parties may, by agreement recorded in the terms of Reference of the Panel in Section 14, limit the application of all or any part of Sections 37 to 42 in a Reference.
37. In order to assist in the resolution of the Disagreement, a Reference will not be open to the public.
38. The Parties, and all persons, will keep confidential:
  - a) all oral and written information disclosed in the Reference; and
  - b) the fact that this information has been disclosed.
39. The Parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the Reference, any oral or written information disclosed in or arising from the Reference, including:
  - a) any documents of other Parties produced in the course of the Reference that are not otherwise produced or producible in that proceeding;
  - b) any views expressed, or suggestions made, in respect of a possible settlement of the Disagreement;
  - c) any admissions made by any Party in the course of the Reference, unless otherwise stipulated by the admitting Party;
  - d) the fact that any Party has indicated a willingness to make or accept a proposal or recommendation for settlement; and
  - e) any reports of the Panel.
40. Sections 38 and 39 do not apply:
  - a) in any proceeding for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of the Reference;
  - b) if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
  - c) if the oral or written information referred to in those Sections is in the public forum.
41. A Member, or anyone retained or employed by the Member, is not compellable in any proceeding to give evidence about any oral or written information acquired or opinion formed by that person as a result of the Reference, and all Parties will oppose any effort to have that person or that information subpoenaed.
42. A Member, or anyone retained or employed by the Member, is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Party to the Reference.

## **Attempt to Resolve After Report**

43. Within 21 days after receipt of the final written report of a Panel, the Parties will meet and make an effort to resolve the Disagreement taking into account the report of the Panel or any other considerations.

44. If the Parties and the Panel agree, the Members of a Panel may attend the meeting under Section 43 and provide any necessary assistance to the Parties.

**Termination of Reference to Panel**

45. A Reference is terminated when any of the following occurs:
- a) the Reference has been terminated as permitted under Section 31 or 33;
  - b) the expiration of 30 days after receipt of the final report of the Panel, or any longer period agreed by the Parties in writing; or
  - c) the Parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

**Costs**

46. A Party is not responsible for sharing any costs of the Reference that were incurred after the date that Party notified the other Parties, under Section 32, of its withdrawal from the Reference.

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**Appendix J-4**  
**Neutral Evaluation**

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**Definitions**

1. In this Appendix:
  - a) "**Chapter**" means the Dispute Resolution Chapter of the Final Agreement;
  - b) "**Party**" means a participating Party to a neutral evaluation under this Appendix; and
  - c) "**Section**" means a Section in this Appendix.

**General**

2. A neutral evaluation commences on the date that the Parties directly engaged in the Disagreement have agreed in writing to use neutral evaluation under paragraph 24 of the Chapter.

**Appointment of Neutral Evaluator**

3. A neutral evaluation will be conducted by one person jointly appointed by the Parties.
4. A neutral evaluator will be:
  - a) experienced or skilled in the subject matter or issues of the Disagreement; and
  - b) independent and impartial.
5. If the Parties fail to agree on a neutral evaluator within 21 days after commencement of a neutral evaluation, the appointment will be made by the Neutral Appointing Authority on the written request of a Party that is copied to the other Parties.
6. Subject to any limitations agreed to by the Parties, a neutral evaluator may employ reasonable and necessary administrative or other support services.

**Requirement to Withdraw**

7. At any time a Party may give a neutral evaluator and the other Parties a written notice, with or without reasons, requiring the neutral evaluator to withdraw from the neutral evaluation on the grounds that the Party has justifiable doubts as to the neutral evaluator's independence or impartiality.
8. On receipt of a written notice under Section 7, the neutral evaluator must immediately withdraw from the neutral evaluation.
9. A person who is a Kitsumkalum Member, or related to a Kitsumkalum Member, must not be required to withdraw under Section 7 solely on the grounds of being a Kitsumkalum Member or that relationship to a Member.

**End of Appointment**

10. A neutral evaluator's appointment terminates if:
  - a) the neutral evaluator is required to withdraw under Section 8;
  - b) the neutral evaluator withdraws from office for any reason; or

- c) the Parties agree to the termination.
- 11. Unless the Parties agree otherwise, if a neutral evaluator's appointment terminates, a replacement will be appointed under Section 5 within the required time commencing from the date of the termination of the appointment.

### **Communications**

- 12. Except with respect to administrative details or a meeting under Section 31, the Parties will not communicate with the neutral evaluator:
  - a) orally except in the presence of all Parties; or
  - b) in writing without immediately sending a copy of that communication to all Parties.
- 13. Section 12 also applies to any communication by a neutral evaluator to the Parties.

### **Conduct of Neutral Evaluation**

- 14. The Parties will:
  - a) cooperate fully with the neutral evaluator;
  - b) comply with any requests made by the neutral evaluator as permitted or required under this Appendix; and
  - c) give prompt attention to and respond to all communications from the neutral evaluator.
- 15. A neutral evaluation will be conducted only on the basis of documents submitted by the Parties under Section 20 unless the Parties agree to, or the neutral evaluator requires, additional submissions or other forms of evidence.
- 16. If a hearing is held, the hearing must be conducted as efficiently as possible and in the manner the neutral evaluator specifies, after consultation with the Parties.
- 17. If a hearing is held, the neutral evaluator must give the Parties reasonable written notice of the hearing date, which notice must, in any event, be not less than 7 days.
- 18. No transcript or recording will be kept of a hearing, but this does not prevent a person attending the hearing from keeping notes of the hearing.
- 19. The legal rules of evidence do not apply to a neutral evaluation.
- 20. Within 15 days after the appointment of a neutral evaluator, each Party must deliver to the other Parties and to the neutral evaluator a written submission respecting the Disagreement, including facts upon which the Parties agree or disagree, and copies of any documents, affidavits and exhibits on which the Party relies.
- 21. Within 21 days after the appointment of a neutral evaluator, a Party may submit a reply to the submission of any other Party and, in that event, will provide copies of the reply to the Party and the neutral evaluator.



## Confidentiality

22. In order to assist in the resolution of the Disagreement, a neutral evaluation will not be open to the public.
23. The Parties, and all persons, will keep confidential:
  - a) all oral and written information disclosed in the neutral evaluation; and
  - b) the fact that this information has been disclosed.
24. The Parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the neutral evaluation, any oral or written information disclosed in or arising from the neutral evaluation, including:
  - a) any documents of other Parties produced in the course of the neutral evaluation which are not otherwise produced or producible in that proceeding;
  - b) any views expressed, or suggestions made, in respect of a possible settlement of the Disagreement;
  - c) any admissions made by any Party in the course of the neutral evaluation, unless otherwise stipulated by the admitting Party;
  - d) the fact that any Party has indicated a willingness to make or accept a proposal for settlement; and
  - e) subject to Section 28, the opinion of the neutral evaluator.
25. Sections 23 and 24 do not apply:
  - a) in any proceedings for the enforcement or setting aside of an agreement resolving the Disagreement that was the subject of a neutral evaluation;
  - b) if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
  - c) if the oral or written information is in the public forum.
26. A neutral evaluator, or anyone retained or employed by the neutral evaluator, is not compellable in any proceedings to give evidence about any oral and written information acquired or opinion formed by that person as a result of a neutral evaluation under this Appendix, and all Parties will oppose any effort to have that person or that information subpoenaed.
27. A neutral evaluator and anyone retained or employed by the neutral evaluator is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Party to the neutral evaluation.
28. Notwithstanding Sections 23 to 26, after an Arbitral Tribunal has delivered its final arbitral award, or a court has referred its decision, in respect of a Disagreement, a Party, for the purpose only of making a submission on the allocation of costs of that arbitral or judicial proceeding, may give to the Arbitral Tribunal or the court a copy of:
  - a) the neutral evaluator's opinion respecting that agreement; or
  - b) the neutral evaluator's notice of termination under Section 7.

### **Non-Binding Opinion**

29. Within 21 days after the later of:
  - a) delivery of the last submission required or permitted in a neutral evaluation under this Appendix; or
  - b) completion of a hearing,the neutral evaluator will deliver to the Parties a written opinion with reasons in respect of the probable disposition of the Disagreement should it be submitted to arbitral or judicial proceedings, as the case may be, under the Chapter.
30. An opinion under Section 29 is not binding on the Parties.

### **Attempt to Resolve After Opinion**

31. Within 21 days after delivery of an opinion under Section 29, the Parties will meet and make an effort to resolve the Disagreement, taking into account the opinion of the neutral evaluator or any other considerations.
32. If the Parties and the neutral evaluator agree, the neutral evaluator may attend a meeting under Section 31, and provide any necessary assistance to the Parties.

### **Failure to Comply**

33. If a Party fails to participate in the neutral evaluation as contemplated in Sections 14 to 21, the neutral evaluator may:
  - a) provide an opinion based solely upon the information and submissions they have obtained; or
  - b) give a written notice of termination of the neutral evaluationand, in either event, the neutral evaluator must record that Party's failure to participate.

### **Termination of Neutral Evaluation**

34. A neutral evaluation is terminated when any of the following occurs:
  - a) the neutral evaluator gives a notice of termination under Section 33(b);
  - b) the expiration of 30 days after receipt of an opinion under Section 29 or 33, as the case may be, or any longer period agreed by the Parties;
  - c) all the Parties directly engaged in the Disagreement agree in writing to terminate evaluation; or
  - d) all the Parties directly engaged in the Disagreement sign a written agreement resolving the Disagreement.

### **Costs**

35. A Party that has failed to participate in a neutral evaluation as contemplated in Sections 14 to 21 is responsible for its share of the costs of the neutral evaluation, despite its failure to participate.

## Appendix J-5

### Arbitration

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#### Definitions

1. In this Appendix:
  - a) "**Applicant**" means:
    - i. in an arbitration commenced under paragraph 28 of the Chapter, the Party that delivered the notice of arbitration, and
    - ii. in an arbitration commenced under paragraph 29 of the Chapter, the Party that the Parties have agreed will be the Applicant in the agreement to arbitrate;
  - b) "**Arbitral Award**" means any decision of the Arbitral Tribunal on the substance of the Disagreement submitted to it, and includes:
    - i. an interim Arbitral Award, including an interim award made for the preservation of property, and
    - ii. an award of interest or costs;
  - c) "**Arbitral Tribunal**" means a single arbitrator or a panel of arbitrators appointed under this Appendix;
  - d) "**Arbitration Agreement**" includes
    - i. the requirement to refer to arbitration Disagreements described in paragraph 28 of the Chapter; and
    - ii. an agreement to arbitrate a Disagreement as described in paragraph 29 of the Chapter;
  - e) "**Chapter**" means the Dispute Resolution Chapter of the Final Agreement;
  - f) "**Party**" means a participating Party to arbitration under this Appendix;
  - g) "**Respondent**" means a Party other than the Applicant;
  - h) "**Section**" means a Section of this Appendix;
  - i) "**Supreme Court**" means the Supreme Court of British Columbia.
2. A Reference in this Appendix, other than in Section 87 or 116(a), to a claim, applies to a counterclaim, and a Reference in this Appendix to a defence, applies to a defence to a counterclaim.
3. Notwithstanding paragraph 4 of the Chapter, the Parties may not vary Section 53 or 97.

## **Communications**

4. Except in respect of administrative details, the Parties will not communicate with the Arbitral Tribunal:
  - a) orally, except in the presence of all other Parties; or
  - b) in writing, without immediately sending a copy of that communication to all other Parties.
5. Section 4 also applies to any communication by the Arbitral Tribunal to the Parties.

## **Waiver and Right to Object**

6. A Party that knows that:
  - a) any provision of this Appendix; or
  - b) any requirement under the Agreement or Arbitration Agreementhas not been complied with, and yet proceeds with the arbitration without stating its objection to non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, will be deemed to have waived its right to object.
7. In Section 6(a) "any provision of this Appendix" means any provision of this Appendix in respect of which the Parties may otherwise agree.

## **Extent of Judicial Intervention**

8. In matters governed by this Appendix:
  - a) no court shall intervene except as provided in this Appendix; and
  - b) no arbitral proceedings of an Arbitral Tribunal, or order, ruling or Arbitral Award made by an Arbitral Tribunal shall be questioned, reviewed or restrained by a proceeding under any legislation or other law that permits judicial review except to the extent provided in this Appendix.

## **Construction of Appendix**

9. In construing a provision of this Appendix, a court or Arbitral Tribunal may refer to the documents of the United Nations Commission on International Trade Law and its working group respecting the preparation of the UNCITRAL Model Arbitration Law and must give those documents the weight that is appropriate in the circumstances.

## **Stay of Legal Proceedings**

10. If a Party commences legal proceedings in a court against another Party in respect of a matter required or agreed to be submitted to arbitration, a Party to the legal proceedings may, before or after entering an appearance, and before delivery of any pleadings or taking any other step in the proceedings, apply to that court to stay the proceedings.
11. In an application under Section 10, the court must make an order staying the legal proceedings unless it determines that:

- a) the Arbitration Agreement is null and void, inoperative or incapable of being performed; or
  - b) the legal proceedings are permitted under the Chapter.
12. An arbitration may be commenced or continued, and an Arbitral Award made, even if an application has been brought under Section 10, and the issue is pending before the court.

### **Interim Measures by Court**

13. It is not incompatible with an Arbitration Agreement for a Party to request from a court, before or during arbitral proceedings, an interim measure of protection as provided in paragraph 14 of the Chapter, and for a court to grant that measure.

### **Commencement of Arbitral Proceedings**

14. The arbitral proceedings in respect of a Disagreement:
- a) required to be arbitrated as set out in paragraph 28 of the Chapter, commences on delivery of the notice of arbitration to the Parties; or
  - b) agreed to be arbitrated as set out in paragraph 29 of the Chapter, commences on the date of the Arbitration Agreement.

### **Notice of Arbitration**

15. A notice of arbitration under paragraph 28 of the Chapter must be in writing and contain the following information:
- a) a statement of the subject matter or issues of the Disagreement;
  - b) a requirement that the Disagreement be referred to arbitration;
  - c) the remedy sought;
  - d) the suggested number of arbitrators; and
  - e) any preferred qualifications of the arbitrators.
16. A notice of arbitration under Section 15 may contain the names of any proposed arbitrators, including the information specified in Section 17.

### **Arbitrators**

17. In an arbitration:
- a) required to be arbitrated as set out in paragraph 28 of the Chapter, there will be three arbitrators; and
  - b) agreed to be arbitrated as set out in paragraph 29 of the Chapter, there will be one arbitrator.
18. An individual eligible for appointment as:
- a) a single arbitrator or as a member or chair of an arbitral panel will be an experienced arbitrator or arbitration counsel or have had training in arbitral procedure; and

- b) a single arbitrator or member of an arbitral panel will:
  - i. be independent and impartial, and
  - ii. preferably, have knowledge of, or experience in, the subject matter or issues of the Disagreement.

### **Appointment of Arbitrators**

- 19. A Party proposing the name of an arbitrator to another Party under Section 20 will also submit a copy of that individual's resume and the statement that individual is required to make under Section 26.
- 20. In an arbitration with a single arbitrator, if the Parties fail to agree on the arbitrator within 30 days after the commencement of the arbitration, the appointment will be made by the Neutral Appointing Authority, on the written request of a Party that is copied to the other Parties.
- 21. In an arbitration with three arbitrators and two Parties:
  - a) each Party will appoint one arbitrator, and the two appointed arbitrators will appoint the third arbitrator; and
  - b) the three arbitrators shall select a chair from among themselves.
- 22. In the appointment procedure under Section 21, if:
  - a) a Party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other Party; or
  - b) the two appointed arbitrators fail to agree on the third arbitrator within 30 days after the last of them is appointed; or
  - c) the three arbitrators fail to appoint a chair within 15 days after the last of them is appointed,the appointment will be made by the Neutral Appointing Authority, on the written request of a Party that is copied to the other Parties.
- 23. In an arbitration with three arbitrators and three Parties:
  - a) the three Parties will jointly appoint the three arbitrators; and
  - b) the three arbitrators shall select a chair from among themselves.
- 24. In the arbitration procedure under Section 23, if:
  - a) the three Parties fail to agree on the three arbitrators within 60 days after the commencement of the arbitration; or
  - b) the three arbitrators fail to appoint a chair within 15 days after the last of them is appointed,the appointments will be made by the Neutral Appointing Authority, on the written request of a Party copied to the other Parties.

- 25 The Neutral Appointing Authority, in appointing an arbitrator or the chair of an Arbitral Tribunal, must have due regard to:
- a) any qualifications as set out in Section 18 or as otherwise agreed in writing by the Parties; and
  - b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator or chair.

### **Grounds for Challenge**

26. When a individual is approached in connection with possible appointment as an arbitrator, that individual must provide a written statement:
- a) disclosing any circumstances likely to give rise to justifiable doubts as to their independence or impartiality; or
  - b) advising that the individual is not aware of any circumstances of that nature and committing to disclose them if they arise or become known at a later date.
27. An arbitrator, from the time of appointment and throughout the arbitral proceedings, must, without delay, disclose to the Parties any circumstances referred to in Section 26 unless the Parties have already been informed of them.
28. An arbitrator may be challenged only if:
- a) circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality; or
  - b) the arbitrator does not possess the qualifications set out in this Appendix or as otherwise agreed in writing by the Parties.
29. A Party may only challenge an arbitrator appointed by that Party, or in whose appointment that Party has participated, for reasons of which that Party becomes aware after the appointment has been made.
30. An individual who is a Kitsumkalum Member, or related to a Kitsumkalum Member, may not be challenged under Section 28 solely on the grounds that they are a Kitsumkalum Member or on the grounds of that relationship.

### **Challenge Procedure**

31. A Party who intends to challenge an arbitrator will send to the Arbitral Tribunal a written statement of the reasons for the challenge within 15 days after becoming aware of the constitution of the Arbitral Tribunal, or after becoming aware of any circumstances referred to in Section 28.
32. Unless the arbitrator challenged under Section 31 withdraws from office, or the other Parties agree to the challenge, the Arbitral Tribunal must decide on the challenge.
33. If a challenge under any procedure agreed upon by the Parties or under the procedure under Section 31 is not successful, the challenging Party, within 30 days after having received notice of the decision rejecting the challenge, may request the Neutral Appointing Authority to decide on the challenge.

34. The decision of the Neutral Appointing Authority under Section 33 is final and is not subject to appeal.
35. While a request under Section 33 is pending, the Arbitral Tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an Arbitral Award unless:
  - a) the costs occasioned by proceeding before the decision of the Neutral Appointing Authority is made would unduly prejudice the Parties; or
  - b) the Parties agree otherwise.

#### **Failure or Impossibility to Act**

36. The mandate of an arbitrator terminates if the arbitrator becomes unable at law, or as a practical matter, to perform the arbitrator's functions, or for other reasons fails to act without undue delay.
37. If a controversy remains concerning any of the grounds referred to in Section 36, a Party may request the Neutral Appointing Authority to decide on the termination of the mandate.

#### **Termination of Mandate and Substitution of Arbitrator**

38. In addition to the circumstances referred to under Sections 31 to 33 and 36, the mandate of an arbitrator terminates:
  - a) if the arbitrator withdraws from office for any reason; or
  - b) by, or pursuant to, agreement of the Parties.
39. If the mandate of an arbitrator terminates, a replacement arbitrator must be appointed under Sections 19 to 25, as applicable.
40. If a single or chairing arbitrator is replaced, any hearings previously held must be repeated.
41. If an arbitrator other than a single or chairing arbitrator is replaced, any hearings previously held may be repeated at the discretion of the Arbitral Tribunal.
42. An order or ruling of the Arbitral Tribunal made before the replacement of an arbitrator under Section 39 is not invalid solely because there has been a change in the composition of the tribunal.

#### **Competence of Arbitral Tribunal to Rule on Its Jurisdiction**

43. An Arbitral Tribunal may rule on its own jurisdiction.
44. A plea that an Arbitral Tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence; but a Party is not precluded from raising that plea by the fact that the Party has appointed, or participated in the appointment of, an arbitrator.
45. A plea that an Arbitral Tribunal is exceeding the scope of its authority must be made as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.



46. An Arbitral Tribunal may, in either of the cases referred to in Section 44 or 45, admit a later plea if it considers the delay justified.
47. An Arbitral Tribunal may rule on a plea referred to in Section 44 or 45 either as a preliminary question or in the Arbitral Award.
48. If an Arbitral Tribunal rules as a preliminary question that it has jurisdiction, any Party, within 15 days after having received notice of that ruling, may request the Supreme Court to decide the matter.
49. A decision of the Supreme Court under Section 48 is final and is not subject to appeal.
50. While a request under Section 48 is pending, an Arbitral Tribunal may continue the arbitral proceedings and make an Arbitral Award unless:
  - a) the costs occasioned by proceeding before the decision of the Supreme Court is made would unduly prejudice the Parties; or
  - b) the Parties agree otherwise.

#### **Interim Measures Ordered by Arbitral Tribunal**

51. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, at the request of a Party, order a Party to take any interim measure of protection as the Arbitral Tribunal may consider necessary in respect of the subject matter of the Disagreement.
52. The Arbitral Tribunal may require a Party to provide appropriate security in connection with a measure ordered under Section 51.

#### **Equal Treatment of Parties**

53. The Parties must be treated with equality and each Party must be given a full opportunity to present its case.

#### **Determination of Rules of Procedure**

54. Subject to this Appendix, the Parties may agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings.
55. Failing any agreement under Section 54, the Arbitral Tribunal, subject to this Appendix, may conduct the arbitration in the manner it considers appropriate.
56. The Arbitral Tribunal is not required to apply the legal rules of evidence, and may determine the admissibility, relevance, materiality and weight of any evidence.
57. The Arbitral Tribunal must make all reasonable efforts to conduct the arbitral proceedings in the most efficient, expeditious and cost effective manner as is appropriate in all the circumstances of the case.
58. The Arbitral Tribunal may extend or abridge a period of time:
  - a) set in this Appendix, except the period specified in Section 106; or
  - b) established by the tribunal.

### **Pre-Hearing Meeting**

59. Within 10 days after the Arbitral Tribunal is selected, the tribunal must convene a pre-hearing meeting of the Parties to reach agreement and to make any necessary orders on:
  - a) any procedural issues arising under this Appendix;
  - b) the procedure to be followed in the arbitration;
  - c) the time periods for taking steps in the arbitration;
  - d) the scheduling of hearings or meetings, if any;
  - e) any preliminary applications or objections; and
  - f) any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.
60. The Arbitral Tribunal must prepare and distribute promptly to the Parties a written record of all the business transacted, and decisions and orders made, at the pre-hearing meeting.
61. The pre-hearing meeting may be conducted by conference call.

### **Place of Arbitration**

62. The arbitration will take place in the Province of British Columbia.
63. Despite Section 62, an Arbitral Tribunal may meet at any place it considers appropriate for consultation among its Members, for hearing witnesses, experts or the Parties, or for inspection of documents, goods or other personal property, or for viewing physical locations.

### **Language**

64. If the Arbitral Tribunal determines that it was necessary or reasonable for a Party to incur the costs of translation of documents and oral presentations in the circumstances of a particular Disagreement, the Arbitral Tribunal, on application of a Party, may order that any of the costs of that translation be deemed to be costs of the arbitration under paragraph 44 of the Chapter.

### **Statements of Claim and Defence**

65. Within 21 days after the Arbitral Tribunal is constituted, the Applicant will deliver a written statement to all the Parties stating the facts supporting its claim or position, the points at issue and the relief or remedy sought.
66. Within 15 days after receipt of the Applicant's statement, each respondent will deliver a written statement to all the Parties stating its defence or position in respect of those particulars.
67. Each Party must attach to its statement a list of documents:
  - a) upon which the Party intends to rely; and
  - b) which describes each document by kind, date, author, addressee and subject matter.

68. The Parties may amend or supplement their statements, including the list of documents, and deliver counter-claims and defences to counter-claims during the course of the arbitral proceedings, unless the Arbitral Tribunal considers it inappropriate to allow the amendment, supplement or additional pleadings having regard to:
  - a) the delay in making it; and
  - b) any prejudice suffered by the other Parties.
69. The Parties will deliver copies of all amended, supplemented or new documents delivered under Section 68 to all the Parties.

### **Disclosure**

70. The Arbitral Tribunal may order a Party to produce, within a specified time, any documents that:
  - a) have not been listed under Section 67;
  - b) the Party has in its care, custody or control; and
  - c) the Arbitral Tribunal considers to be relevant.
71. Each Party will allow the other Party the necessary access at reasonable times to inspect and take copies of all documents that the former Party has listed under Section 67, or that the Arbitral Tribunal has ordered to be produced under Section 70.
72. The Parties will prepare and send to the Arbitral Tribunal an agreed statement of facts within the time specified by the Arbitral Tribunal.
73. Not later than 21 days before a hearing commences, each Party will give the other Party:
  - a) the name and address of any witness and a written summary of the witness's evidence; and
  - b) in the case of an expert witness, a written statement or report prepared by the expert witness.
74. Not later than 15 days before a hearing commences, each Party will give to the other Party and the Arbitral Tribunal an assembly of all documents to be introduced at the hearing.

### **Hearings and Written Proceedings**

75. The Arbitral Tribunal must decide whether to hold hearings for the presentation of evidence or for oral argument, or whether the proceedings will be conducted on the basis of documents and other materials.
76. Unless the Parties have agreed that no hearings will be held, the Arbitral Tribunal must hold hearings at an appropriate stage of the proceedings, if so requested by a Party.
77. The Arbitral Tribunal must give the Parties sufficient advance notice of any hearing and of any meeting of the Arbitral Tribunal for the purpose of inspection of documents, goods or other property or viewing any physical location.

78. All statements, documents or other information supplied to, or applications made to, the Arbitral Tribunal by one Party will be communicated to the other Party, and any expert report or evidentiary document on which the Arbitral Tribunal may rely in making its decision must be communicated to the Parties.
79. Unless ordered by the Arbitral Tribunal, all hearings and meetings in arbitral proceedings, other than meetings of the Arbitral Tribunal, are open to the public.
80. The Arbitral Tribunal must schedule hearings to be held on consecutive days until completion.
81. All oral evidence must be taken in the presence of the Arbitral Tribunal and all the Parties unless a Party is absent by default or has waived the right to be present.
82. The Arbitral Tribunal may order any individual to be examined by the Arbitral Tribunal under oath or on affirmation in relation to the Disagreement and to produce before the Arbitral Tribunal all relevant documents within the individual's care, custody or control.
83. The document assemblies delivered under Section 74 will be deemed to have been entered into evidence at the hearing without further proof and without being read out at the hearing, but a Party may challenge the admissibility of any document so introduced.
84. If the Arbitral Tribunal considers it just and reasonable to do so, the Arbitral Tribunal may permit a document that was not previously listed under Section 67, or produced as required under Section 70 or 74, to be introduced at the hearing, but the Arbitral Tribunal may take that failure into account when fixing the costs to be awarded in the arbitration.
85. If the Arbitral Tribunal permits the evidence of a witness to be presented as a written statement, the other Party may require that witness to be made available for cross examination at the hearing.
86. The Arbitral Tribunal may order a witness to appear and give evidence, and, in that event, the Parties may cross examine that witness and call evidence in rebuttal.

### **Default of a Party**

87. If, without showing sufficient cause, the Applicant fails to communicate its statement of claim in accordance with Section 65, the Arbitral Tribunal may terminate the proceedings.
88. If, without showing sufficient cause, a respondent fails to communicate its statement of defence in accordance with Section 66, the Arbitral Tribunal must continue the proceedings without treating that failure in itself as an admission of the Applicant's allegations.
89. If, without showing sufficient cause, a Party fails to appear at the hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the Arbitral Award on the evidence before it.
90. Before terminating the proceedings under Section 87, the Arbitral Tribunal must give all respondents written notice providing an opportunity to file a statement of claim in respect of the Disagreement within a specified period of time.

### **Expert Appointed by Arbitral Tribunal**

91. After consulting the Parties, the Arbitral Tribunal may:
  - a) appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal; and
  - b) for that purpose, require a Party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other personal property or land for inspection or viewing.
92. The Arbitral Tribunal must give a copy of the expert's report to the Parties who must have an opportunity to reply to it.
93. If a Party so requests, or if the Arbitral Tribunal considers it necessary, the expert must, after delivery of a written or oral report, participate in a hearing where the Parties must have the opportunity to cross examine the expert and to call any evidence in rebuttal.
94. The expert must, on the request of a Party:
  - a) make available to that Party for examination all documents, goods or other property in the expert's possession, and provided to the expert in order to prepare a report; and
  - b) provide that Party with a list of all documents, goods or other personal property or land not in the expert's possession but which were provided to or given access to the expert, and a description of the location of those documents, goods or other personal property or lands.

### **Law Applicable to Substance of Dispute**

95. An Arbitral Tribunal must decide the Disagreement in accordance with the law.
96. If the Parties have expressly authorized it to do so, an Arbitral Tribunal may decide the Disagreement based upon equitable considerations.
97. In all cases, an Arbitral Tribunal must make its decisions in accordance with the spirit and intent of the Agreement.
98. Before a final Arbitral Award is made, an Arbitral Tribunal or a Party, with the agreement of the other Parties, may refer a question of law to the Supreme Court for a ruling.
99. A Party may appeal a decision in the Supreme Court under Section 98 to the British Columbia Court of Appeal with leave of the British Columbia Court of Appeal. If the British Columbia Court of Appeal:
  - a) refuses to grant leave to a Party to appeal a ruling of the Supreme Court under Section 98; or
  - b) hears an appeal from a ruling of the Supreme Court under Section 98the decision of the British Columbia Court of Appeal may not be appealed to the Supreme Court of Canada.

100. While a request under Section 98 is pending, the Arbitral Tribunal may continue the arbitral proceedings and make an Arbitral Award unless:
- a) the costs occasioned by proceeding before the ruling of the Supreme Court is made would unduly prejudice the Parties; or
  - b) the Parties agree otherwise.

### **Decision Making by Panel of Arbitrators**

101. In arbitral proceedings with more than one arbitrator, any decision of the Arbitral Tribunal must be made by a majority of all its Members.
102. If there is no majority decision on a matter to be decided, the decision of the chair of the tribunal is the decision of the tribunal.
103. Notwithstanding Section 101, if authorized by the Parties or all the Members of the Arbitral Tribunal, questions of procedure may be decided by the chair of the tribunal.

### **Settlement**

104. If, during arbitral proceedings, the Parties settle the Disagreement, the Arbitral Tribunal must terminate the proceedings and, if requested by the Parties, must record the settlement in the form of an Arbitral Award on agreed terms.
105. An Arbitral Award on agreed terms:
- a) must be made in accordance with Sections 107 to 109;
  - b) must state that it is an Arbitral Award; and
  - c) has the same status and effect as any other Arbitral Award on the substance of the Disagreement.

### **Form and Content of Arbitral Award**

106. An Arbitral Tribunal must make its final award as soon as possible and, in any event, not later than 60 days after:
- a) the hearings have been closed; or
  - b) the final submission has been made
- whichever is the later date.
107. An Arbitral Award must be made in writing, and be signed by the Members of the Arbitral Tribunal.
108. An Arbitral Award must state the reasons upon which it is based, unless:
- a) the Parties have agreed that no reasons are to be given; or
  - b) the award is an Arbitral Award on agreed terms under Sections 104 and 105.
109. A signed copy of an Arbitral Award must be delivered to all the Parties by the Arbitral Tribunal.
110. At any time during the arbitral proceedings, an Arbitral Tribunal may make an interim Arbitral Award on any matter with respect to which it may make a final Arbitral Award.

111. An Arbitral Tribunal may award interest.
112. The costs of an arbitration are in the discretion of the Arbitral Tribunal which, in making an order for costs, may:
- a) include as costs:
    - i. the fees and expenses of the arbitrators and expert witnesses,
    - ii. legal fees and expenses of the Parties,
    - iii. any administration fees of a Neutral Appointing Authority, or
    - iv. any other expenses incurred in connection with the arbitral proceedings; and
  - b) specify:
    - i. the Party entitled to costs,
    - ii. the Party who will pay the costs,
    - iii. subject to Section 113, the amount of costs or method of determining that amount, and
    - iv. the manner in which the costs will be paid.
113. For purposes of Section 112, an Arbitral Tribunal may award up to 50% of the reasonable and necessary legal fees and expenses that were actually incurred by a Party, and if the legal services were provided by an employee or employees of that Party, the Arbitral Tribunal may fix an amount or determine an hourly rate to be used in the calculation of the cost of those employee legal fees.

### **Termination of Proceedings**

114. An Arbitral Tribunal must close any hearings if:
- a) the Parties advise they have no further evidence to give or submissions to make; or
  - b) the tribunal considers further hearings to be unnecessary or inappropriate.
115. A final Arbitral Award, or an order of the Arbitral Tribunal under Section 116, terminates arbitral proceedings.
116. An Arbitral Tribunal must issue an order for the termination of the arbitral proceedings if:
- a) the Applicant withdraws its claim, unless the respondent objects to the order and the Arbitral Tribunal recognizes a legitimate interest in obtaining a final settlement of the Disagreement;
  - b) the Parties agree on the termination of the proceedings; or
  - c) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
117. Subject to Sections 118 to 123 and 127, the mandate of an Arbitral Tribunal terminates with the termination of the arbitral proceedings.

## **Correction and Interpretation of Award; Additional Award**

118. Within 30 days after receipt of an Arbitral Award:
  - a) a Party may request the Arbitral Tribunal to correct in the tribunal award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and
  - b) a Party may, if agreed by all the Parties, request the Arbitral Tribunal to give an interpretation of a specific point or part of the Arbitral Award.
119. If an Arbitral Tribunal considers a request made under Section 118 to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request and the interpretation will form part of the Arbitral Award.
120. An Arbitral Tribunal, on its own initiative, may correct any error of the type referred to in subsection 118(a) within 30 days after the date of the Arbitral Award.
121. A Party may request, within 30 days after receipt of an Arbitral Award, the Arbitral Tribunal to make an additional Arbitral Award respecting claims presented in the arbitral proceedings but omitted from the Arbitral Award.
122. If the Arbitral Tribunal considers a request made under Section 121 to be justified, it must make an additional Arbitral Award within 60 days.
123. Sections 107 to 109, and Sections 111 to 113 apply to a correction or interpretation of an Arbitral Award made under Section 119 or 120, or to an additional Arbitral Award made under Section 122.

## **Application for Setting Aside Arbitral Award**

124. Subject to Sections 129 and 131, an Arbitral Award may be set aside by the Supreme Court, and no other court, only if a Party making the application establishes that:
  - a) the Party making the application:
    - i. was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or
    - ii. was otherwise unable to present its case or respond to the other Party's case;
  - b) the Arbitral Award:
    - i. deals with a Disagreement not contemplated by or not falling within the terms of the submission to arbitration, or
    - ii. contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the Arbitral Award that contains decisions on matters not submitted to arbitration may be set aside;
  - c) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the Parties, unless that agreement was in



conflict with a provision of this Appendix from which the Parties cannot derogate, or, failing any agreement, was not in accordance with this Appendix;

- d) the Arbitral Tribunal or a Member of it has committed a corrupt or fraudulent act; or
  - e) the award was obtained by fraud.
125. An application for setting aside may not be made more than three months:
- a) after the date on which the Party making that application received the Arbitral Award; or
  - b) if a request had been made under Section 118 or 121, after the date on which that request was disposed of by the Arbitral Tribunal.
126. An application to set aside an award on the ground that the Arbitral Tribunal or a Member of it has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced:
- a) within the period referred to in Section 125; or
  - b) within 30 days after the Applicant discovers or ought to have discovered the fraud or corrupt or fraudulent act

whichever is the longer period.

127. When asked to set aside an Arbitral Award, the Supreme Court may, where it is appropriate and it is requested by a Party, adjourn the proceedings to set aside the Arbitral Award for a period of time determined by it in order to give the Arbitral Tribunal an opportunity:
- a) to resume the arbitral proceedings; or
  - b) to take any other action that, in the Arbitral Tribunal's opinion, will eliminate the grounds for setting aside the Arbitral Award.
128. A Party that was not a participating Party in an arbitration must be given notice of an application under Section 124, and is entitled to be a Party to, and make representation on, the application.

### **Appeal on Question of Law**

129. A Party may appeal an Arbitral Award to the Supreme Court, with leave, on a question of law, which the Supreme Court must grant only if it is satisfied that:
- a) the importance of the result of the arbitration to the Parties justifies the intervention of the court, and the determination of the point of law may prevent a miscarriage of justice; or
  - b) the point of law is of general or public importance.
130. An application for leave may not be made more than three months:
- a) after the date on which the Party making the application received the Arbitral Award; or

- b) if a request had been made under Section 118 or 121, after the date on which that request was disposed of by the Arbitral Tribunal.
- 131. The Supreme Court may confirm, vary or set aside the Arbitral Award or may remit the award to the Arbitral Tribunal with directions, including the court's opinion on the question of law.
- 132. When asked to set aside an Arbitral Award the Supreme Court may, where it is appropriate and it is requested by a Party, adjourn the proceedings to set aside the Arbitral Award for a period of time determined by it in order to give the Arbitral Tribunal an opportunity:
  - a) to resume the arbitral proceedings; or
  - b) to take any other action that, in the Arbitral Tribunal's opinion, will eliminate the grounds for setting aside the Arbitral Award.
- 133. A Party that was not a participating Party in an arbitration must be given notice of an application under Section 129 and is entitled to be a Party to, and make representation on the application.
- 134. A Party may appeal a decision of the Supreme Court under Section 131 to the British Columbia Court of Appeal with leave of the British Columbia Court of Appeal.
- 135. If the British Columbia Court of Appeal:
  - a) refuses to grant leave to a Party to appeal a ruling of the Supreme Court under Section 131; or
  - b) hears an appeal from a ruling of the Supreme Court under Section 131,the decision of the British Columbia Court of Appeal may not be appealed to the Supreme Court of Canada.
- 136. No application may be made under Section 129 in respect of:
  - a) an Arbitral Award based upon equitable considerations as permitted in Section 96; or
  - b) an Arbitral Award made in an arbitration commenced under paragraph 28 of the Chapter.
- 137. No application for leave may be brought under Section 129 in respect of a ruling made by the Supreme Court under Section 98 if the time for appealing that ruling has already expired.

### **Recognition and Enforcement**

- 138. An Arbitral Award must be recognized as binding and, upon application to the Supreme Court, must be enforced subject to paragraphs 152 and 153 of the Kitsumkalum Self-Government Chapter.
- 139. Unless the Supreme Court orders otherwise, the Party relying on an Arbitral Award or applying for its enforcement must supply the duly authenticated original Arbitral Award or a duly certified copy of it.

## Grounds for Refusing Enforcement

140. Subject to Sections 128 and 133, a Party that was not a participating Party in an arbitration must not bring an application under Section 124 or 129 to set the award aside but may resist enforcement of the award against it by bringing an application under Section 141.

141. On the application of a Party that was not a participating Party in an arbitration, the Supreme Court may make an order refusing to enforce against that Party an Arbitral Award made under this Appendix if that Party establishes that:

- a) it was not given copies of:
  - i. the notice of arbitration or agreement to arbitrate, or
  - ii. the pleadings or all amendments and supplements to the pleadings;
- b) the Arbitral Tribunal refused to add the Party as a participating Party to the arbitration under paragraph 32 of the Chapter;
- c) the Arbitral Award
  - i. deals with a Disagreement not contemplated by or not falling within the terms of the submission to arbitration, or
  - ii. contains decisions on matters beyond the scope of the submission to arbitration

provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the Arbitral Award which contains decisions on matters submitted to arbitration may be recognized and enforced;

- d) the Arbitral Award has not yet become binding on the Parties or has been set aside or suspended by a court;
- e) the Arbitral Tribunal or a Member of it has committed a corrupt or fraudulent act; or
- f) the award was obtained by fraud.