



KITSELAS TREATY

A LIVING AGREEMENT



Appendices

Minor Changes Agreement No. 1
Consolidated Version
February 27, 2026

Canada 



KITSELAS
FIRST NATION



BRITISH
COLUMBIA

KITSELAS TREATY APPENDICES

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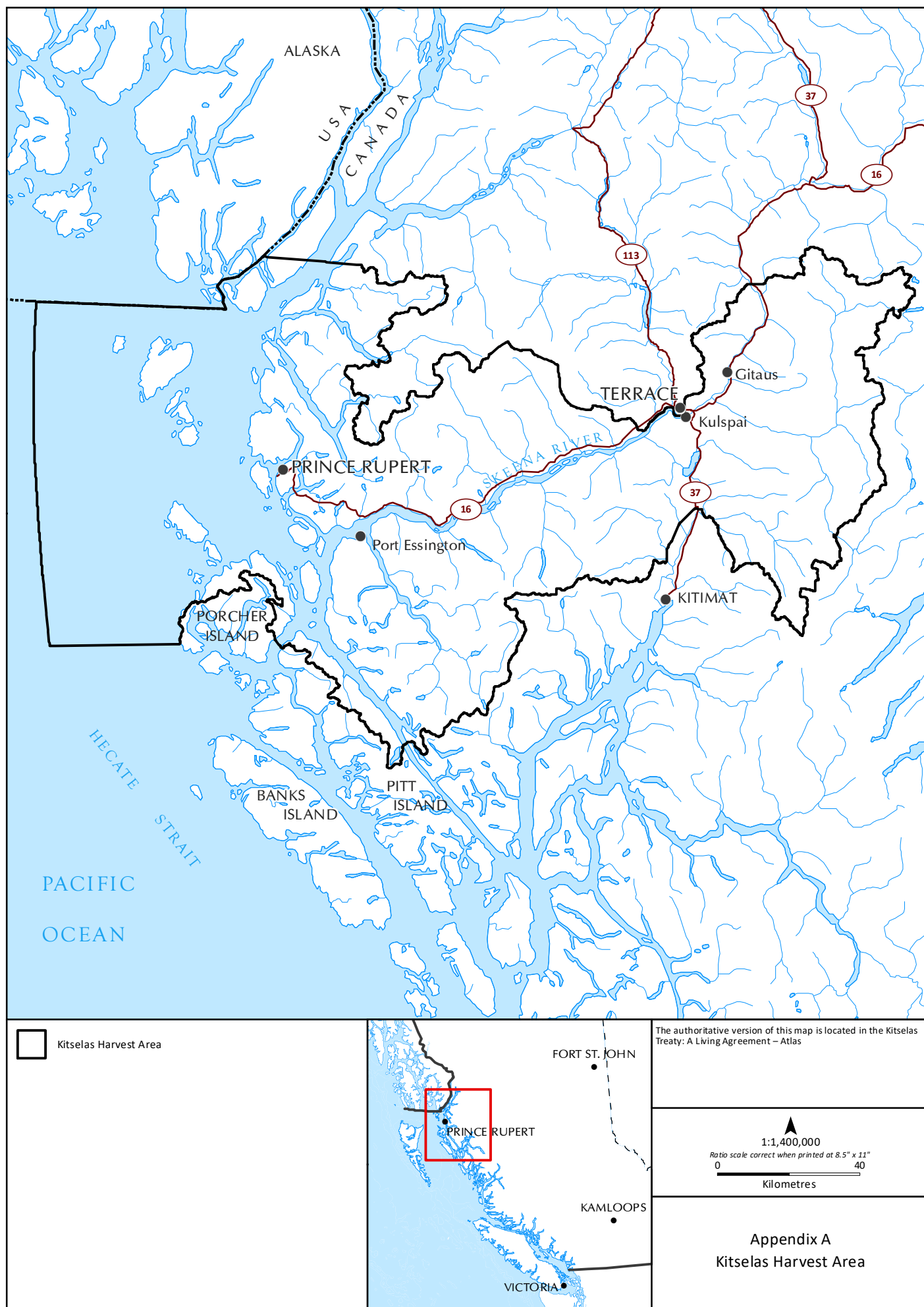
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Appendix A Kitselas Harvest Area

Map of Kitselas Harvest Area

Note: The Parties will update the Appendices before the Effective Date, as required



Appendix B Kitselas Lands

Appendix B-1 Kitselas Lands Overview

Overview Map of Kitselas Lands

Appendix B-2 Former Kitselas Indian Reserves

Part 1: Overview Map of Former Kitselas Indian Reserves

Part 2: Maps of Former Kitselas Indian Reserves

Part 3: Land Descriptions of Former Kitselas Indian Reserves

Appendix B-3 Former Provincial Crown Land

Part 1: Overview Map of Former Provincial Crown Land

Part 2: Maps of Former Provincial Crown Land

Appendix B-4 Former Private Fee Simple Lands

Part 1: Legal Descriptions of Former Private Fee Simple Lands

Part 2: Maps of Former Private Fee Simple Lands

Part 3: Applicable Forms of Documents for Inclusion of Former Private Fee Simple Lands, Acquisition and Addition of Fee Simple Lands or Pre-Approved Fee Simple Addition Lands in Kitselas Lands

Document 1. Certificate of Fee Simple Ownership and Consent

Document 2. Certificate of Charge and Consent

Document 3. Release

Appendix B-5 Kitselas Lands to be Registered in the Land Title Office on the Effective Date

Legal Descriptions of Kitselas Lands to be Registered in the Land Title Office on the Effective Date

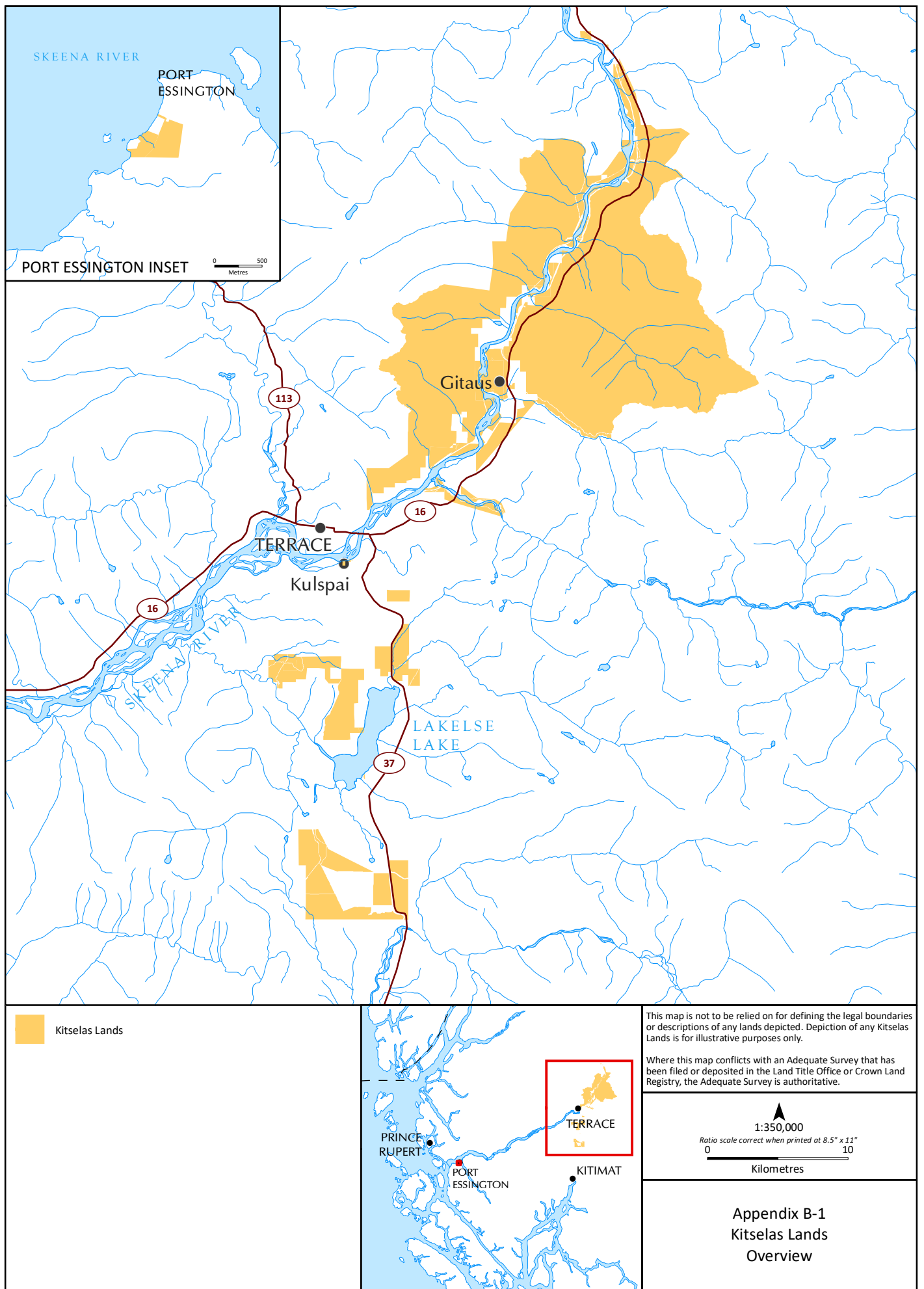
Appendix B-6 Kitselas Agricultural Lands

Maps of Kitselas Agricultural Lands

Appendix B-1 Kitselas Lands Overview

Overview Map of Kitselas Lands

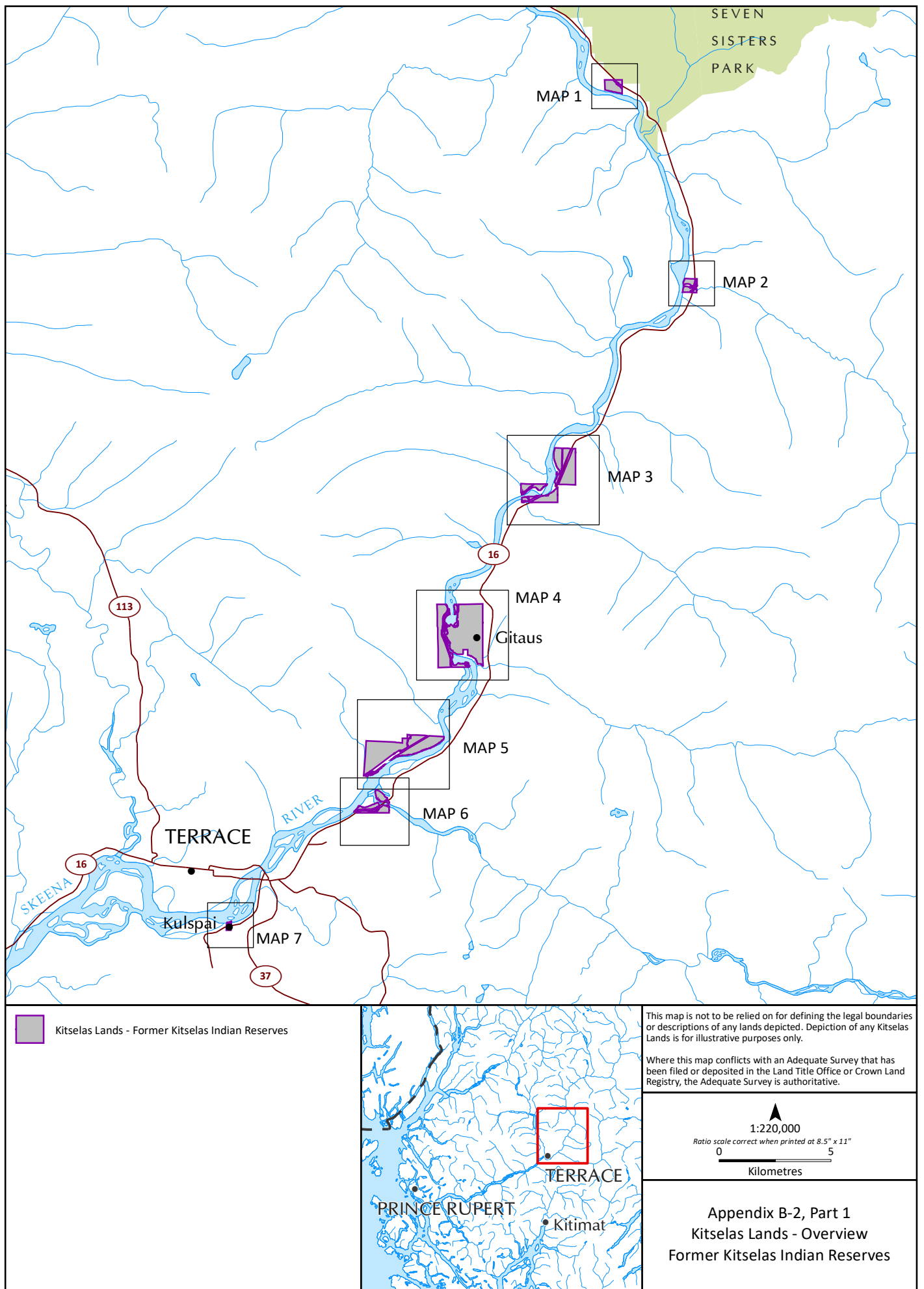
Note: The Parties will update the Appendices before the Effective Date, as required



Appendix B-2 Former Kitselas Indian Reserves

Part 1: Overview Map of Former Kitselas Indian Reserves

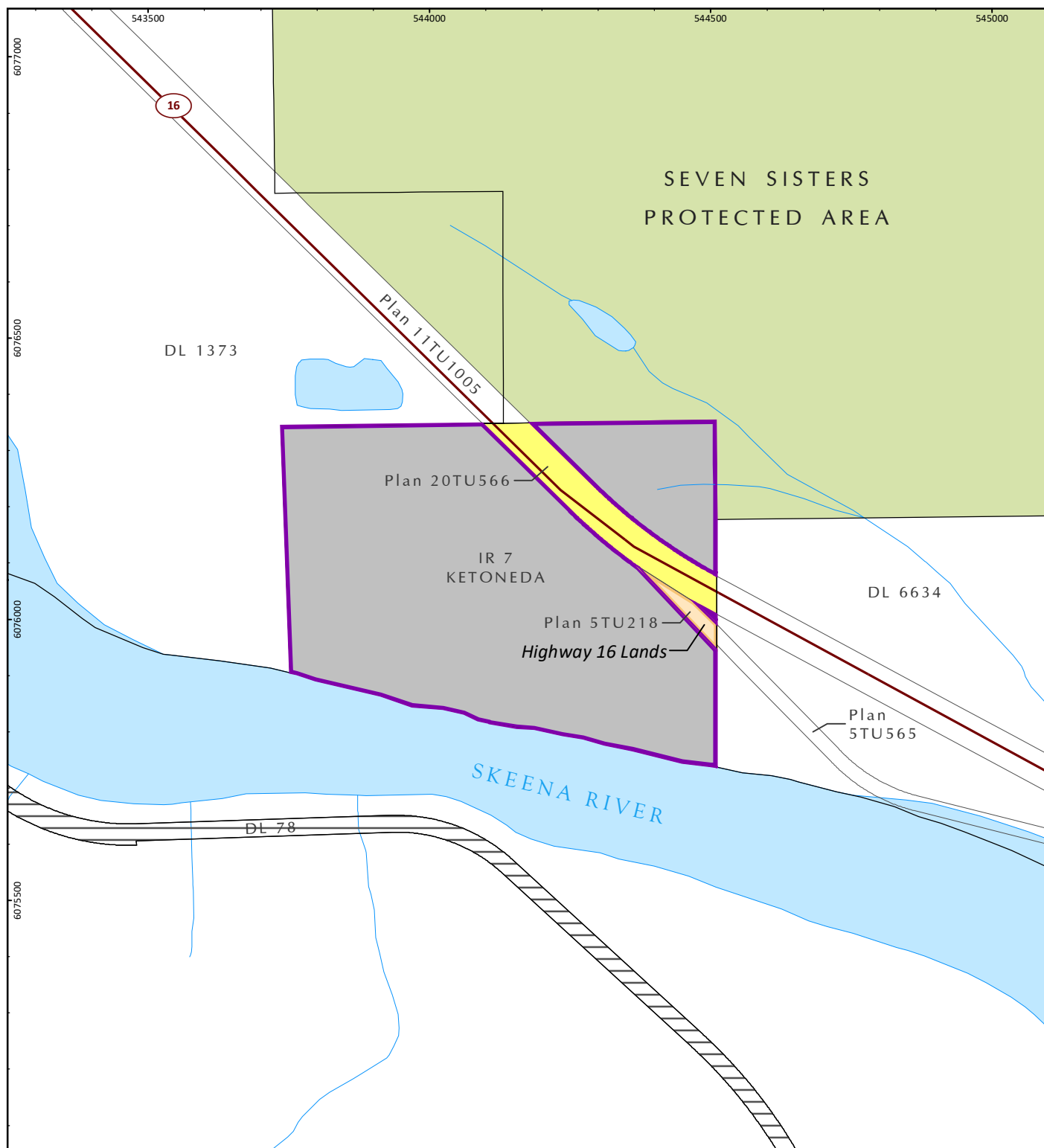
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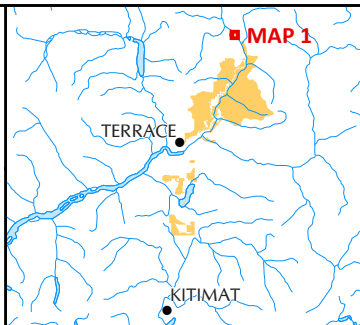
Appendix B-2 Former Kitselas Indian Reserves

Part 2: Maps of Former Kitselas Indian Reserves

Note: The Parties will update the Appendices before the Effective Date, as required



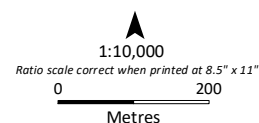
	Kitselas Lands - Former Kitselas Indian Reserves		Paved road
	Kitselas Lands - Former Provincial Crown Land		Unpaved road
	Kitselas Lands - Former Private Fee Simple Lands		Transmission line
	Crown Corridor		Railway Corridor
	Survey parcel		
	Park or protected area		
	Municipality		



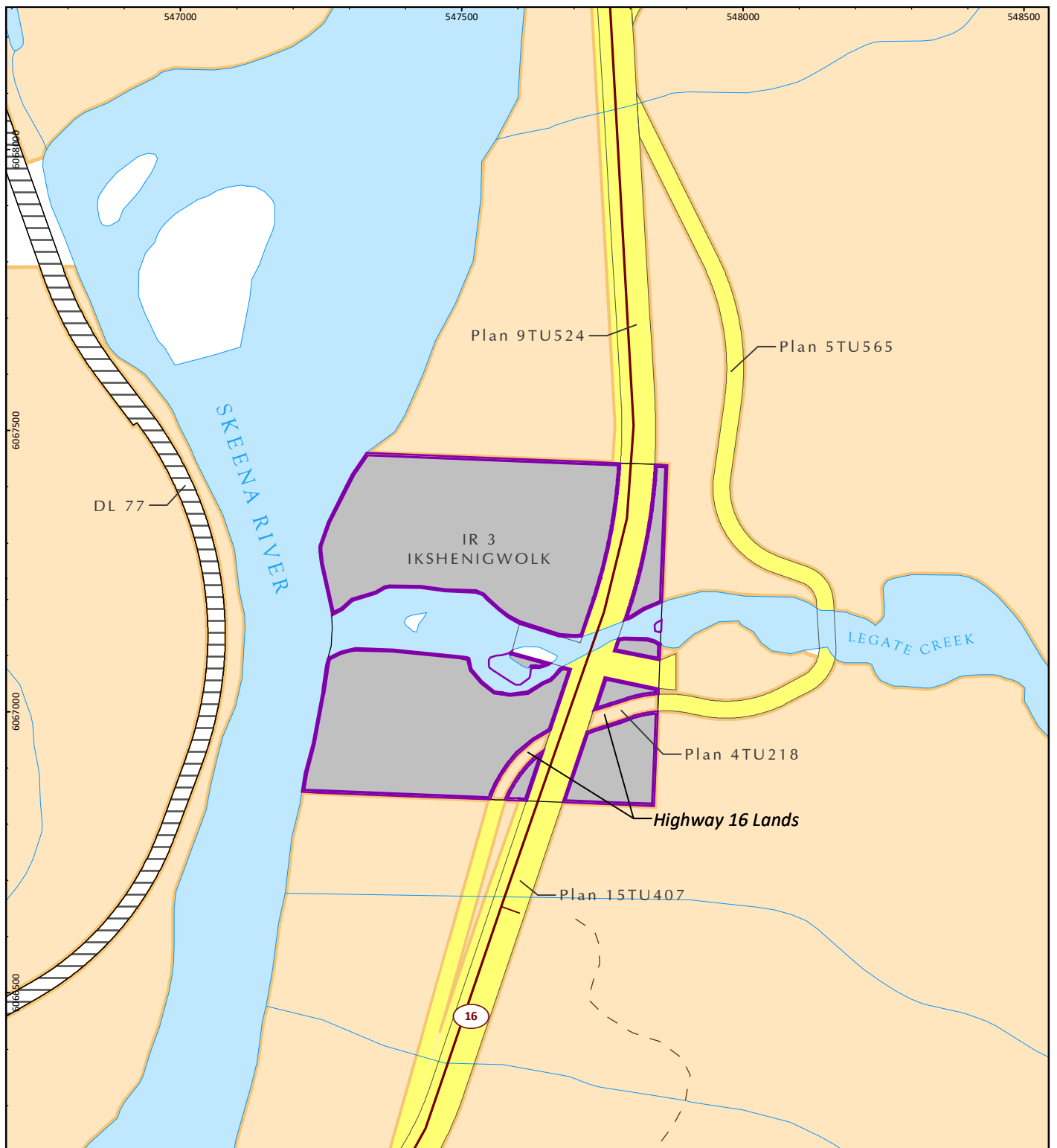
Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District: Prince Rupert
 Projection: NAD 1983 UTM Zone 9N

This map is not to be relied on for defining the legal boundaries or descriptions of any lands depicted. Depiction of any Kitselas Lands is for illustrative purposes only.

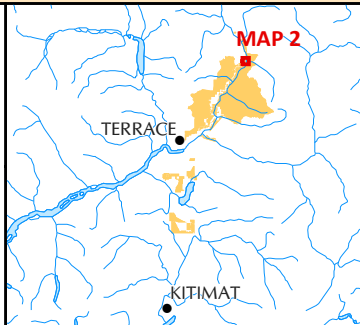
Where this map conflicts with an Adequate Survey that has been filed or deposited in the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.



Appendix B-2, Part 2
 Kitselas Lands
 Former Kitselas Indian Reserves
 Ketonedá 7
 Map 1 of 7



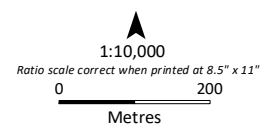
	Kitselas Lands - Former Kitselas Indian Reserves		Paved road
	Kitselas Lands - Former Provincial Crown Land		Unpaved road
	Kitselas Lands - Former Private Fee Simple Lands		Transmission line
	Crown Corridor		Railway Corridor
	Survey parcel		
	Park or protected area		
	Municipality		



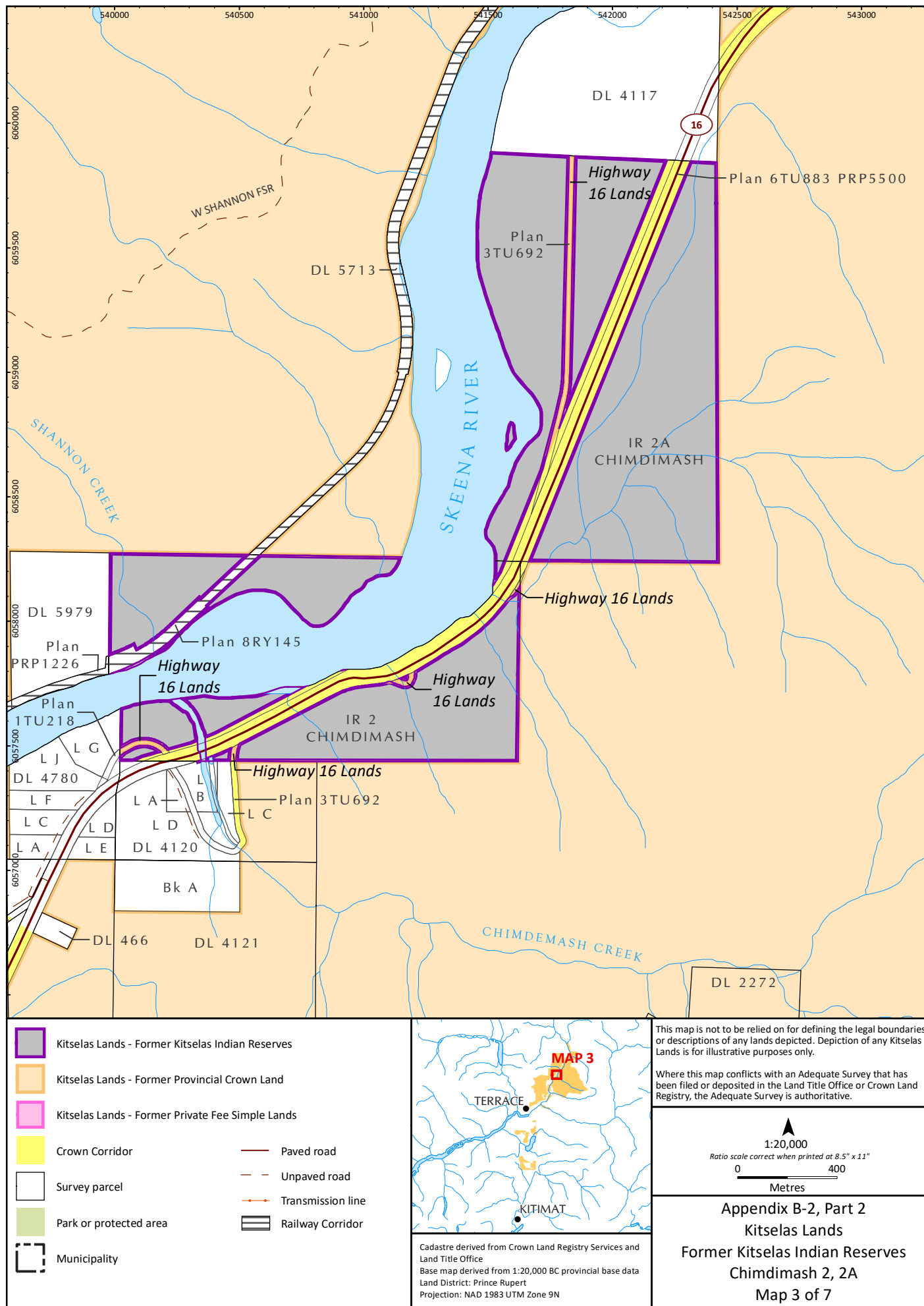
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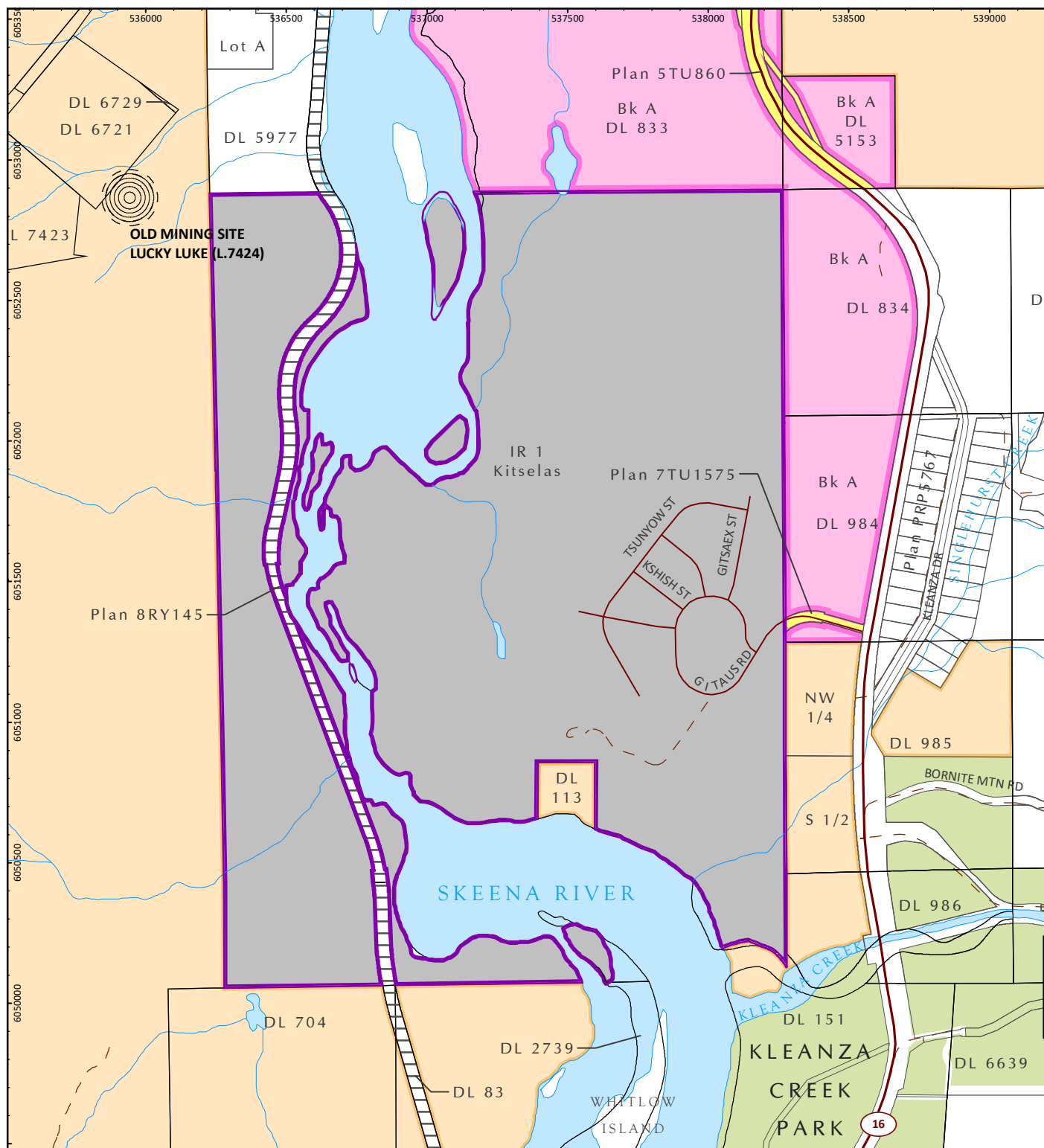
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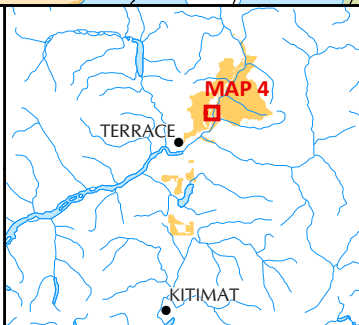


Appendix B-2, Part 2
 Kitselas Lands
 Former Kitselas Indian Reserves
 Ikshenigwolk 3
 Map 2 of 7





- Kitselas Lands - Former Kitselas Indian Reserves
- Kitselas Lands - Former Provincial Crown Land
- Kitselas Lands - Former Private Fee Simple Lands
- Crown Corridor
- Survey parcel
- Park or protected area
- Municipality
- Paved road
- Unpaved road
- Transmission line
- Railway Corridor



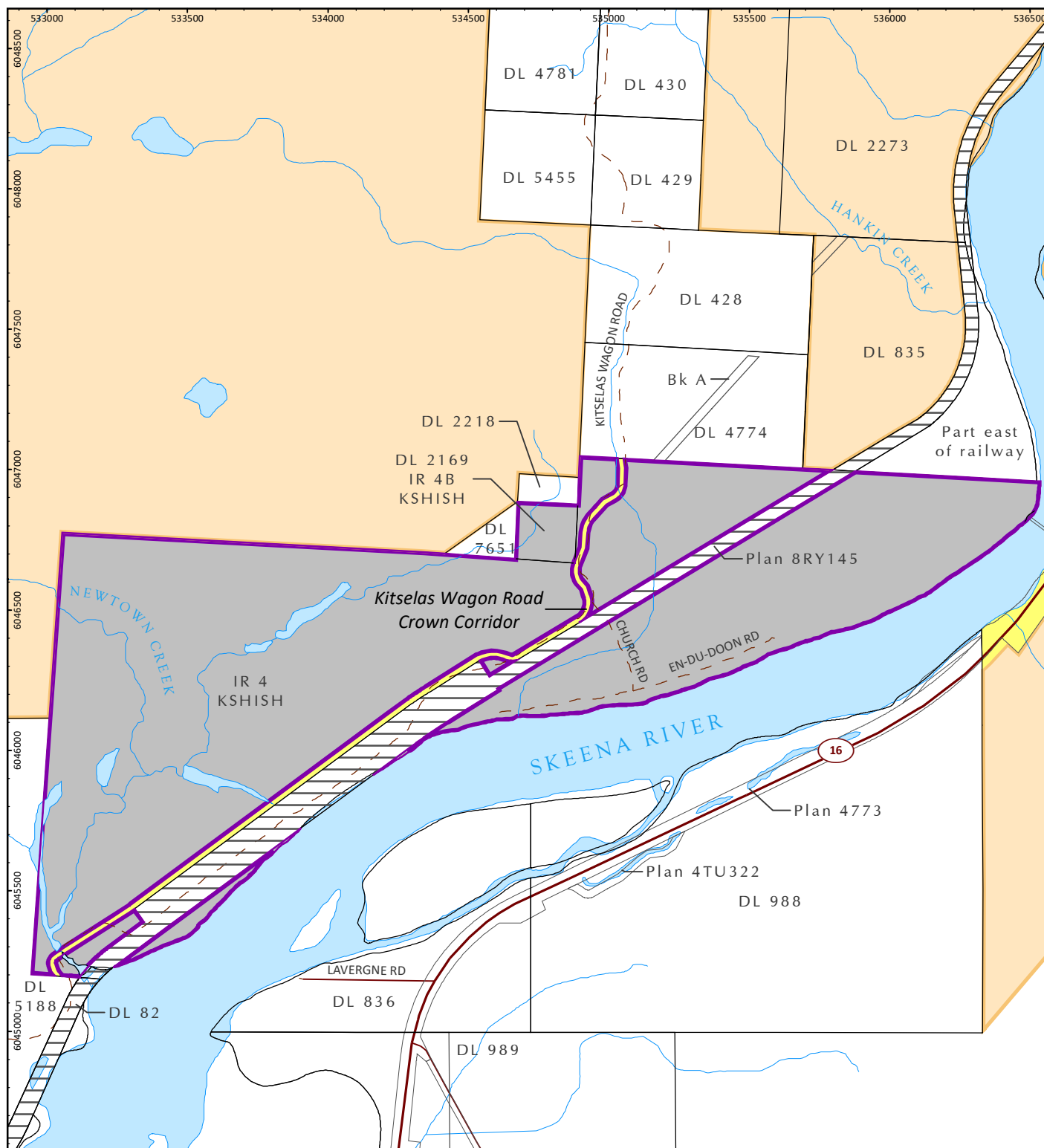
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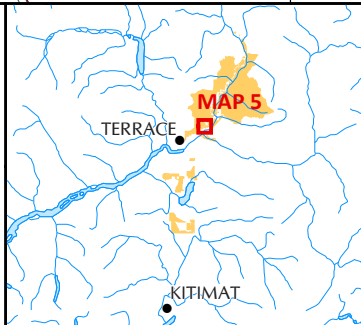
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 Ratio scale correct when printed at 8.5" x 11"
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 Metres

Appendix B-2, Part 2
 Kitselas Lands
 Former Kitselas Indian Reserves
 Kitselas 1
 Map 4 of 7



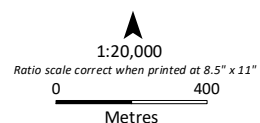
- Kitseles Lands - Former Kitseles Indian Reserves
- Kitseles Lands - Former Provincial Crown Land
- Kitseles Lands - Former Private Fee Simple Lands
- Crown Corridor
- Survey parcel
- Park or protected area
- Municipality
- Paved road
- Unpaved road
- Transmission line
- Railway Corridor



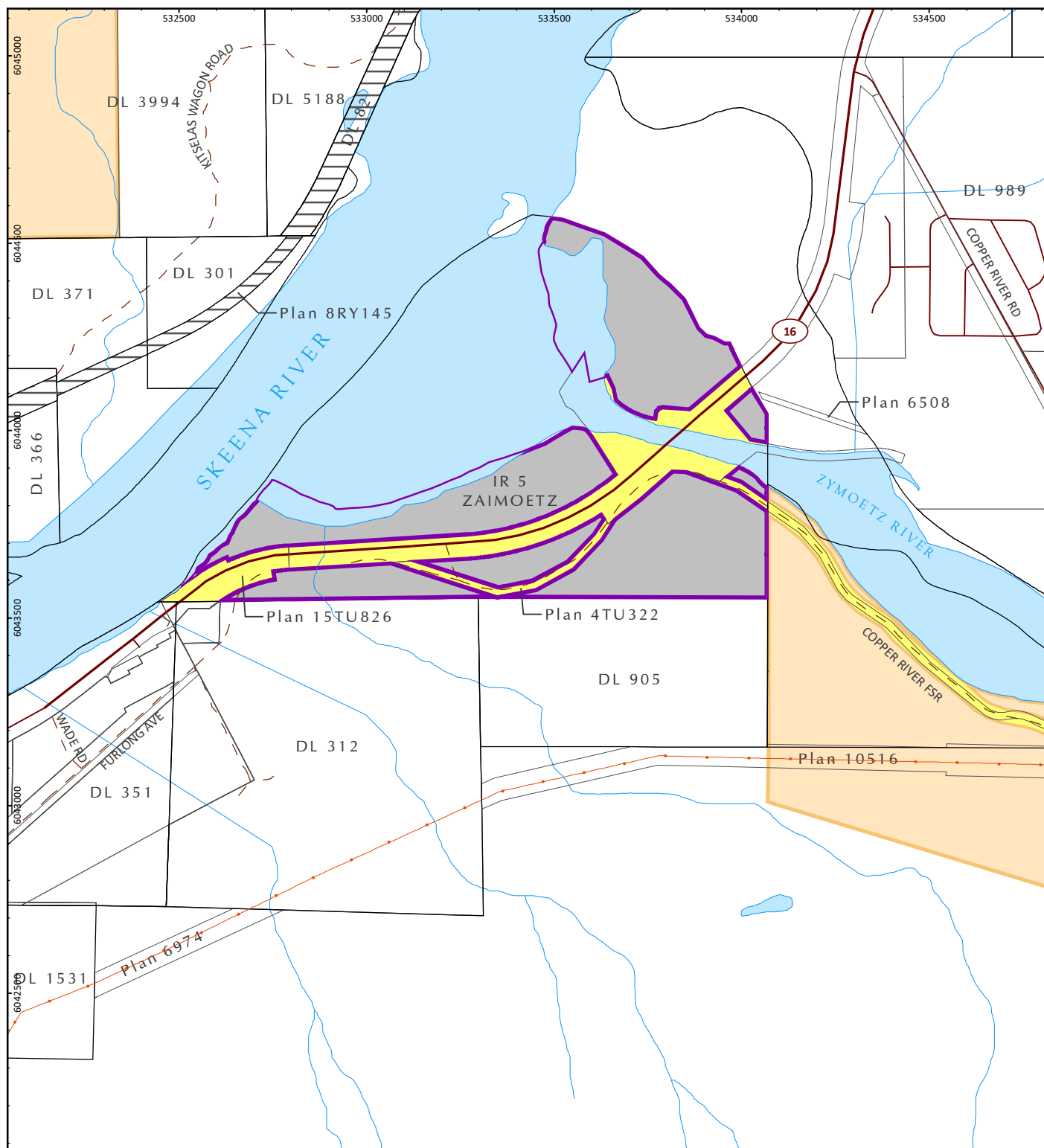
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 Base map derived from 1:20,000 BC provincial base data
 Land District: Prince Rupert
 Projection: NAD 1983 UTM Zone 9N

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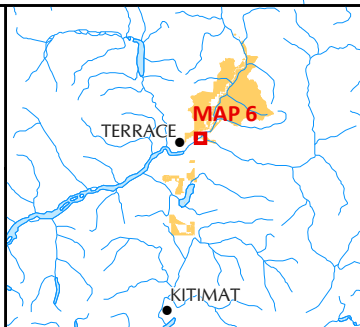
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Appendix B-2, Part 2
 Kitseles Lands
 Former Kitseles Indian Reserves
 Kshish 4, 4B
 Map 5 of 7



- Kitselas Lands - Former Kitselas Indian Reserves
- Kitselas Lands - Former Provincial Crown Land
- Kitselas Lands - Former Private Fee Simple Lands
- Crown Corridor
- Survey parcel
- Park or protected area
- Municipality
- Paved road
- Unpaved road
- Transmission line
- Railway Corridor



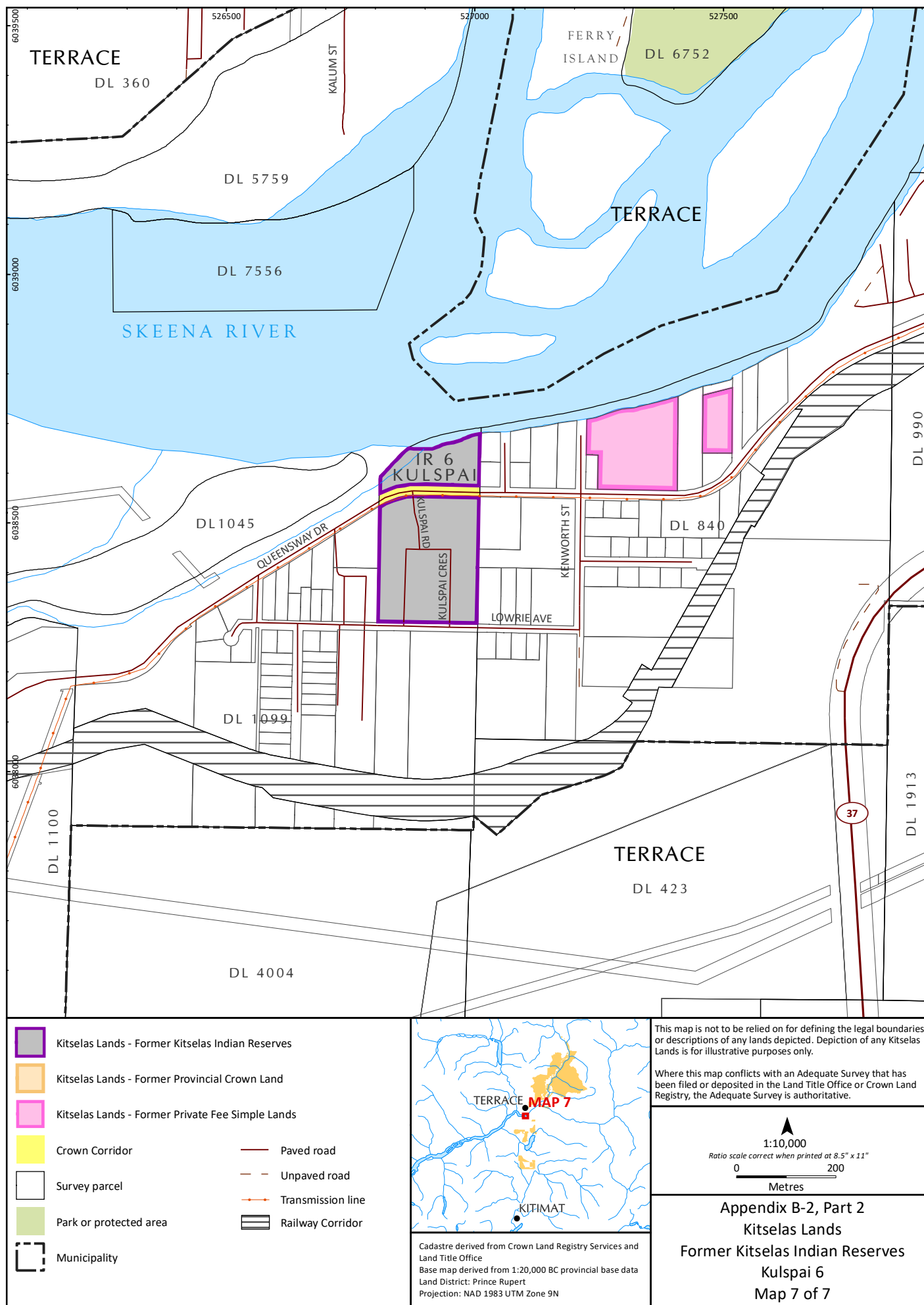
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 Ratio scale correct when printed at 8.5" x 11"
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 Metres

Appendix B-2, Part 2
 Kitselas Lands
 Former Kitselas Indian Reserves
 Zaimoetz 5
 Map 6 of 7



Appendix B-2 Former Kitselas Indian Reserves

Part 3: Land Descriptions of Former Kitselas Indian Reserves

Note: The Parties will update the Appendices before the Effective Date, as required

Former Kitselas Indian Reserve Name	Land Description¹²	Appendix Map
Kitselas 1	Kitselas Indian Reserve No. 1 as shown on plan BC124, save and except the railway rights of ways shown on plans RR1008A and RR1008B	Appendix B-2 Part 2 Map 4
Chimdimash 2	Chimdimash Indian Reserve No. 2 as shown on plan BC124, save and except the highway rights of ways shown on plans RD3274 and 52963, and save and except the railway right of way shown on plan RR1267A	Appendix B-2 Part 2 Map 3
Chimdimash 2A	Chimdimash Indian Reserve No. 2A as shown on plan BC124, save and except the highway rights of ways shown on plans RD3274 and 52963	Appendix B-2 Part 2 Map 3
Ikshenigwolk 3	Ikshenigwolk Indian Reserve No. 3 as shown on plan 90530, save and except the highway rights of ways shown on plans RD3372 and 57929	Appendix B-2 Part 2 Map 2
Kshish 4 and 4A	Kshish Indian Reserve No. 4 and 4A as shown on plan BC123, save and except the highway right of way shown on plan RD2540, and save and except the railway right of way shown on plan RR884B	Appendix B-2 Part 2 Map 5
Kshish 4B	Kshish Indian Reserve No. 4B as shown on plan BC585	Appendix B-2 Part 2 Map 5

¹ Plan numbers in this column are Canadian Land Survey Records on deposit in Ottawa.

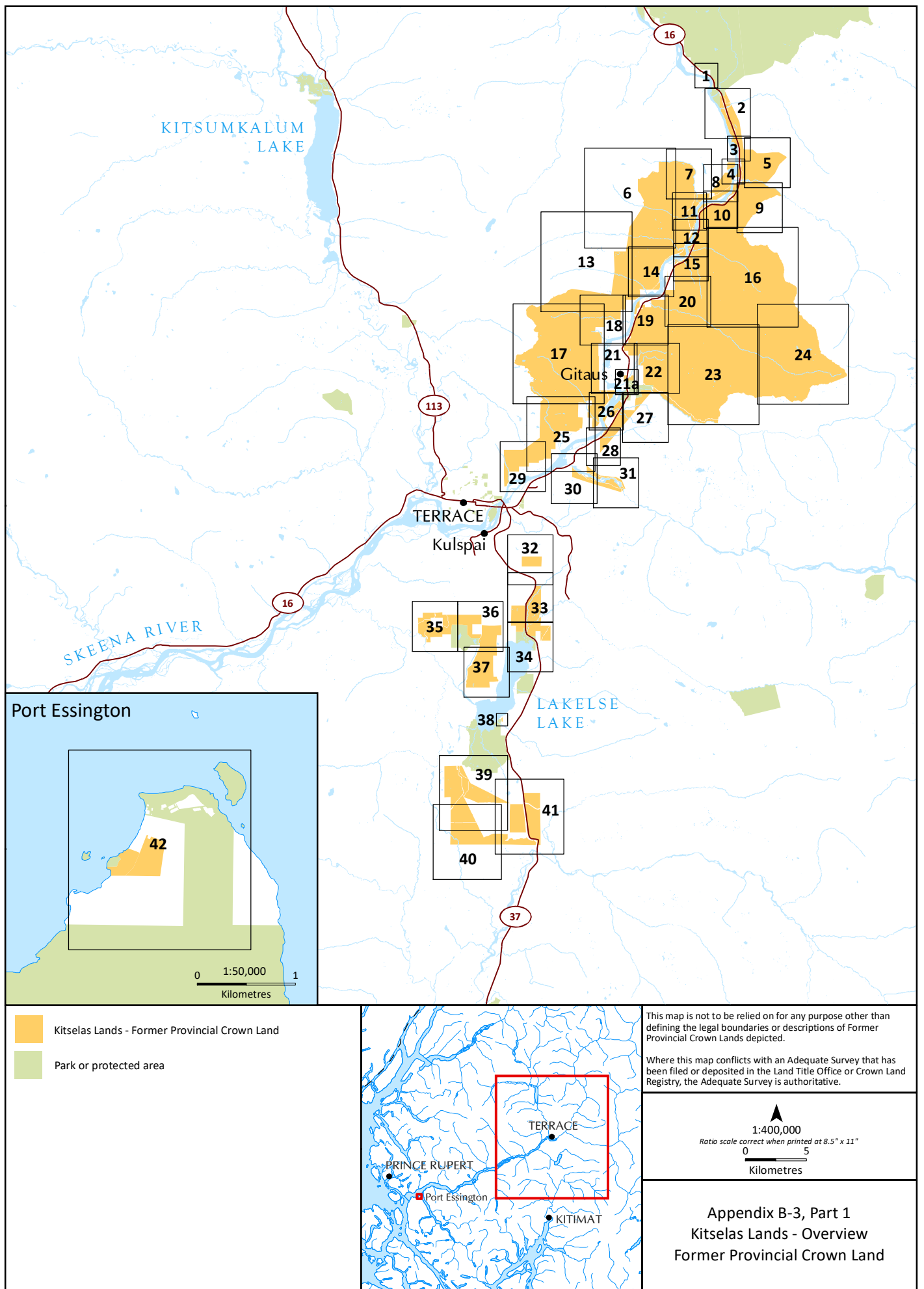
² The location of natural boundaries may have moved since surveyed, and may continue to move and the associated titled areas may change

Zaimoetz 5	Zaimoetz Indian Reserve No. 5 as shown on plan BC123, save and except the highway right of way being a parcel of consistent width of 20.116 metres, located 10.058 metres either side of a centerline shown on plan RD2230, and save and except the highway rights of ways shown on plans 52696 and 90180	Appendix B-2 Part 2 Map 6
Kulspai 6	Kulspai Indian Reserve No. 6 as shown on plan 58777, save and except the highway rights of ways shown on plans 51294 and 56361	Appendix B-2 Part 2 Map 7
Ketoneda 7	Ketoneda Indian Reserve No. 7 as shown on plan 91179, save and except the highway rights of ways shown on plans RD3264 and 57236	Appendix B-2 Part 2 Map 1

Appendix B-3 Former Provincial Crown Land

Part 1: Overview Map of Former Provincial Crown Land

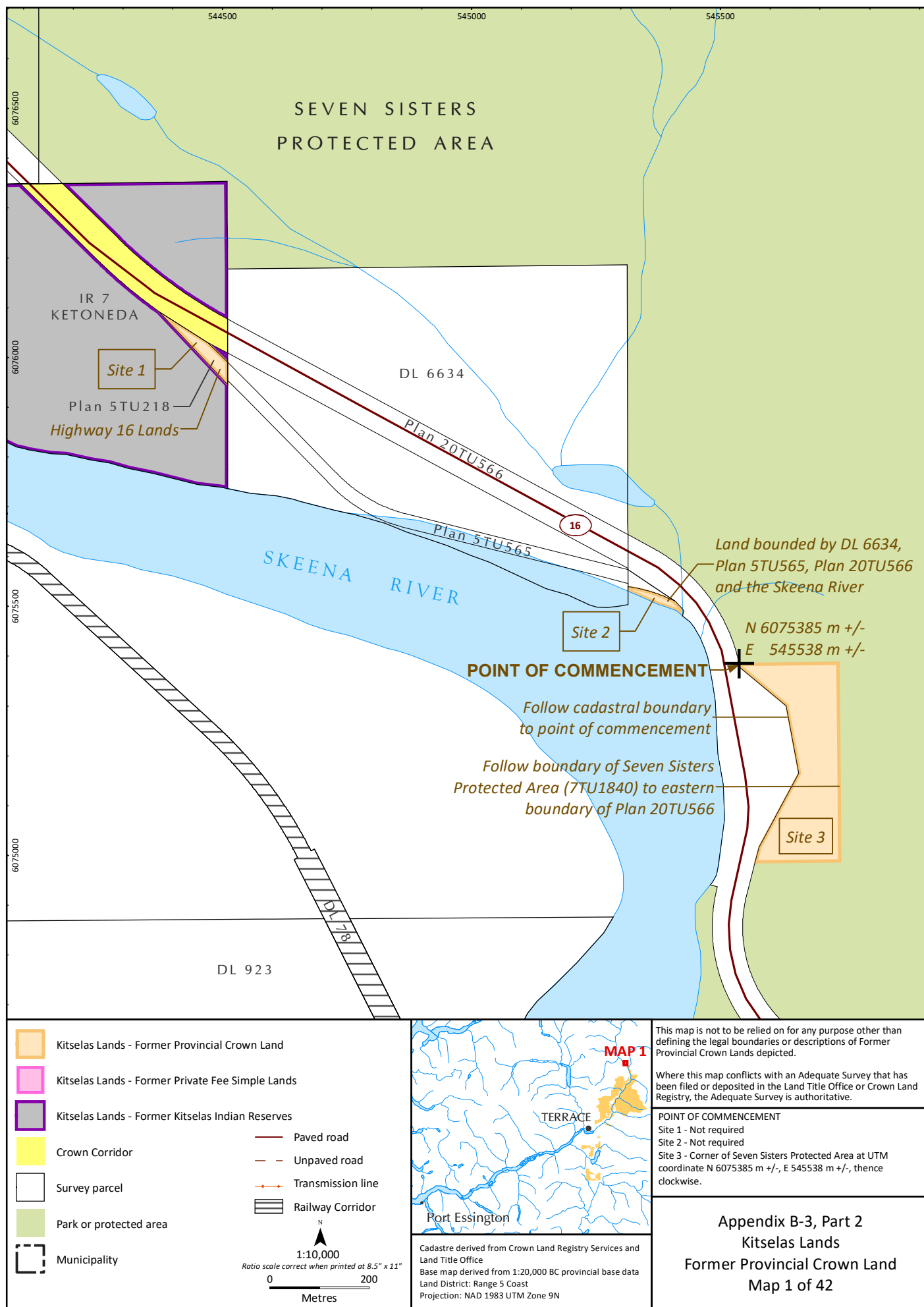
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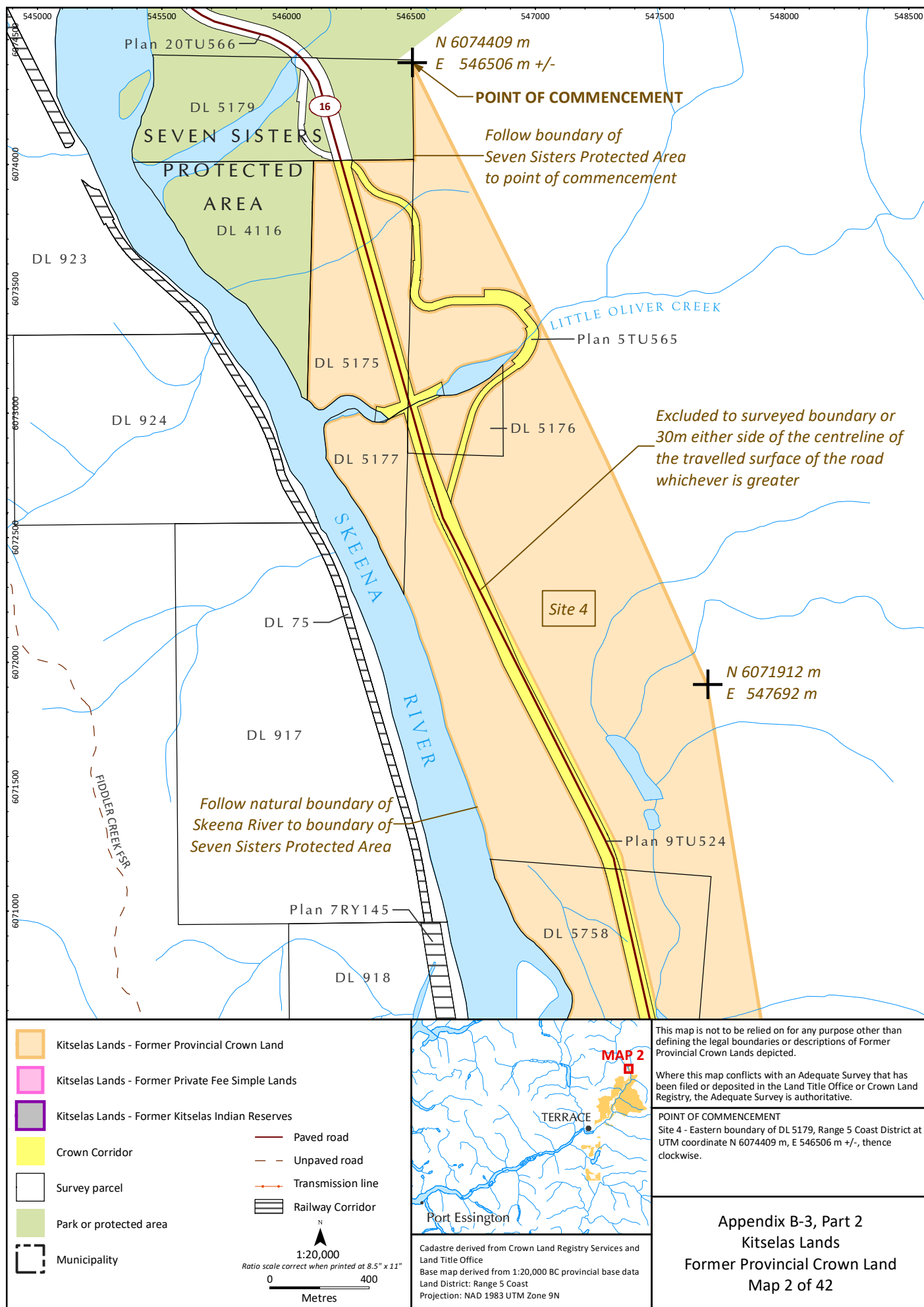


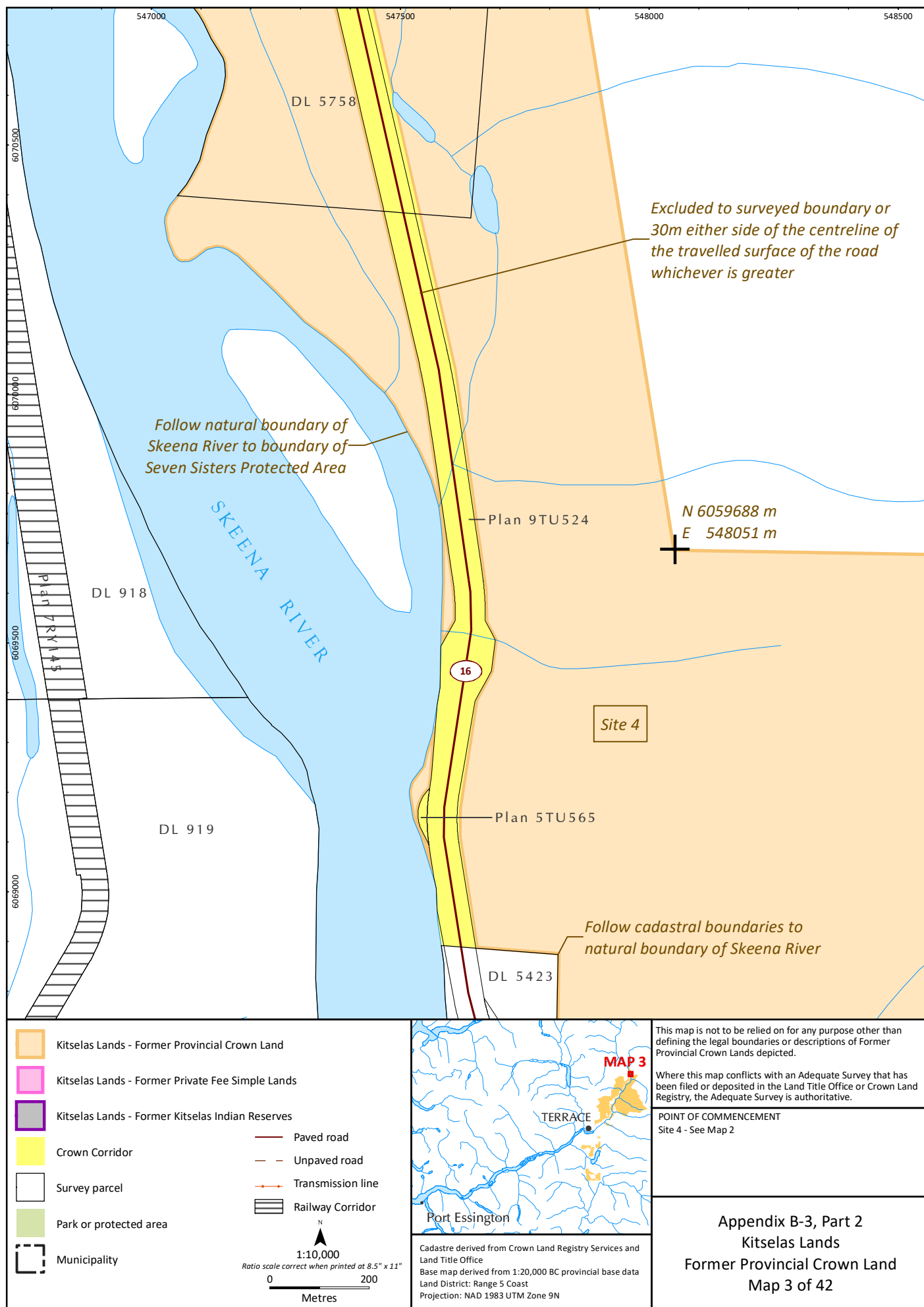
Appendix B-3 Former Provincial Crown Land

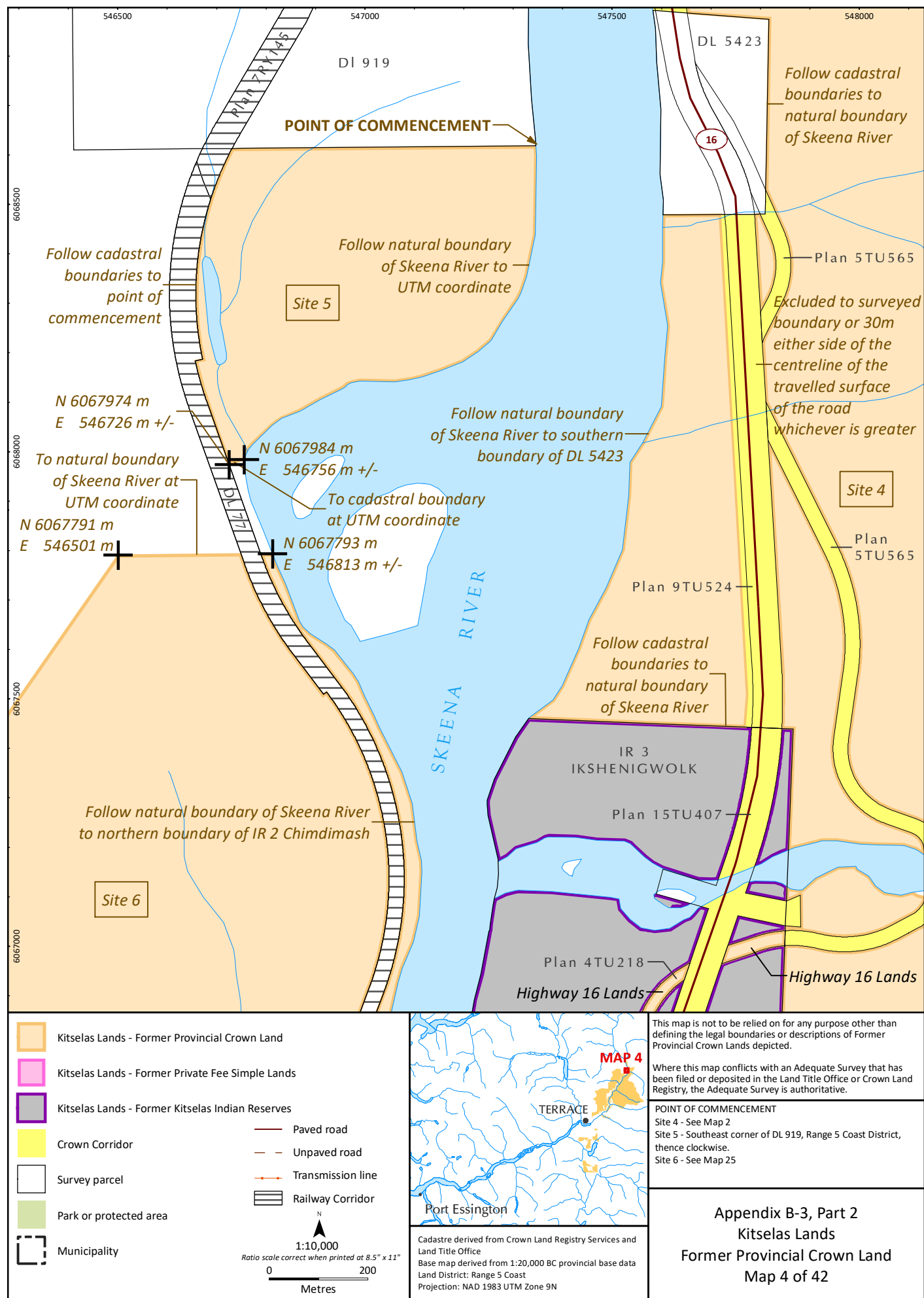
Part 2: Maps of Former Provincial Crown Land

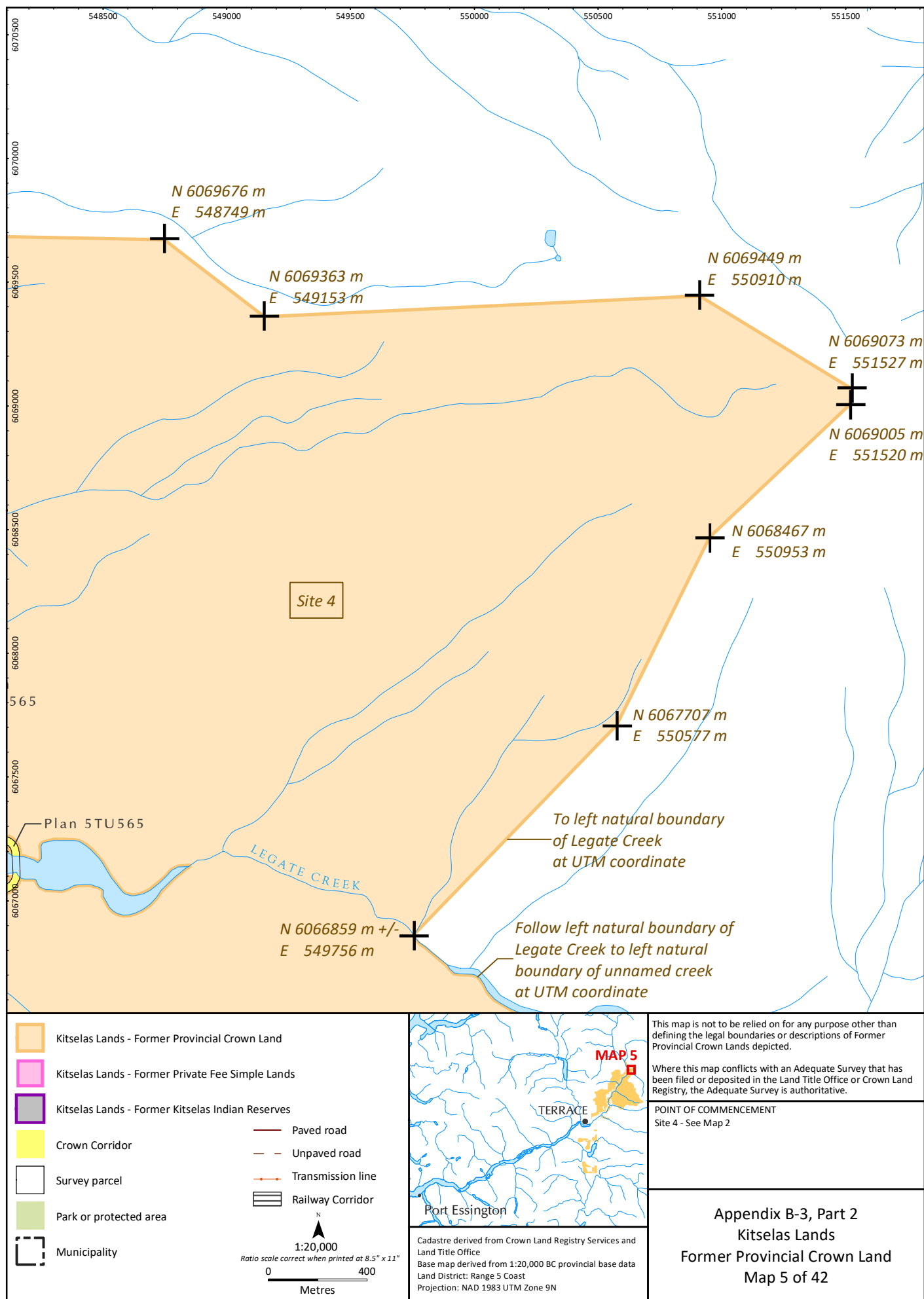
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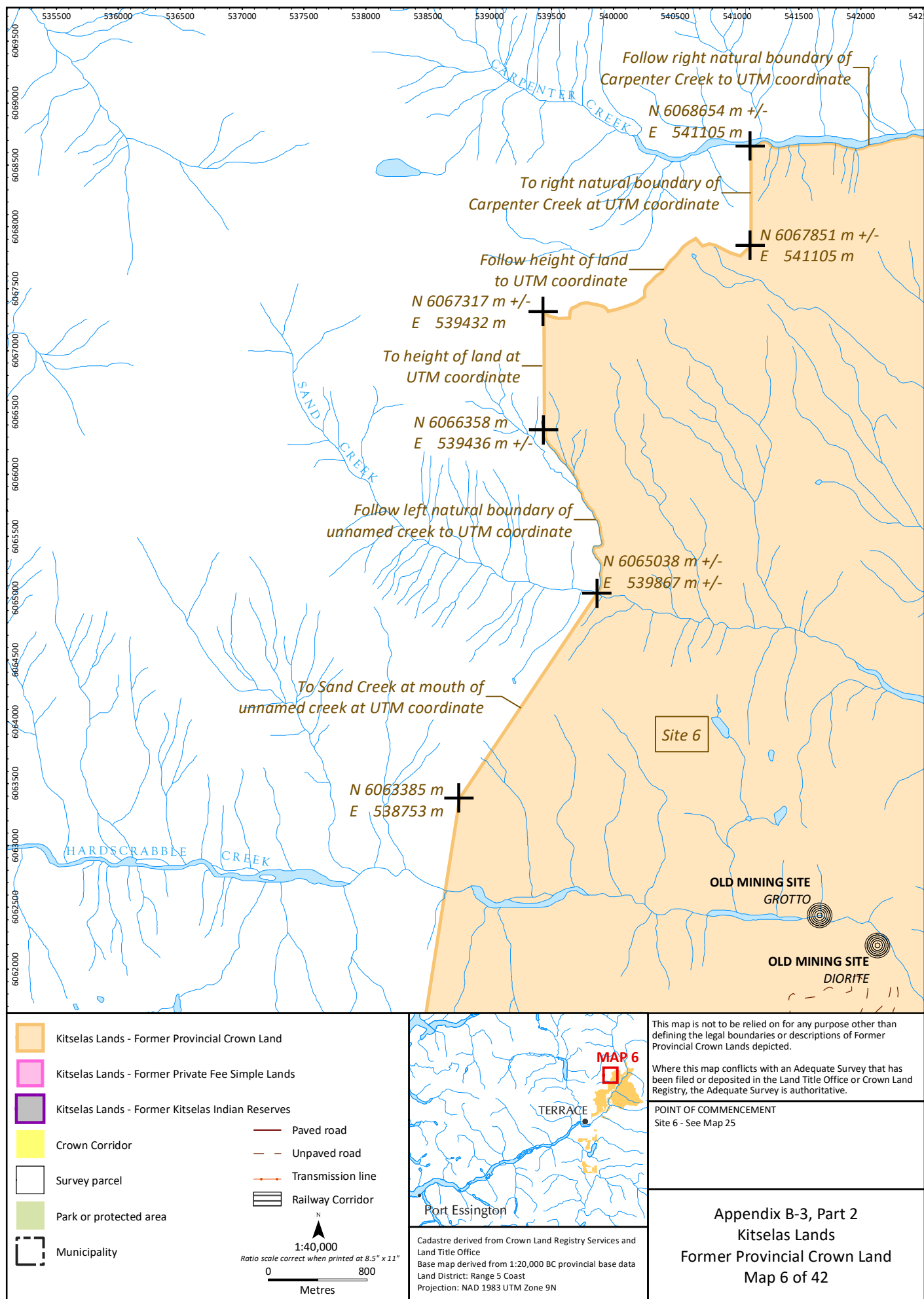


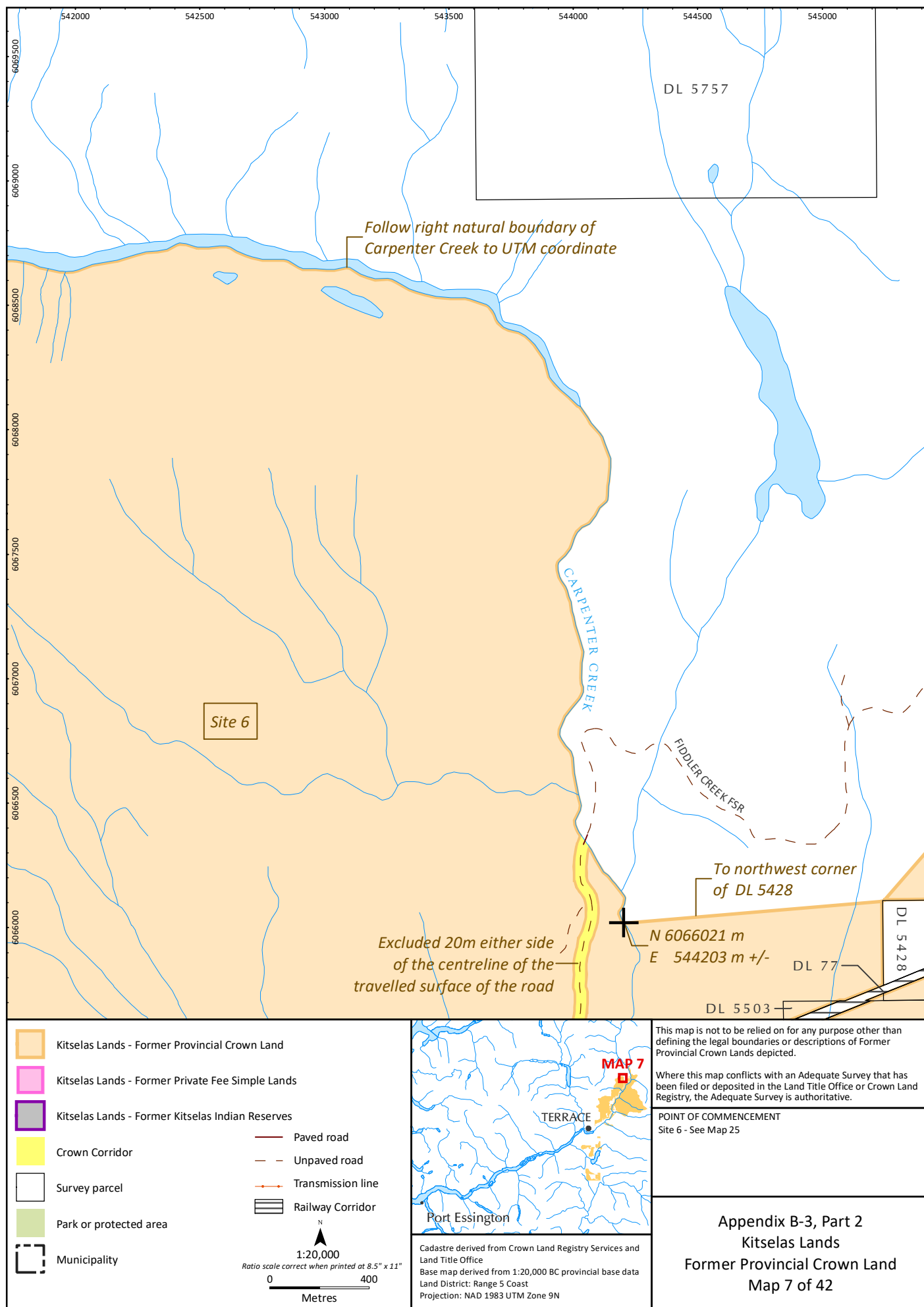


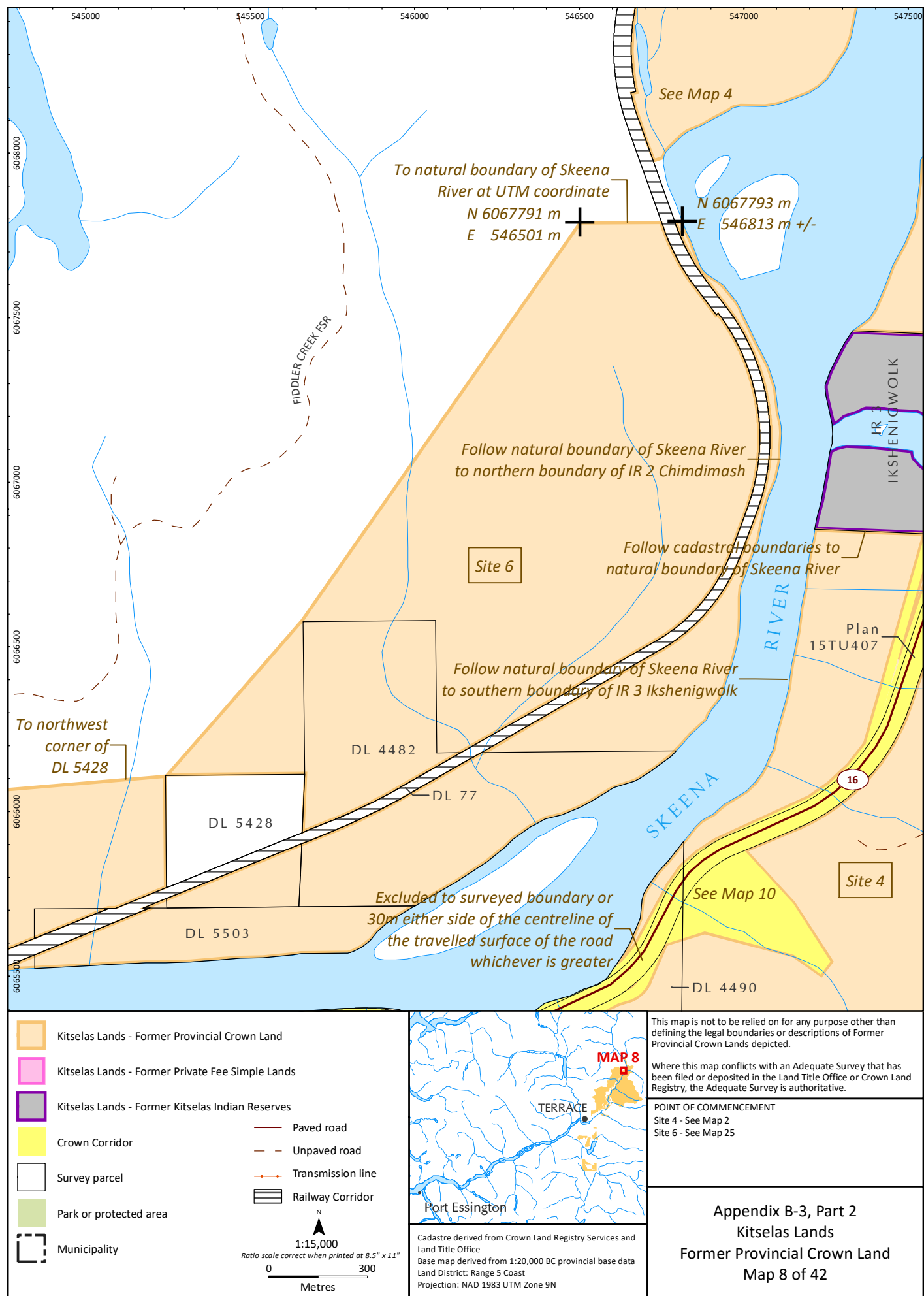


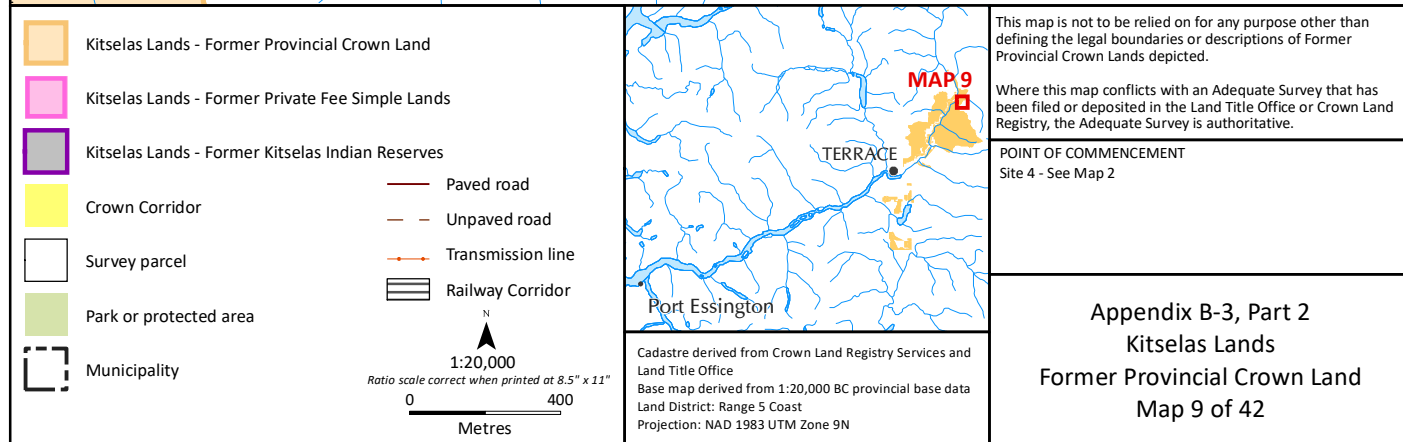
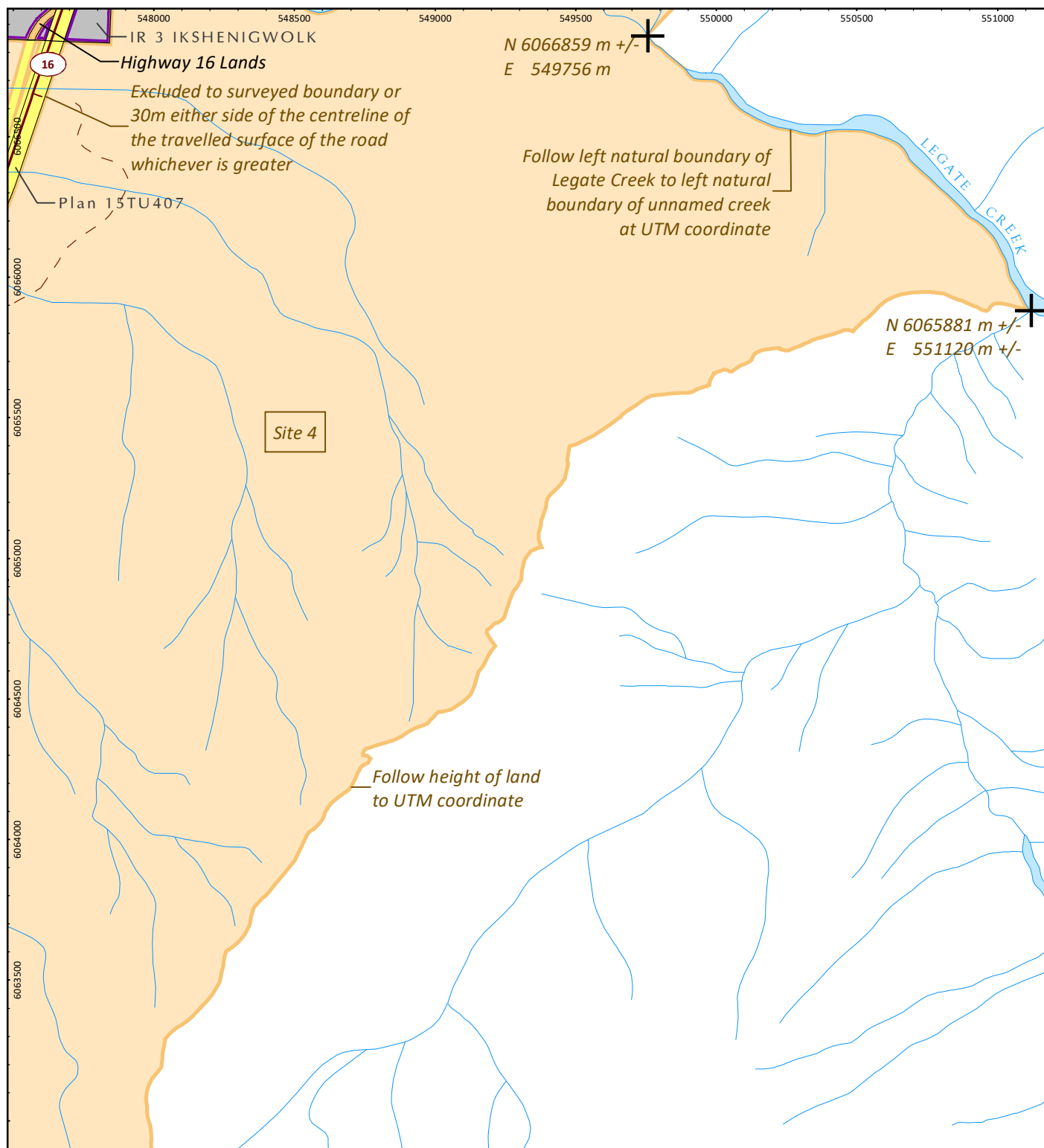


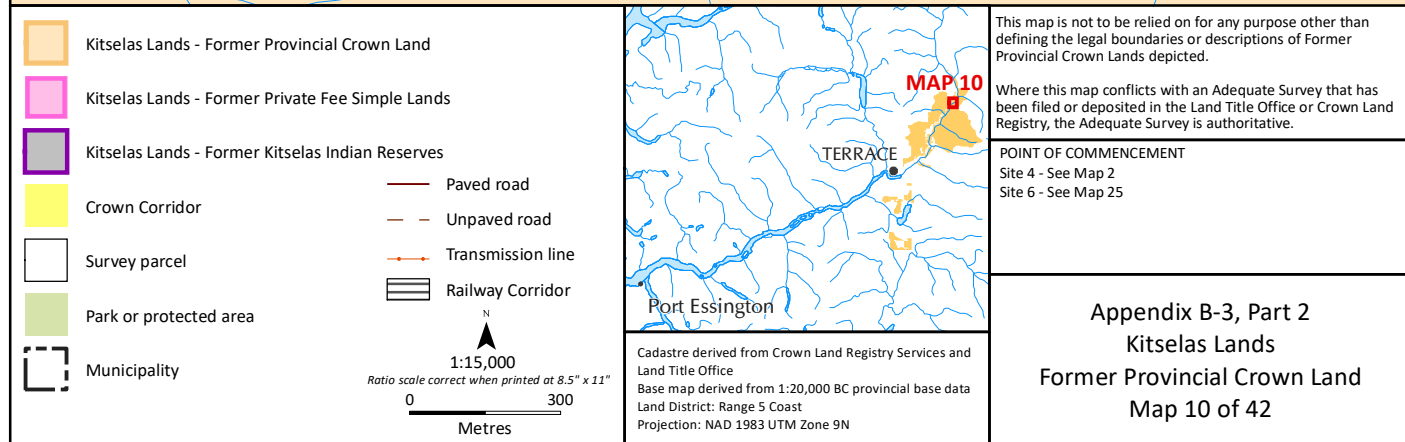
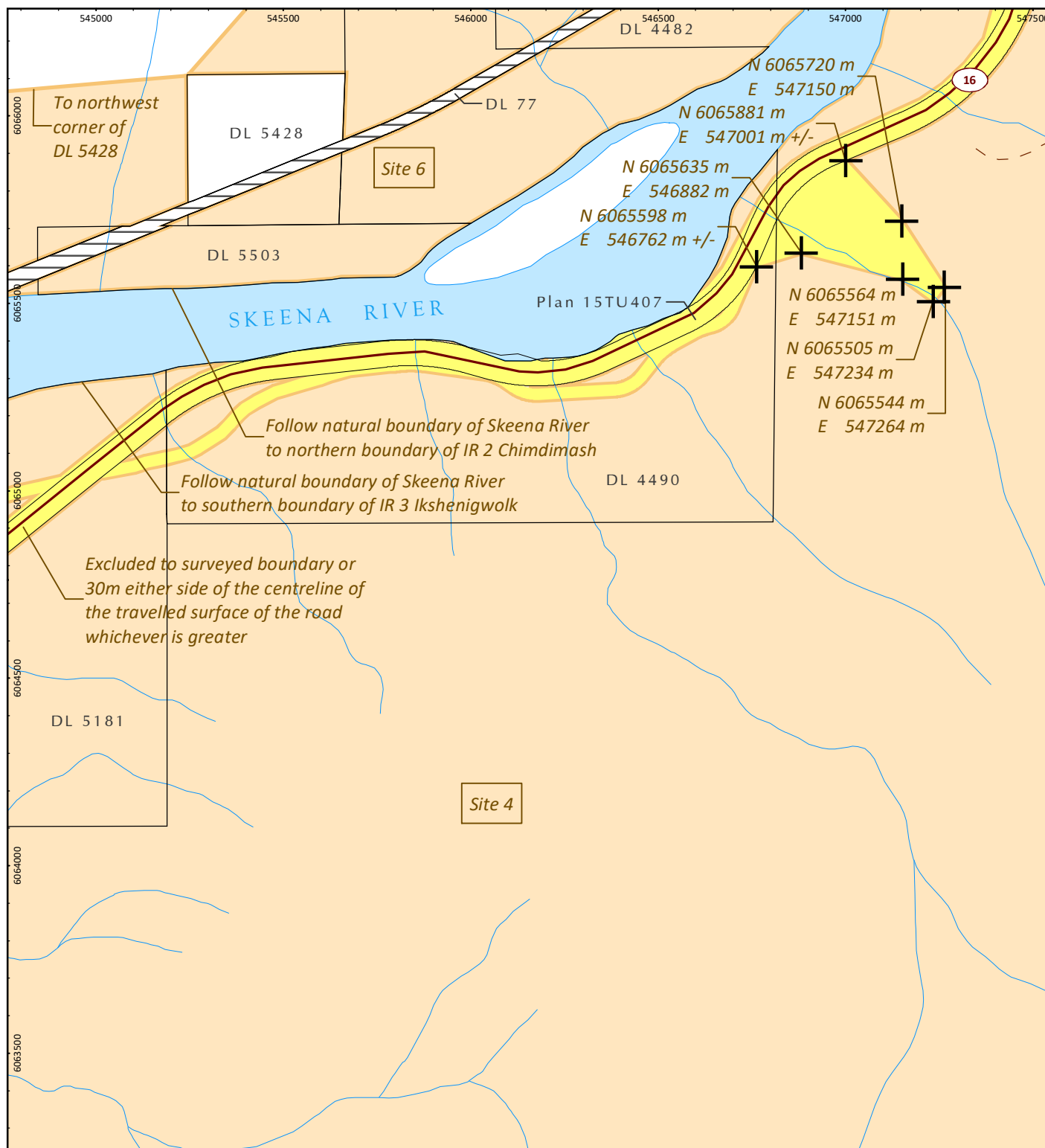


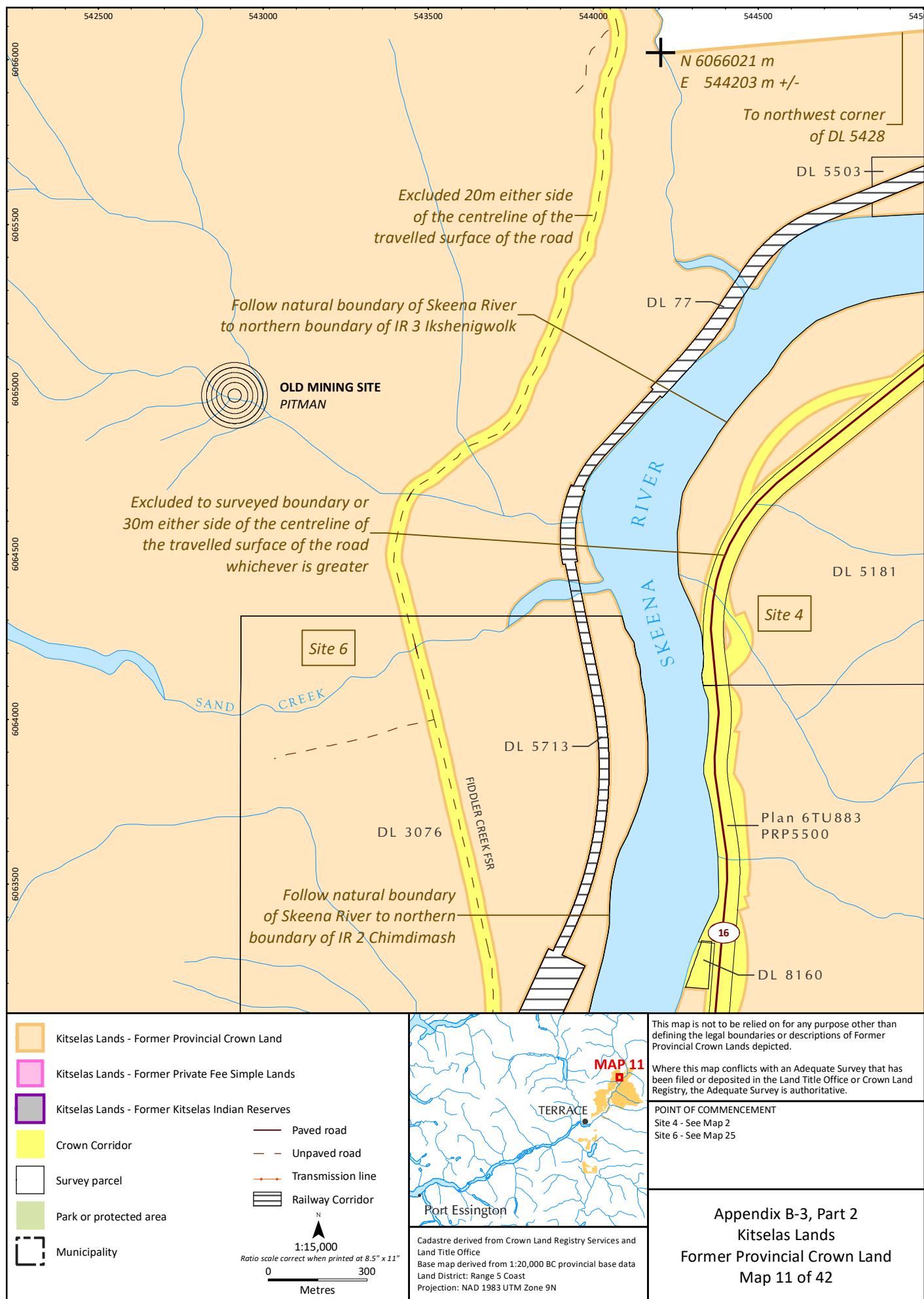


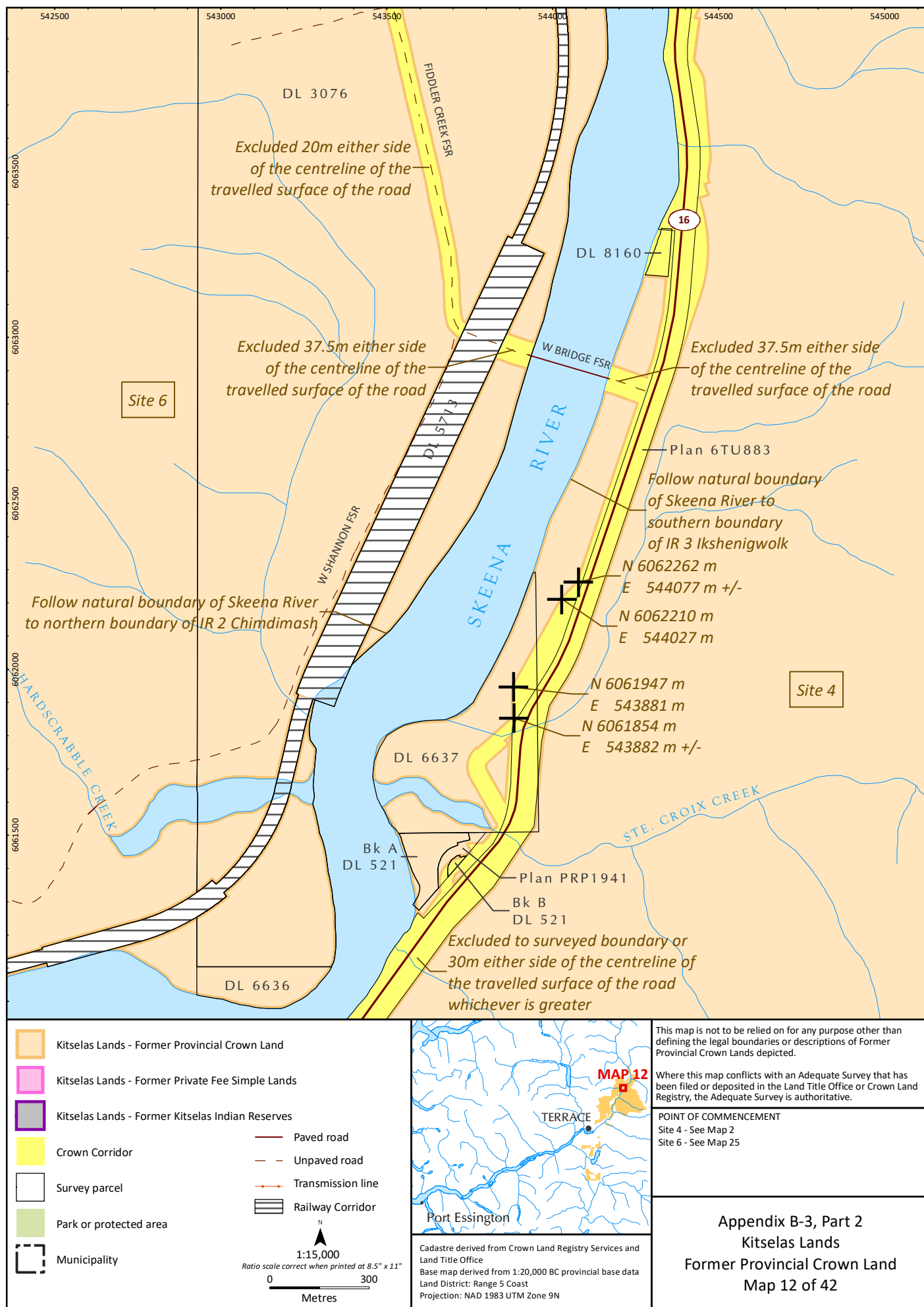


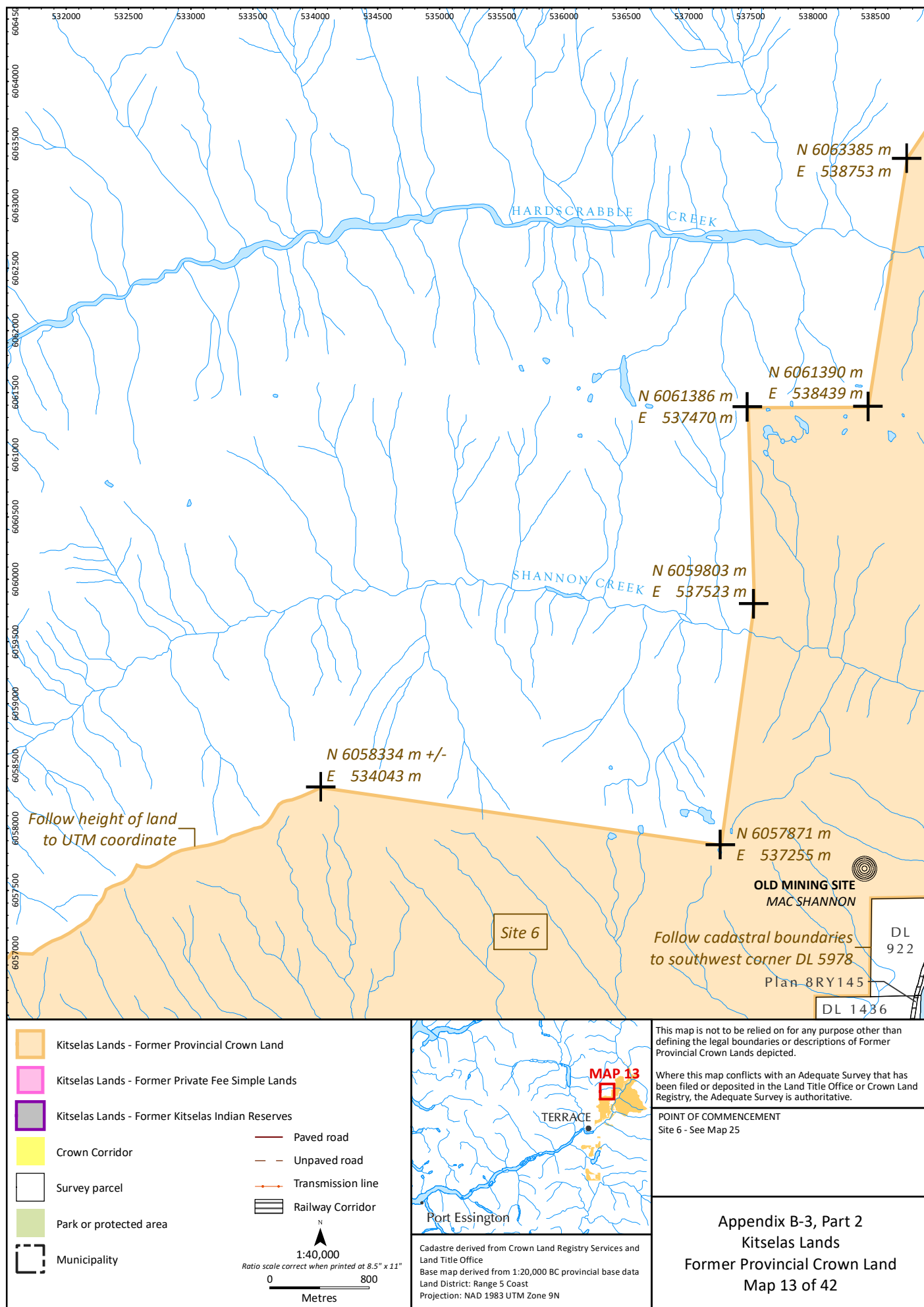


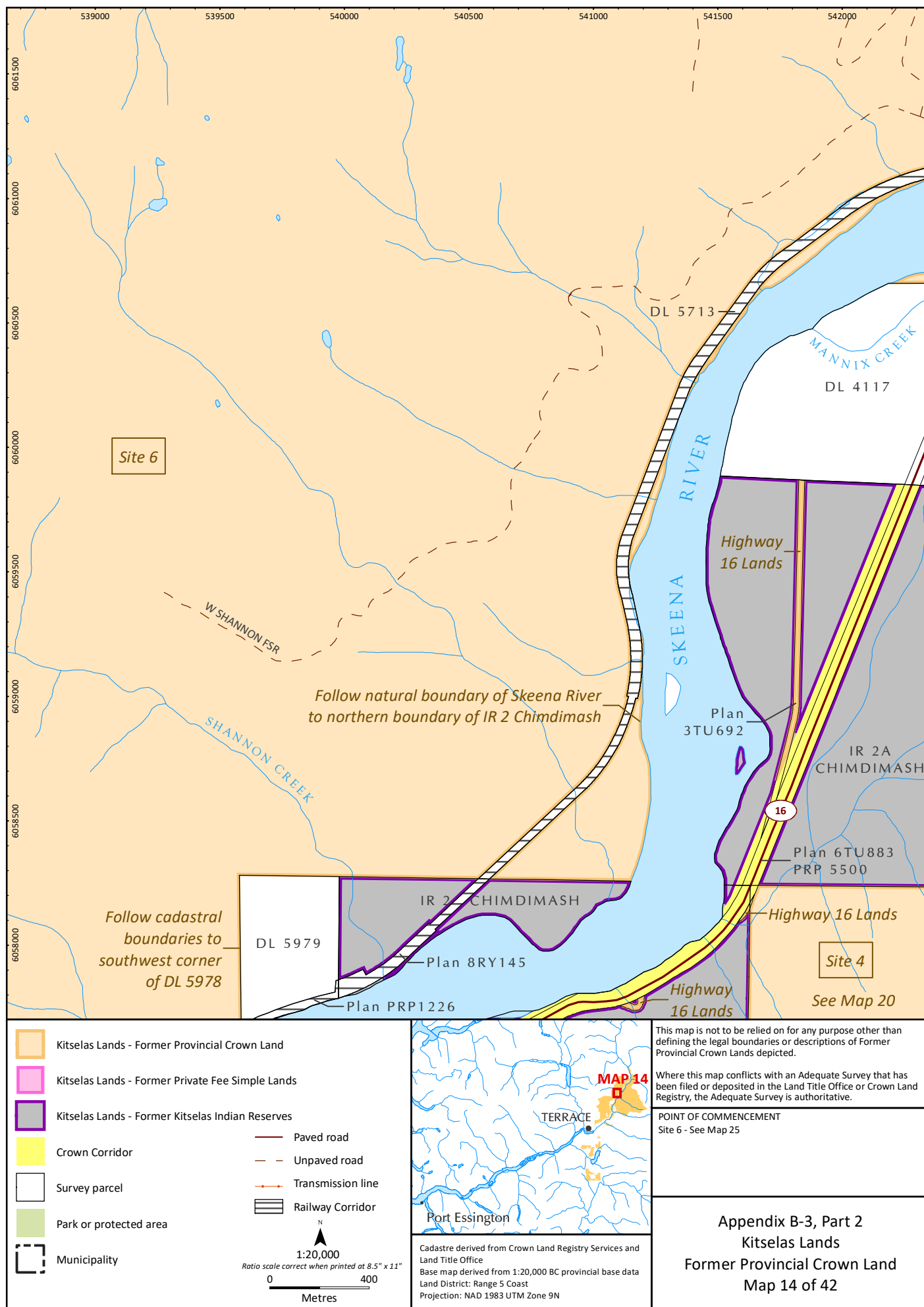


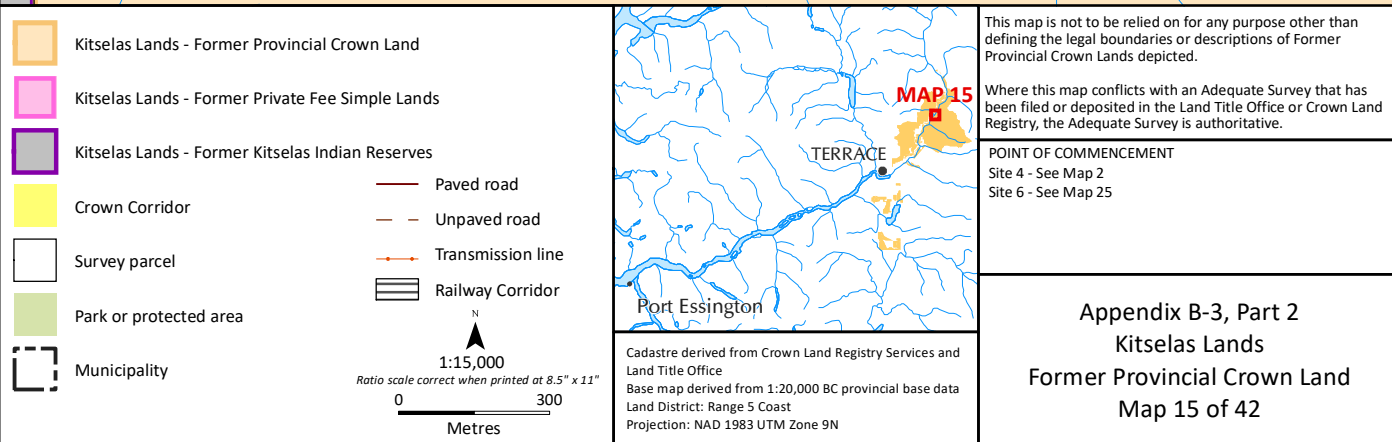
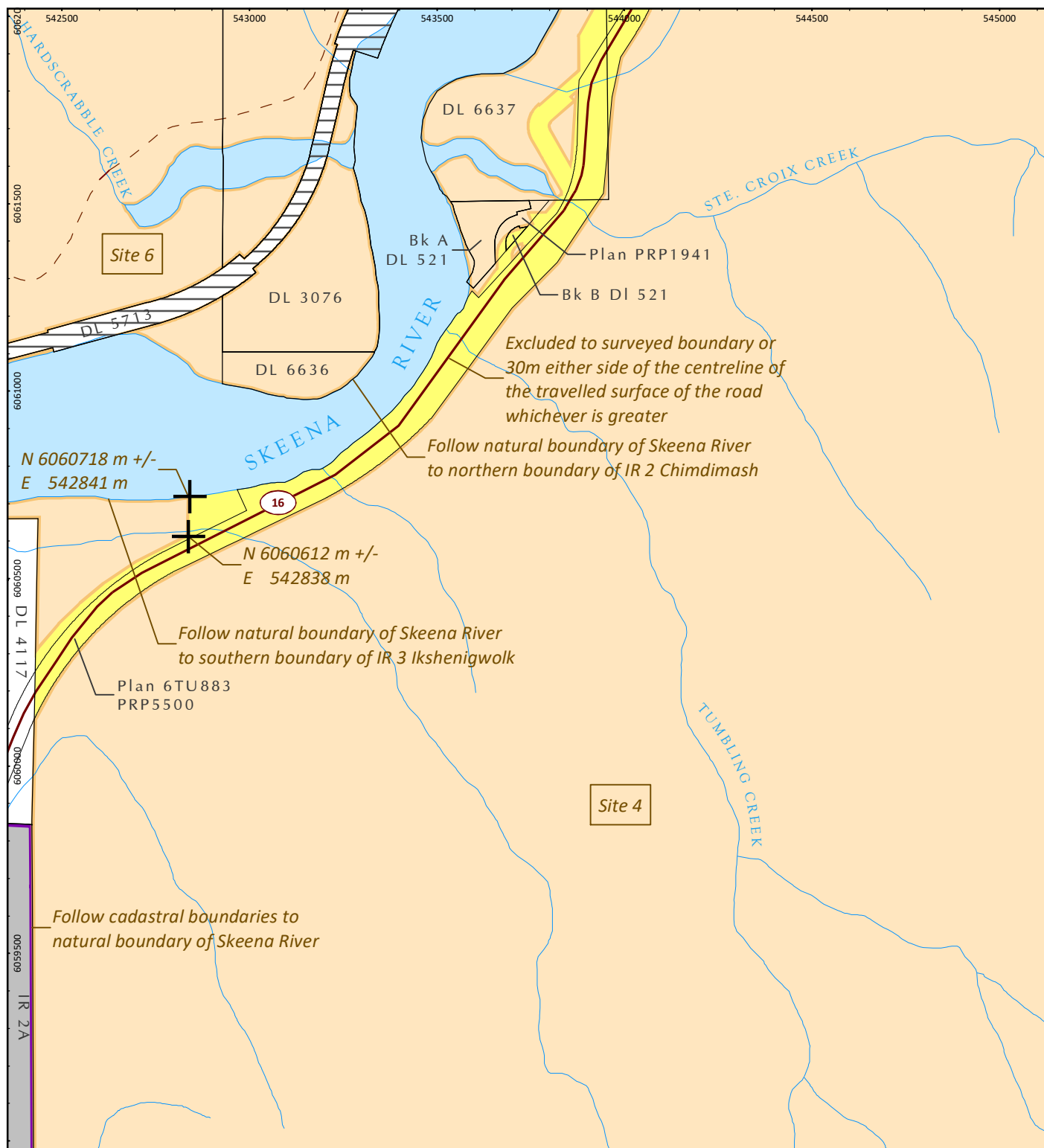


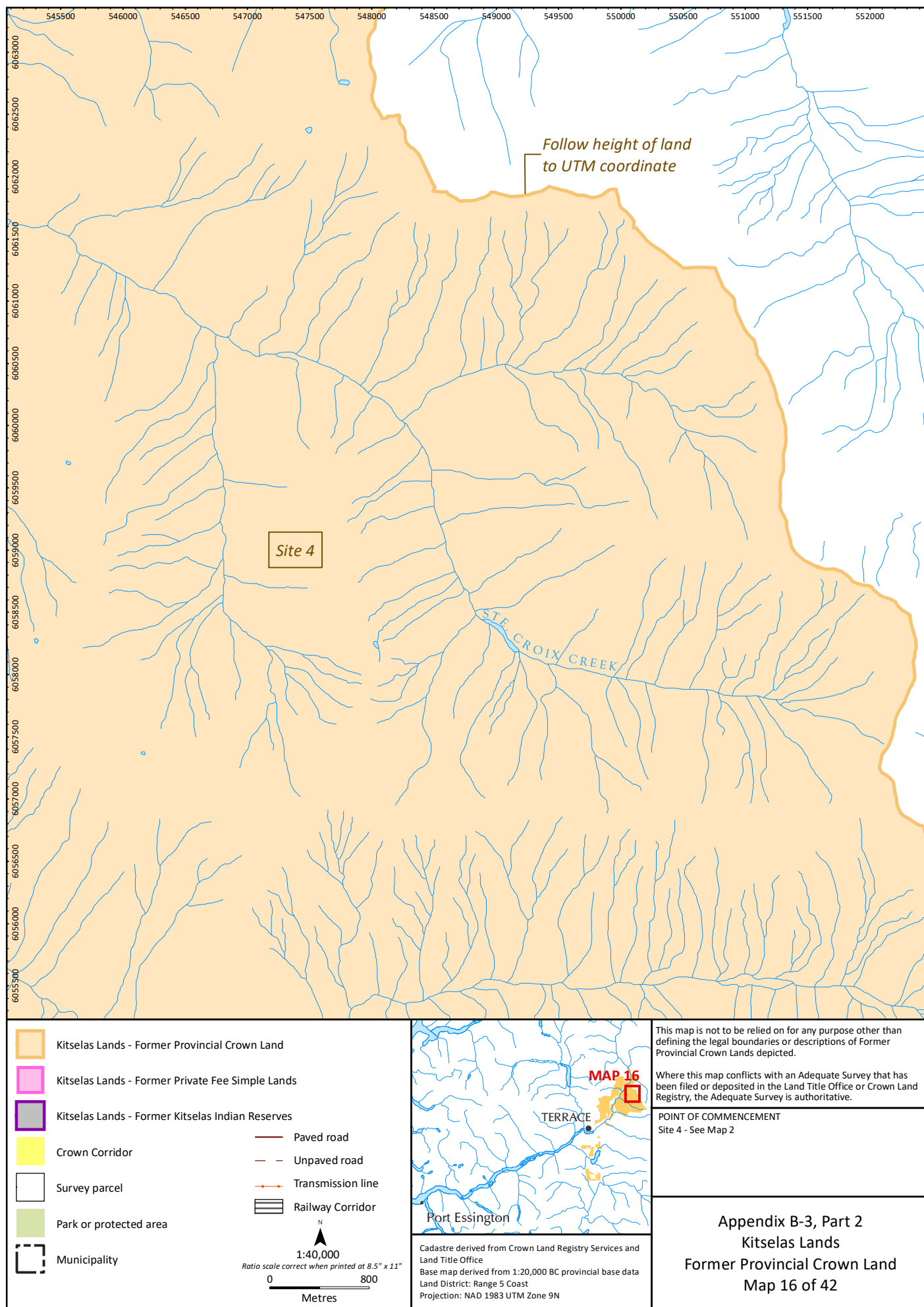


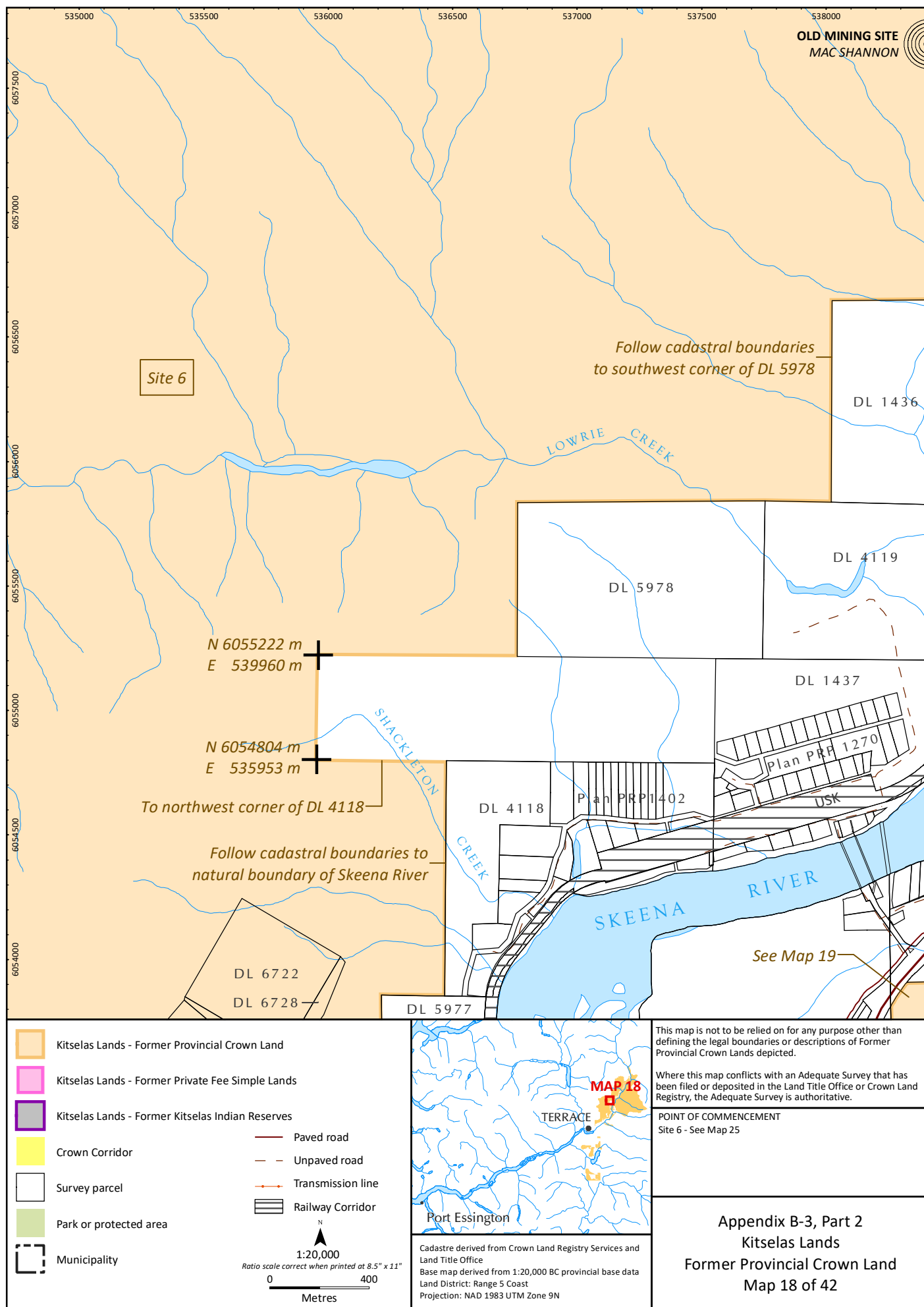


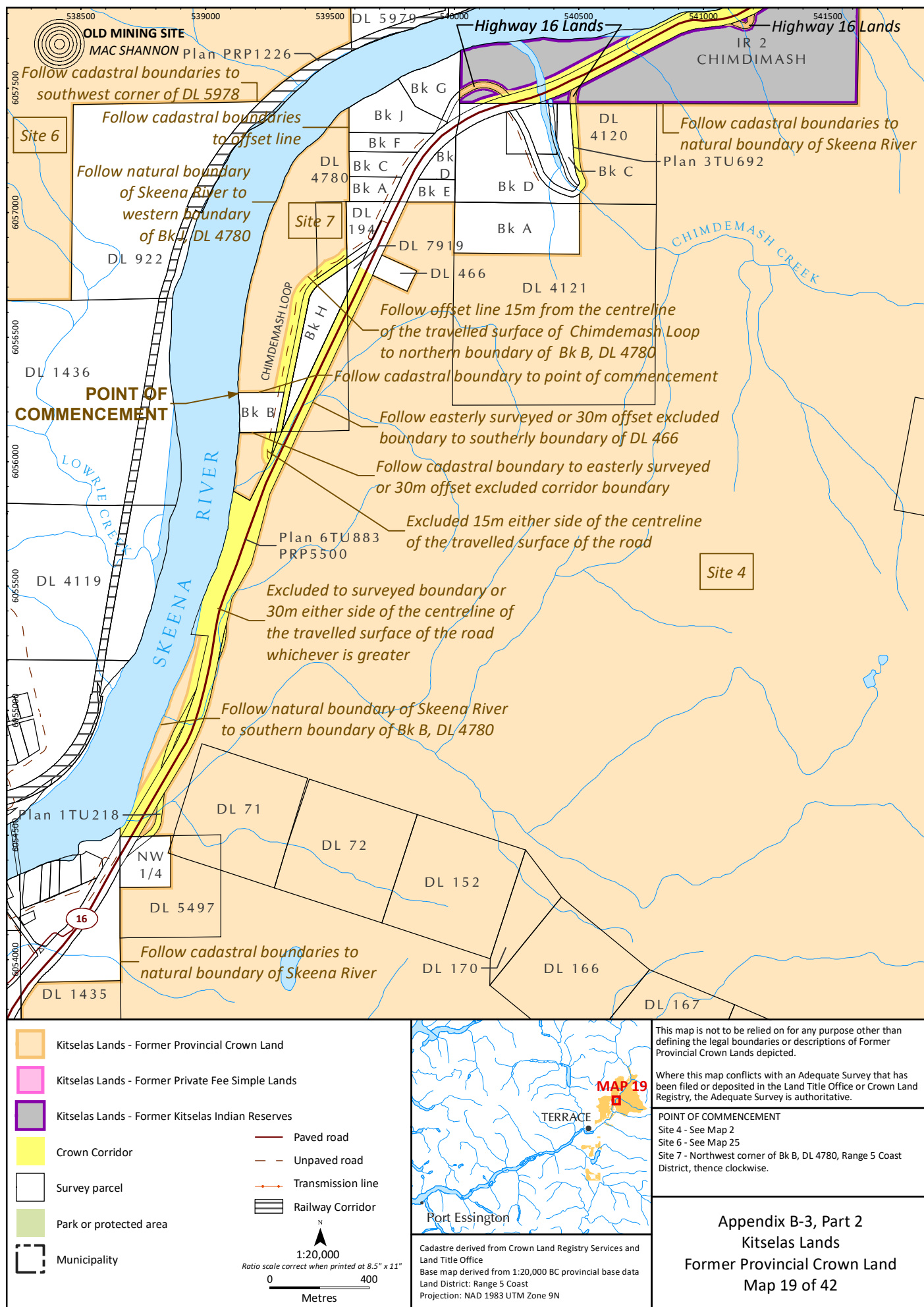


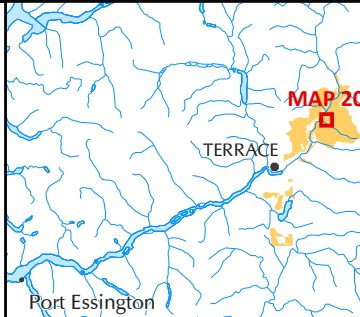
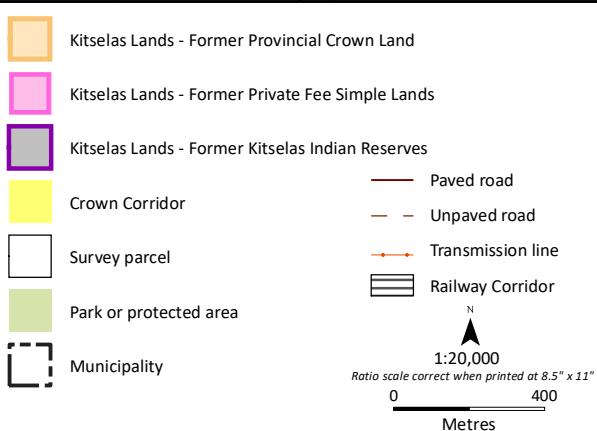
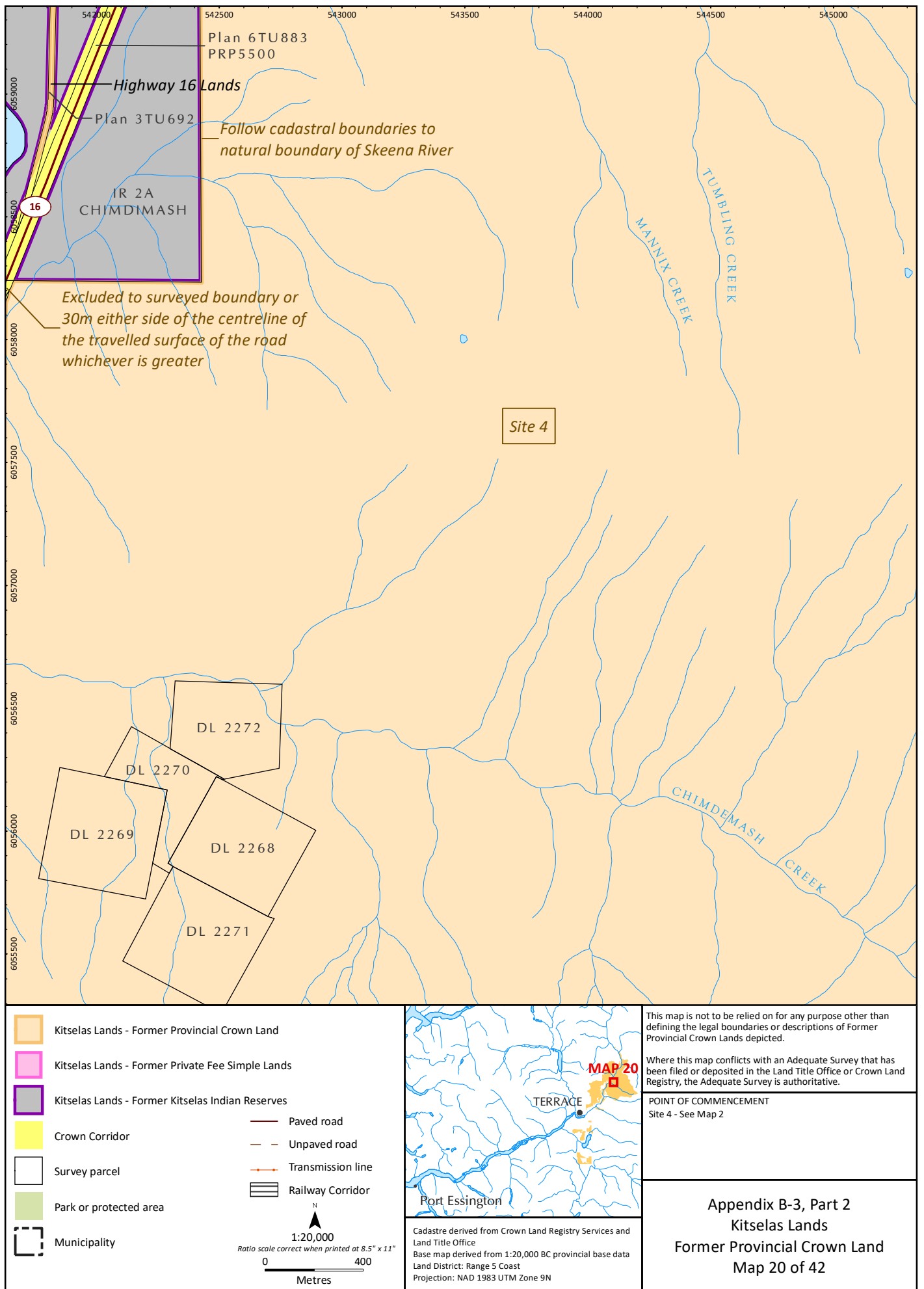












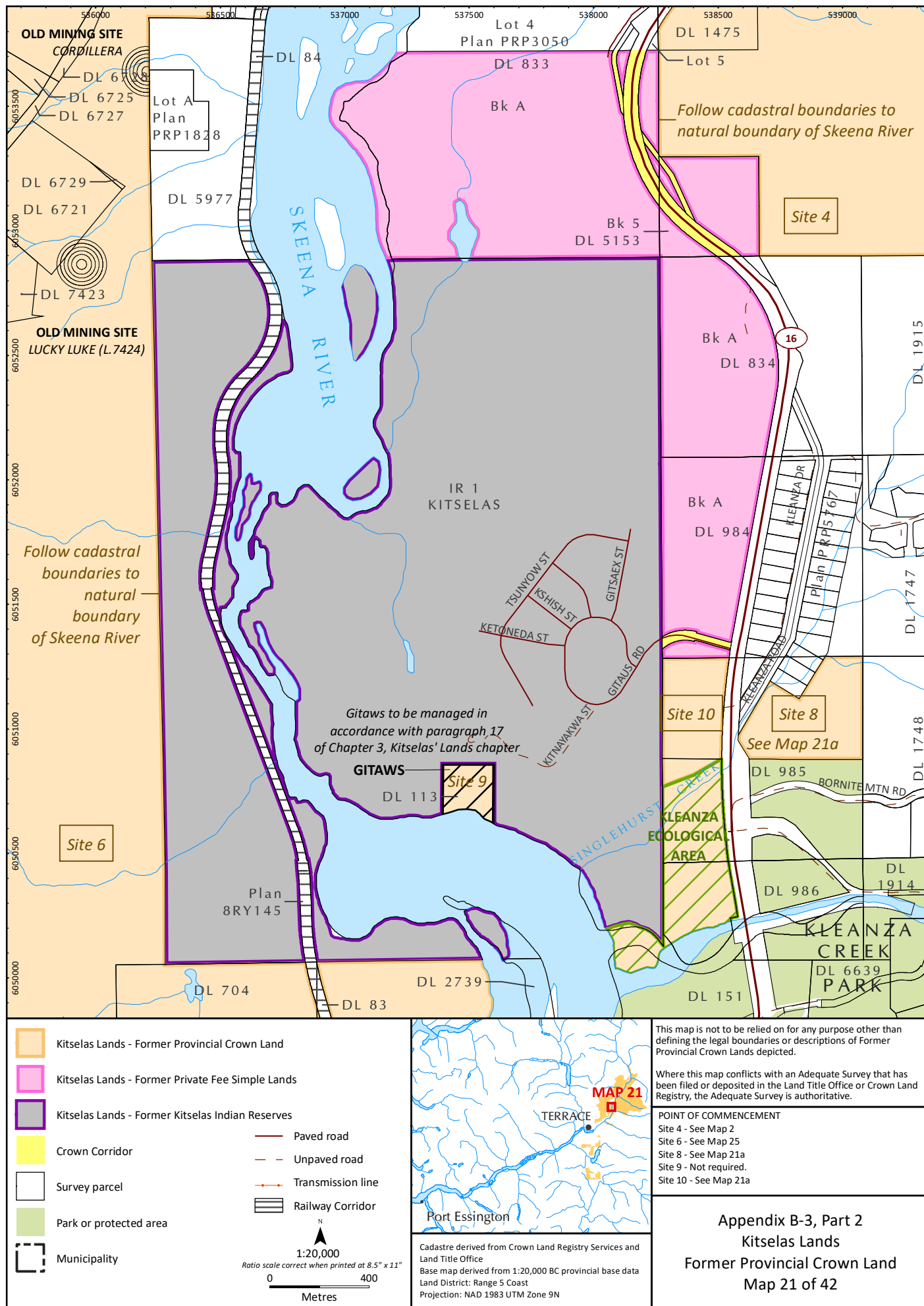
Cadastre derived from Crown Land Registry Services and Land Title Office
Base map derived from 1:20,000 BC provincial base data
Land District: Range 5 Coast
Projection: NAD 1983 UTM Zone 9N

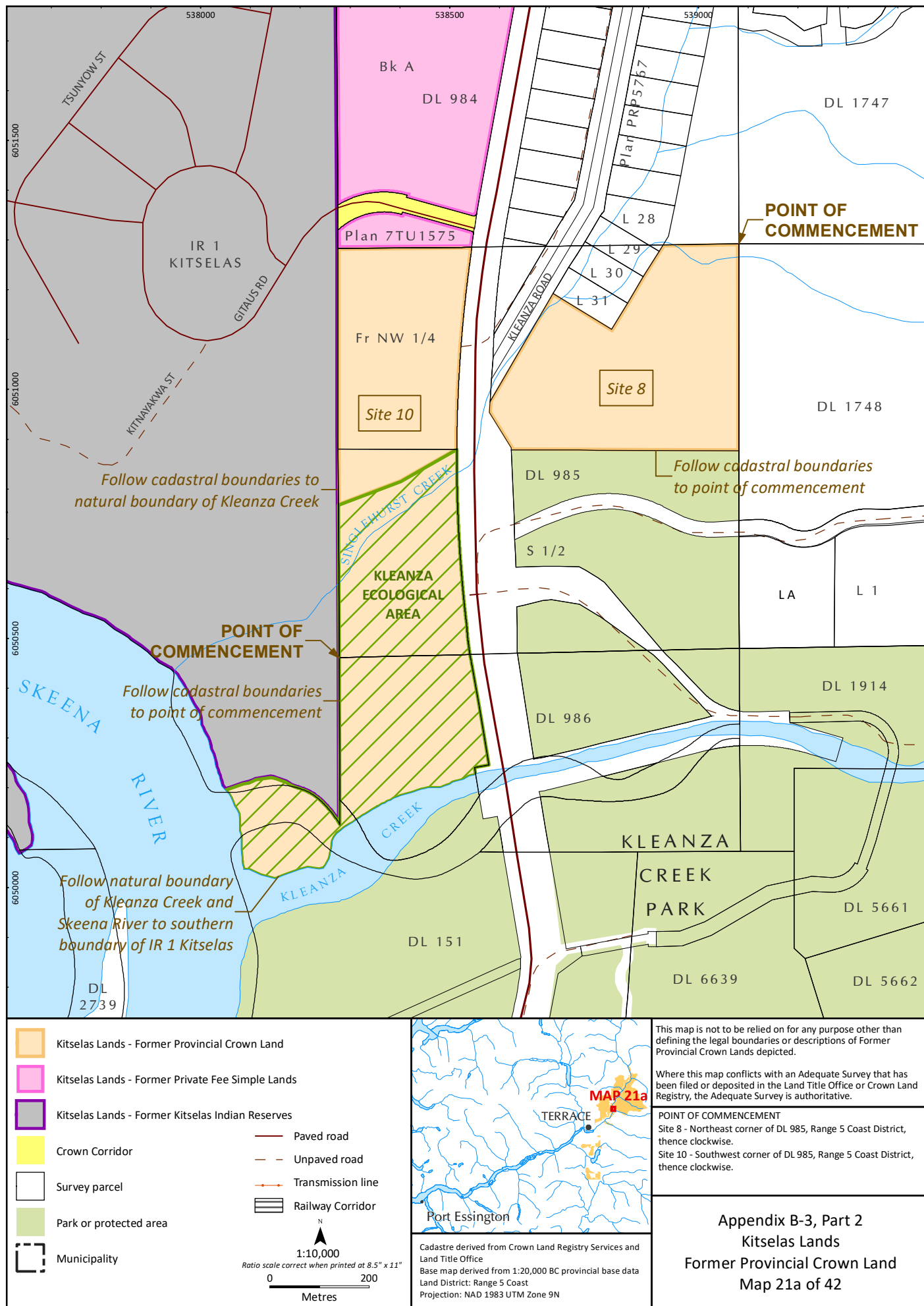
This map is not to be relied on for any purpose other than defining the legal boundaries or descriptions of Former Provincial Crown Lands depicted.

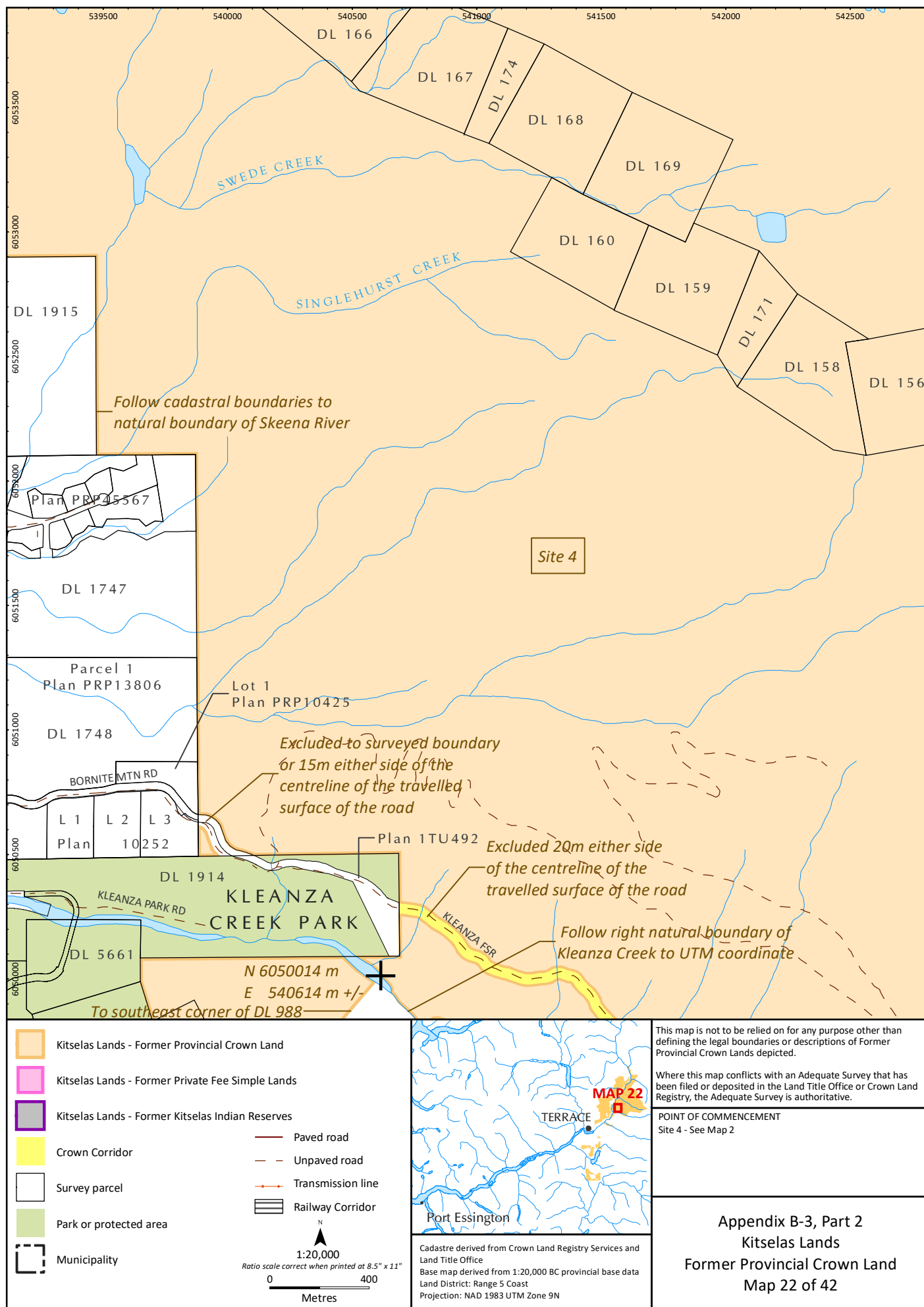
Where this map conflicts with an Adequate Survey that has been filed or deposited in the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.

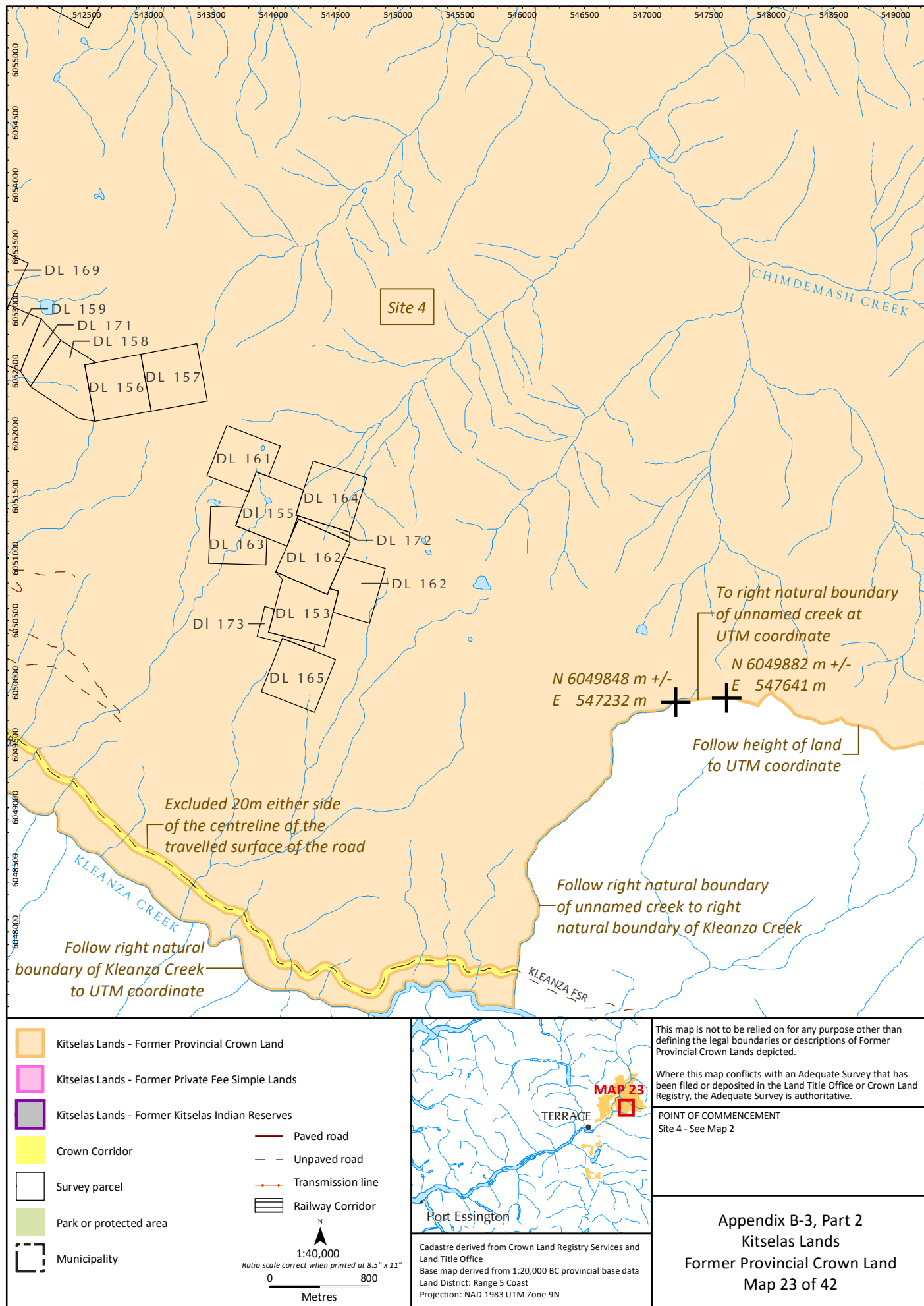
POINT OF COMMENCEMENT
Site 4 - See Map 2

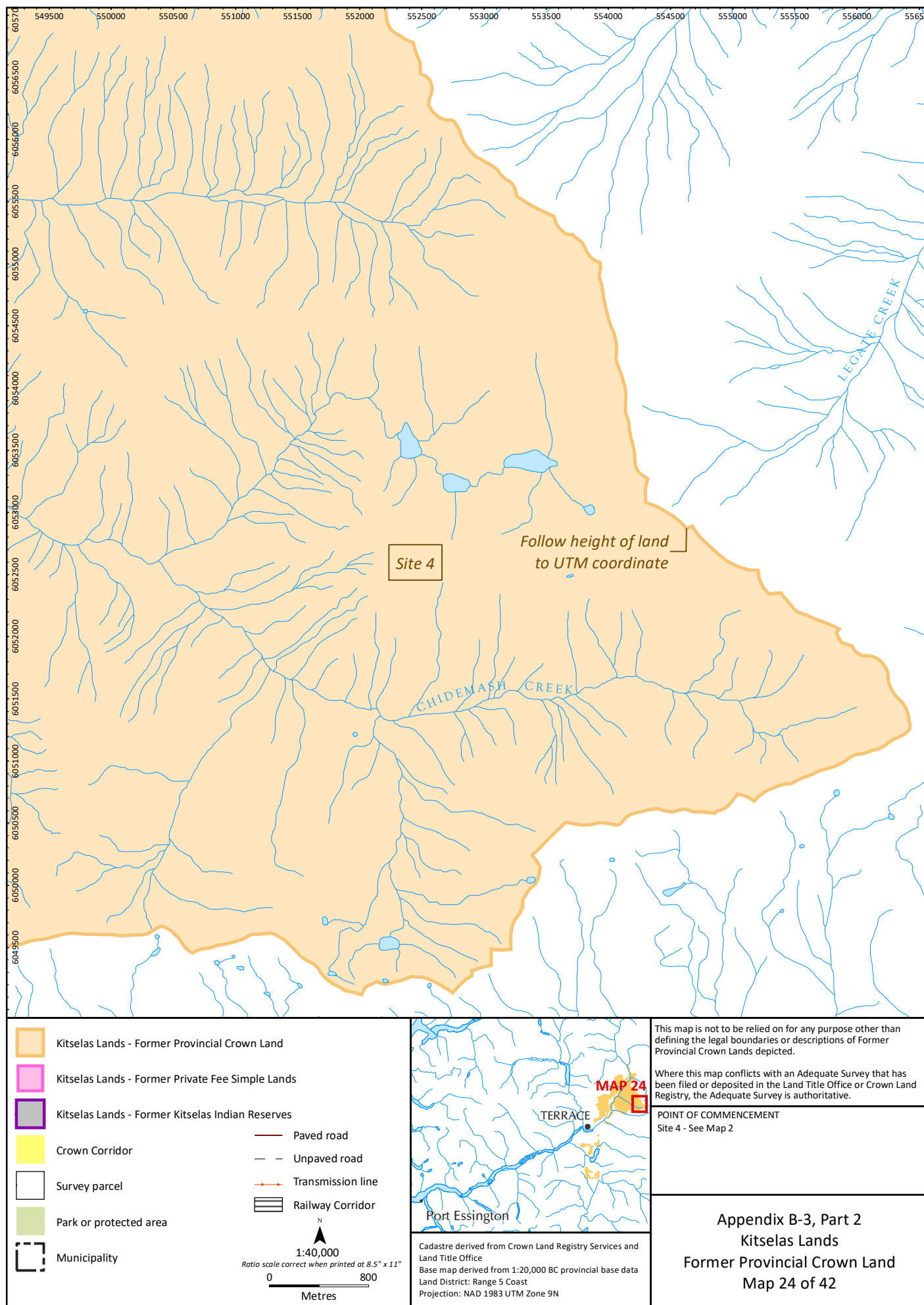
Appendix B-3, Part 2
Kitseles Lands
Former Provincial Crown Land
Map 20 of 42

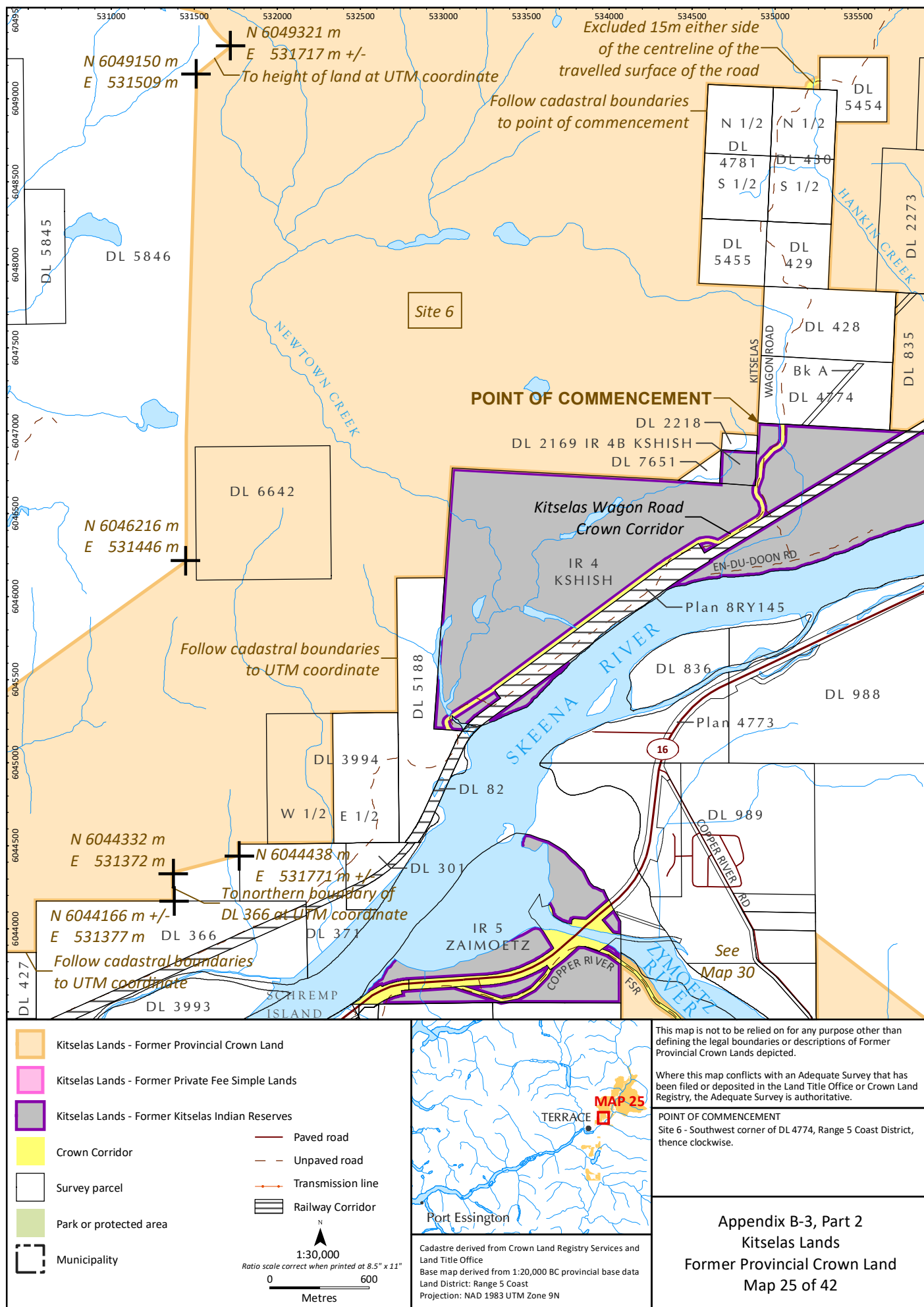


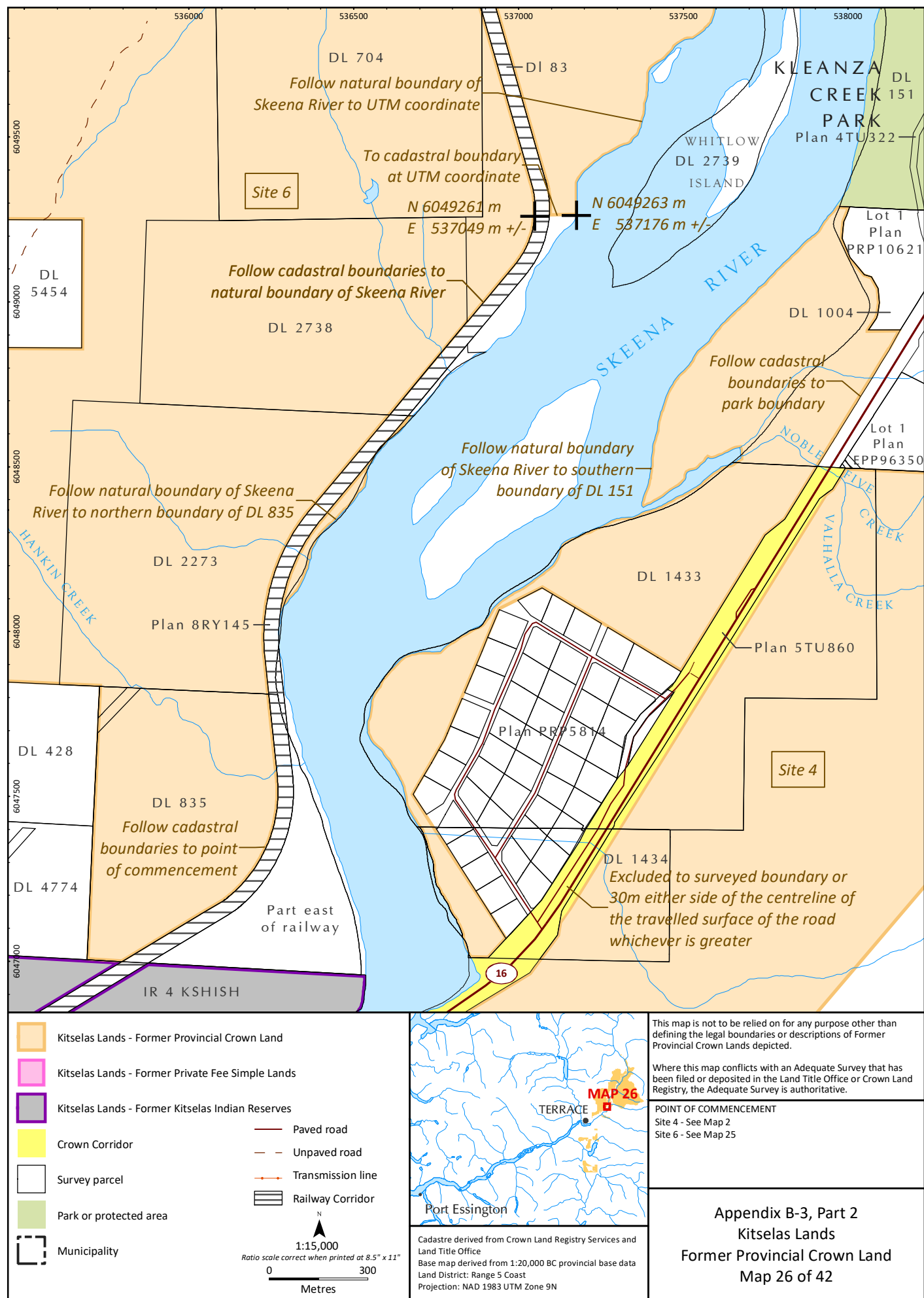


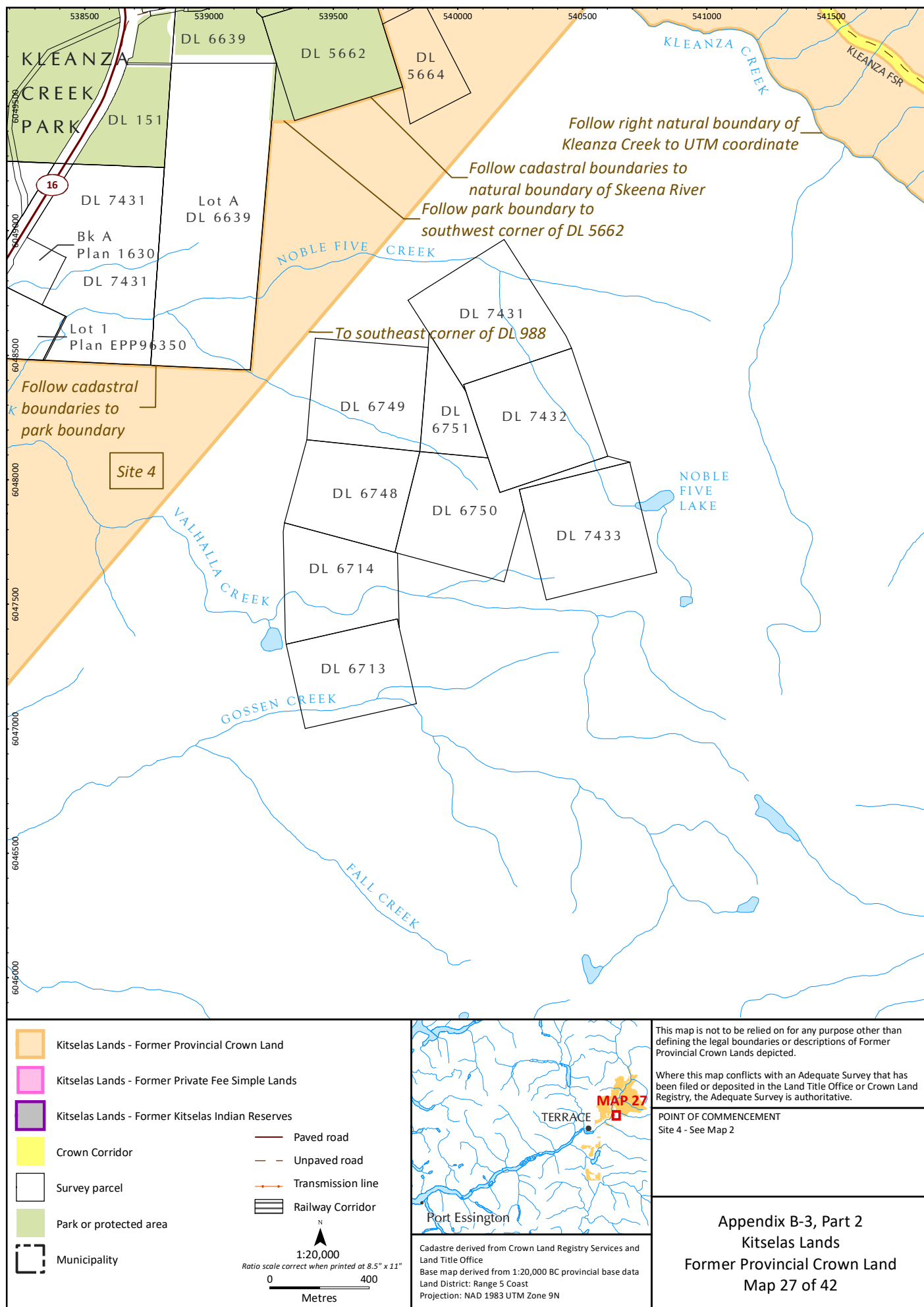


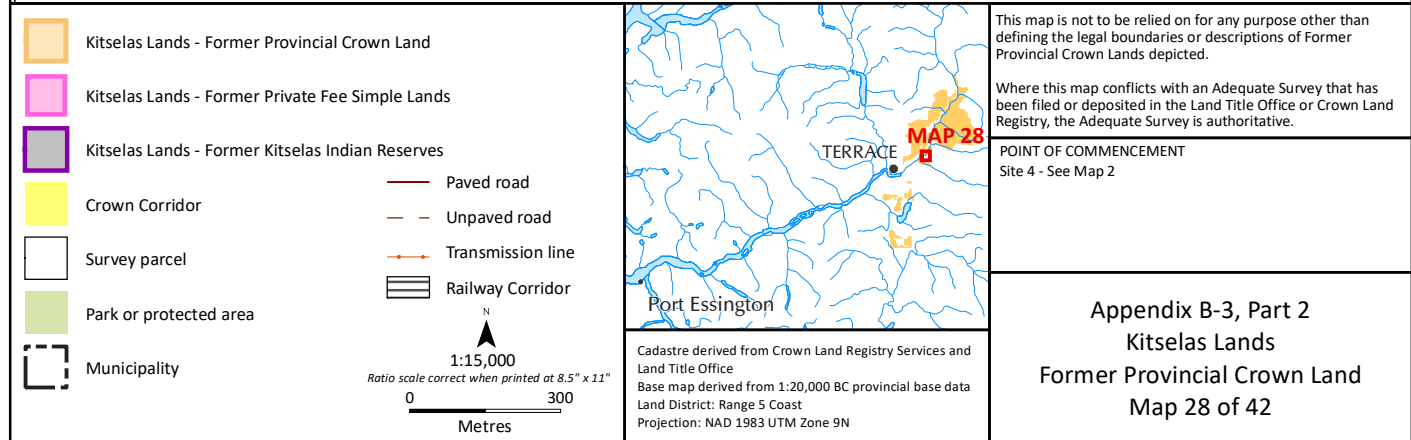
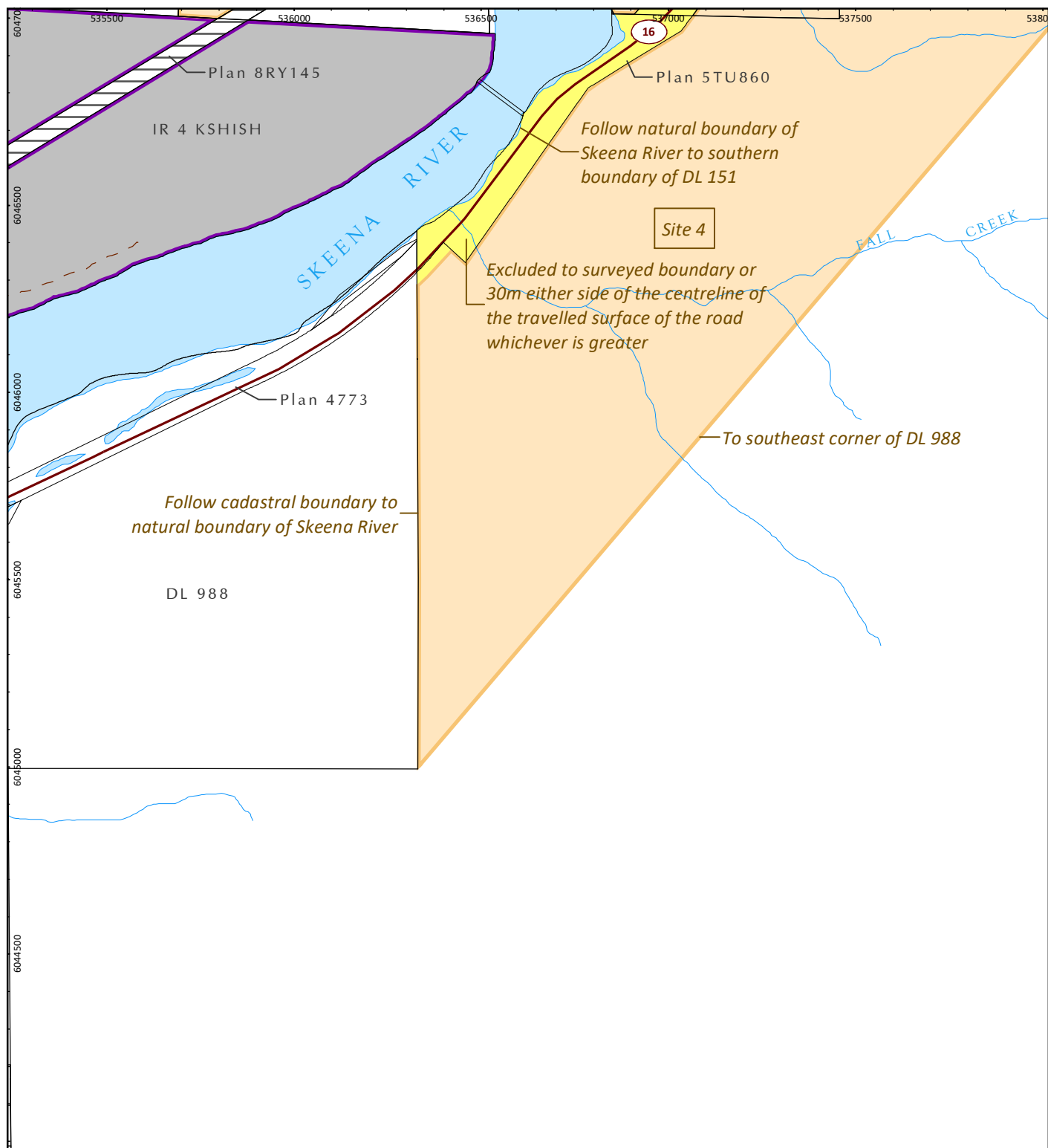


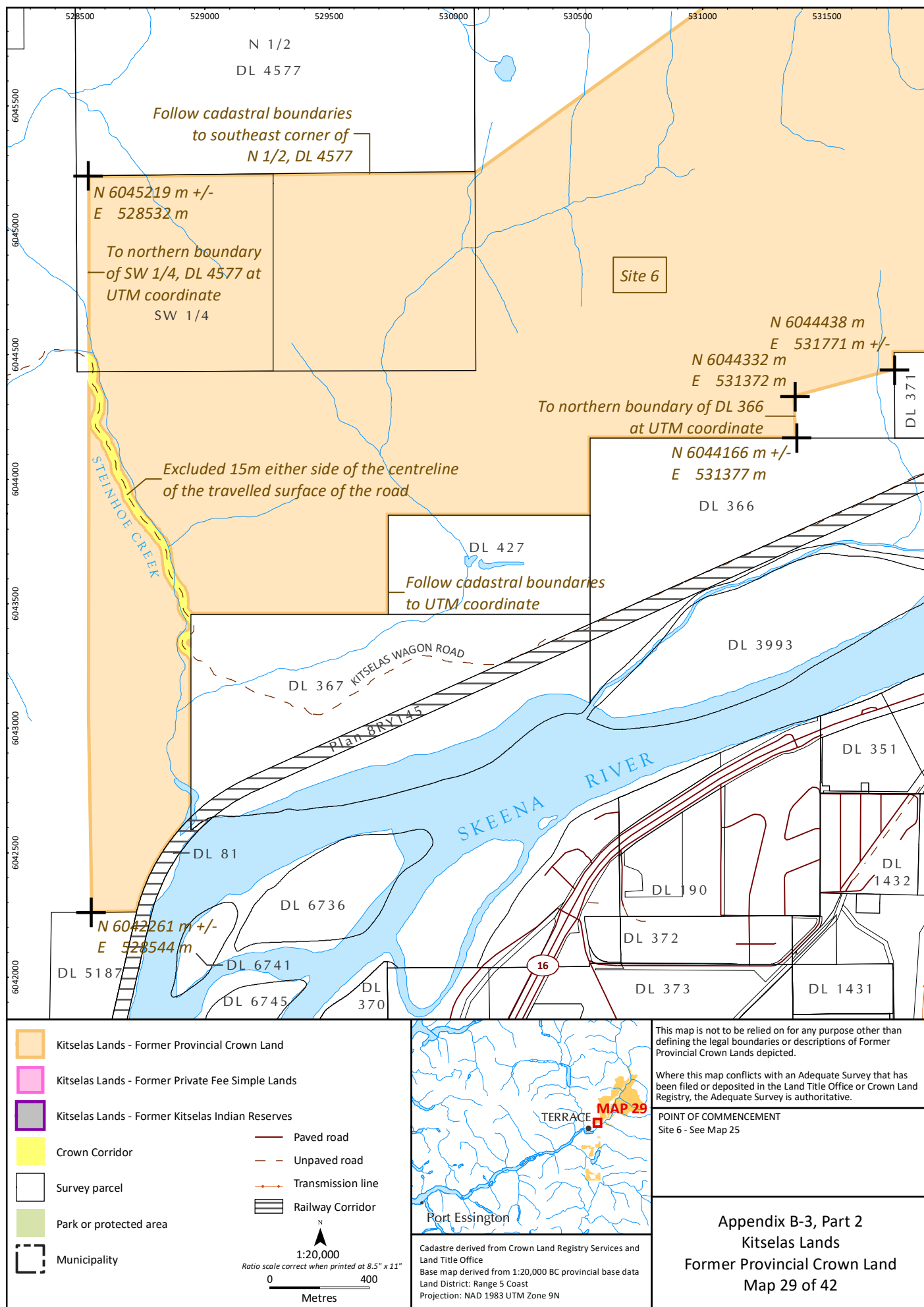


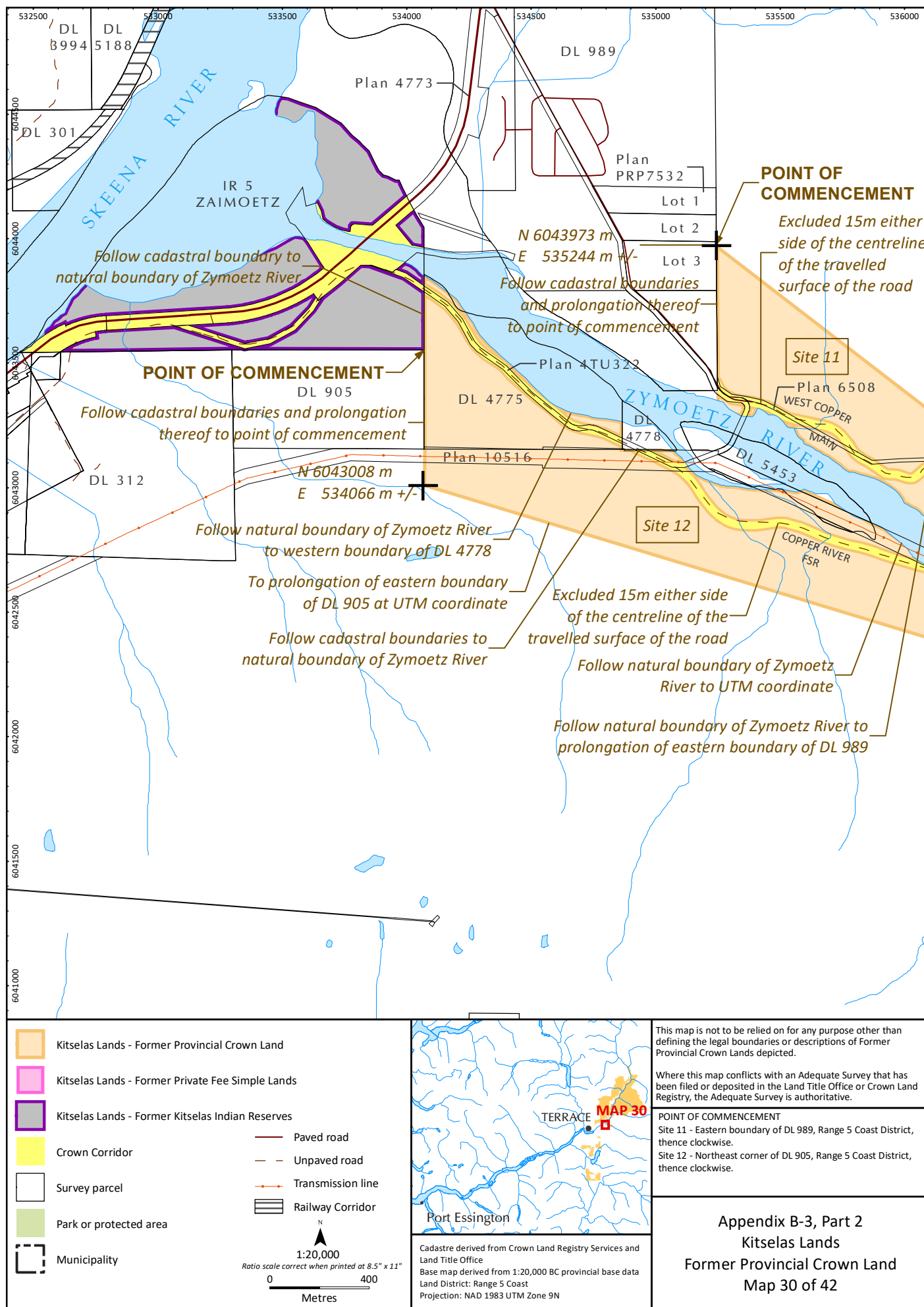


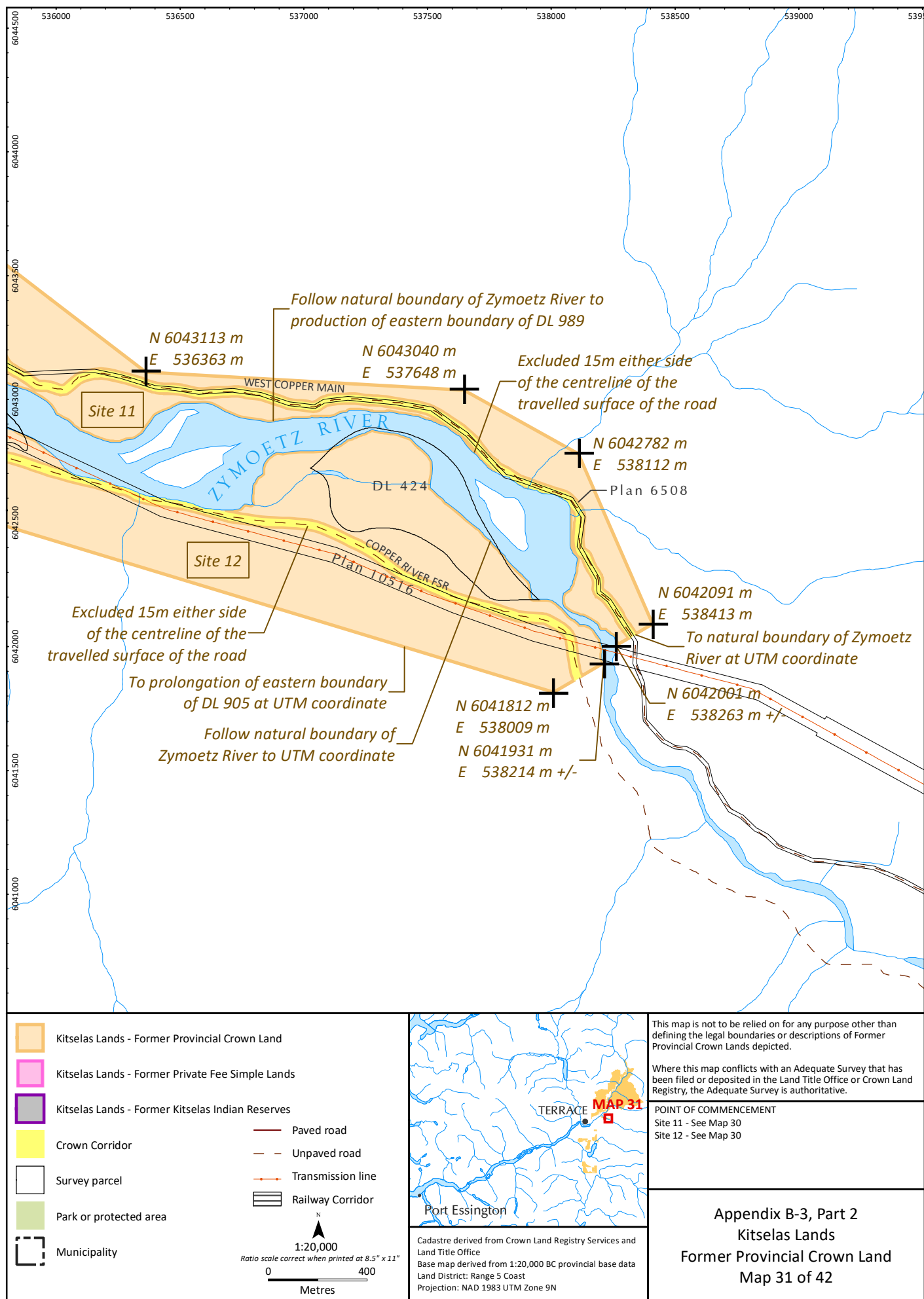


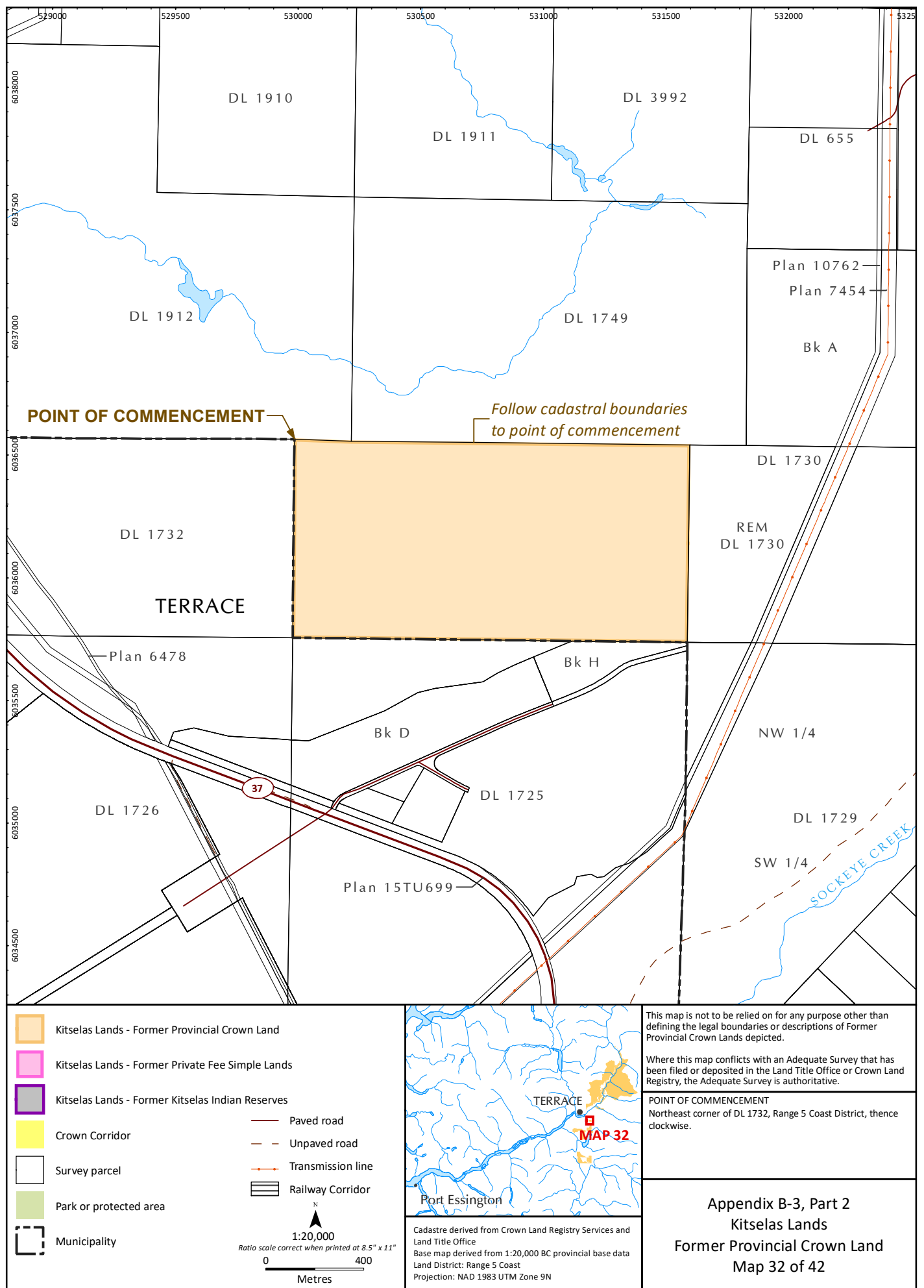


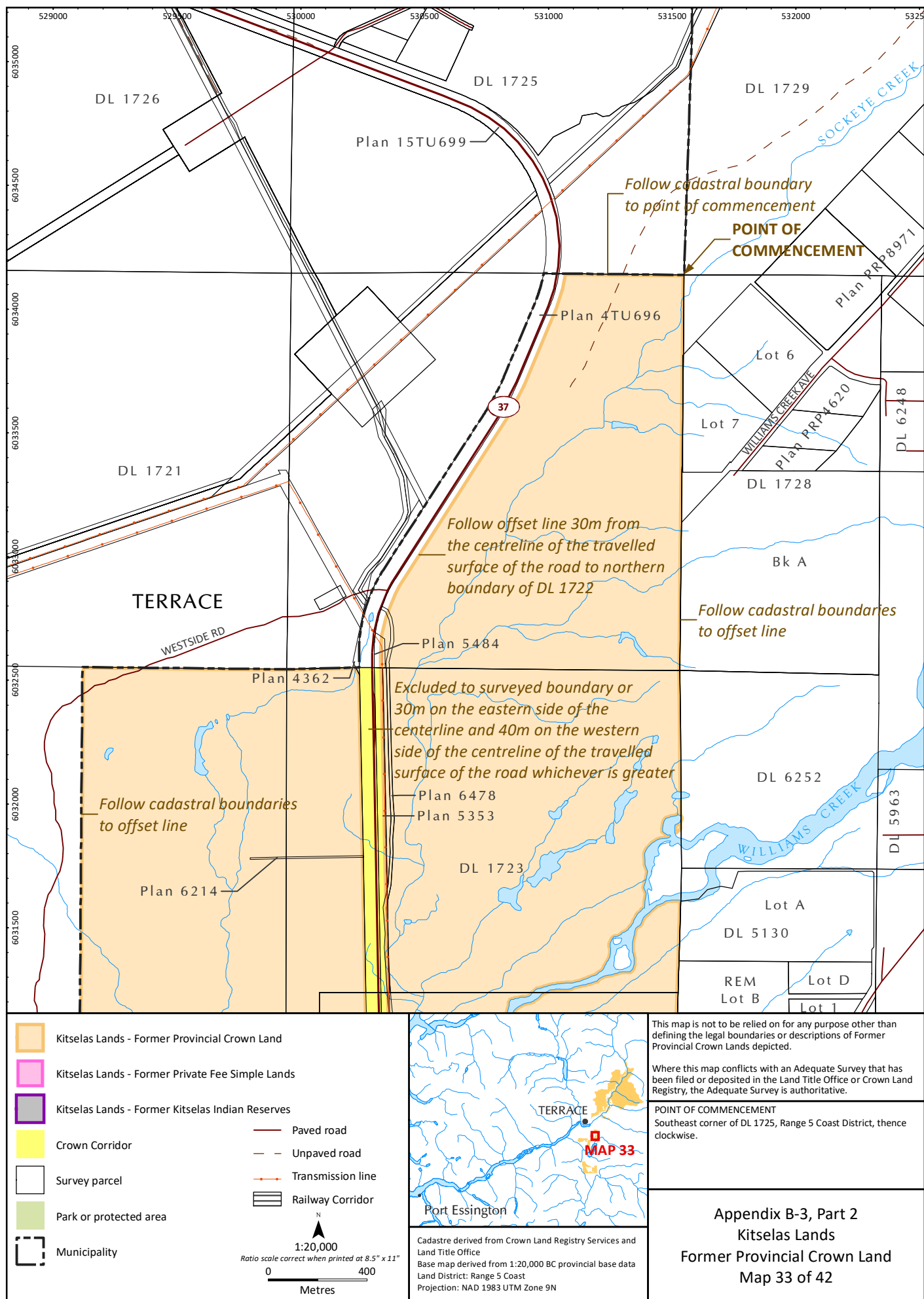


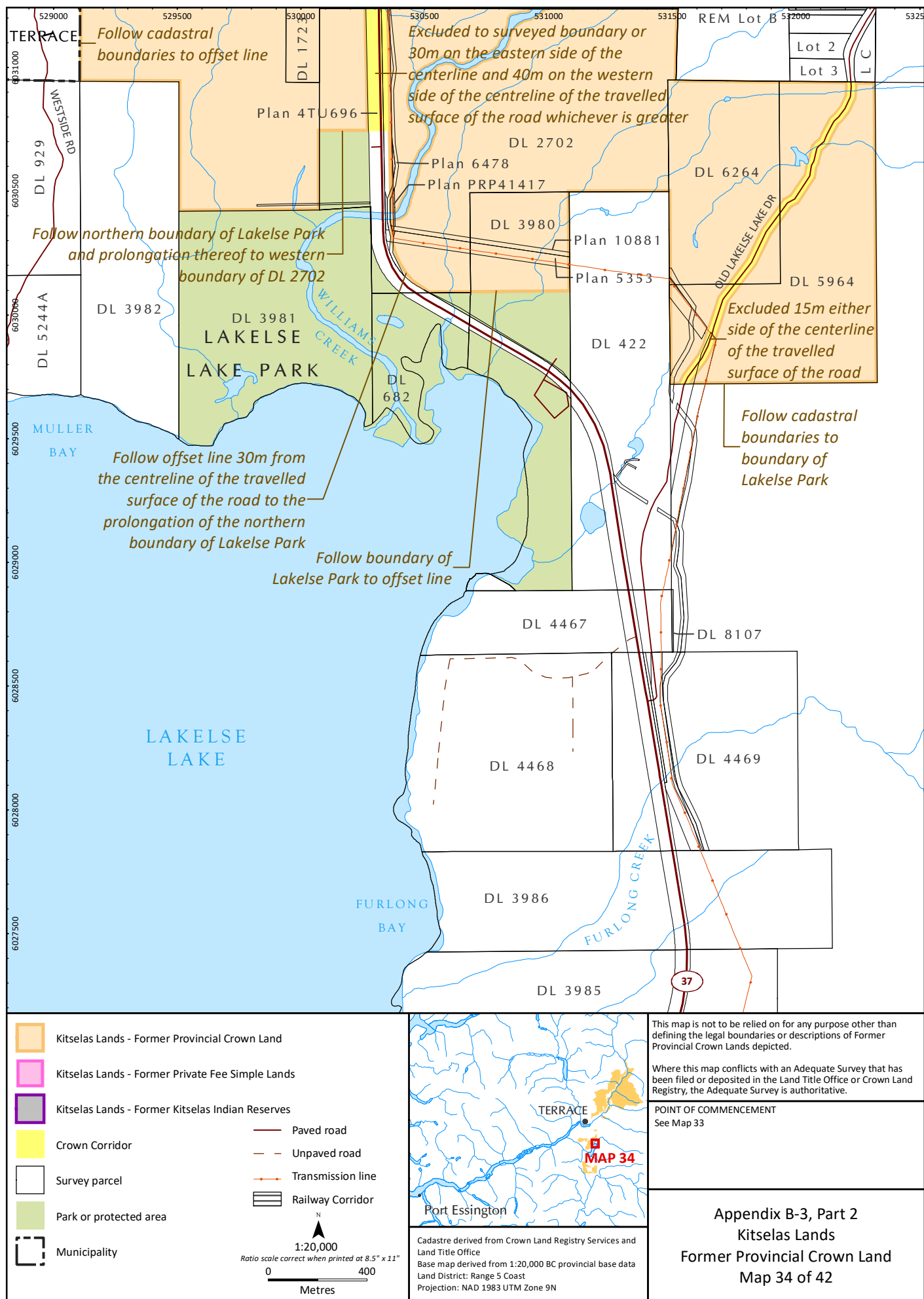


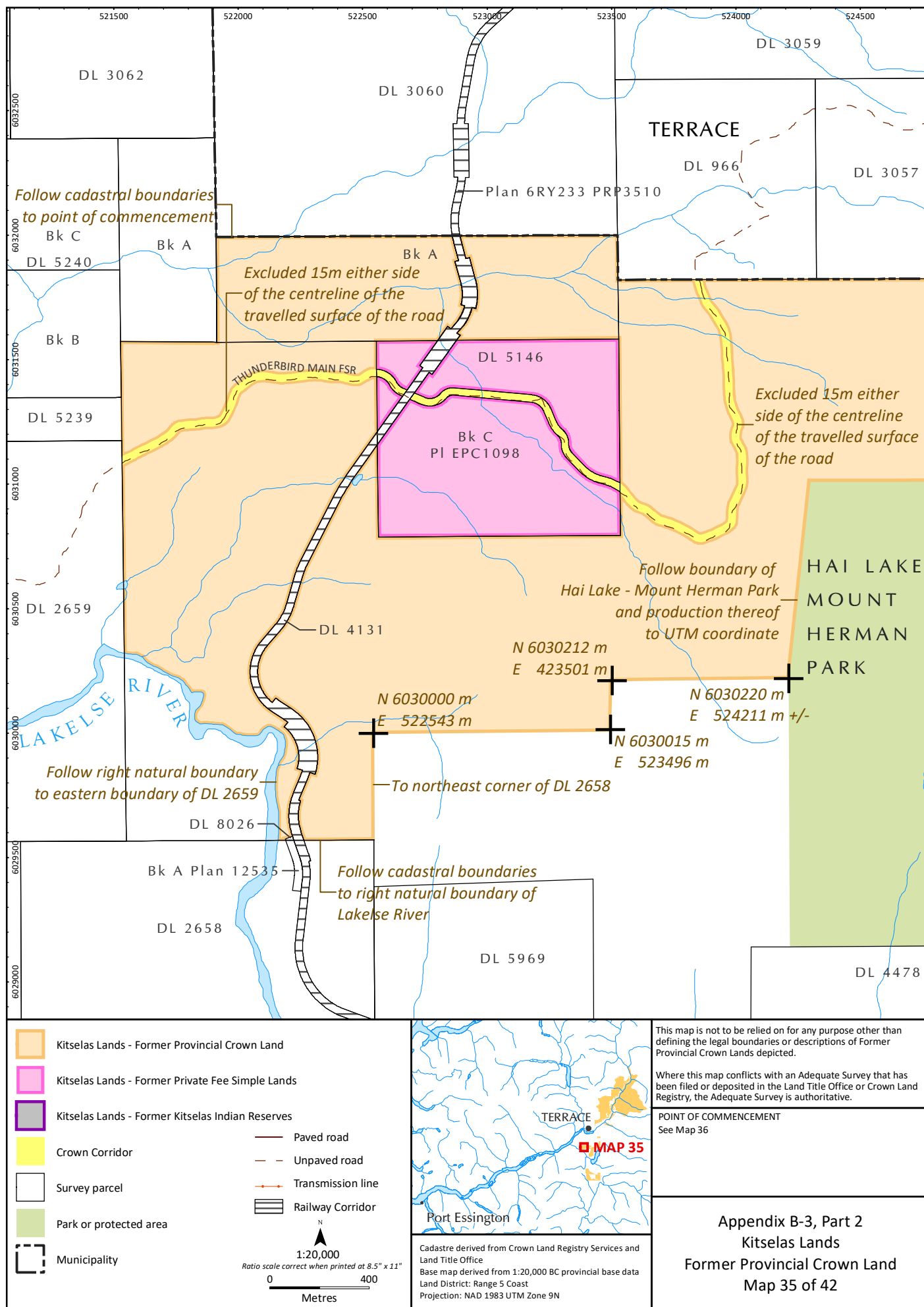


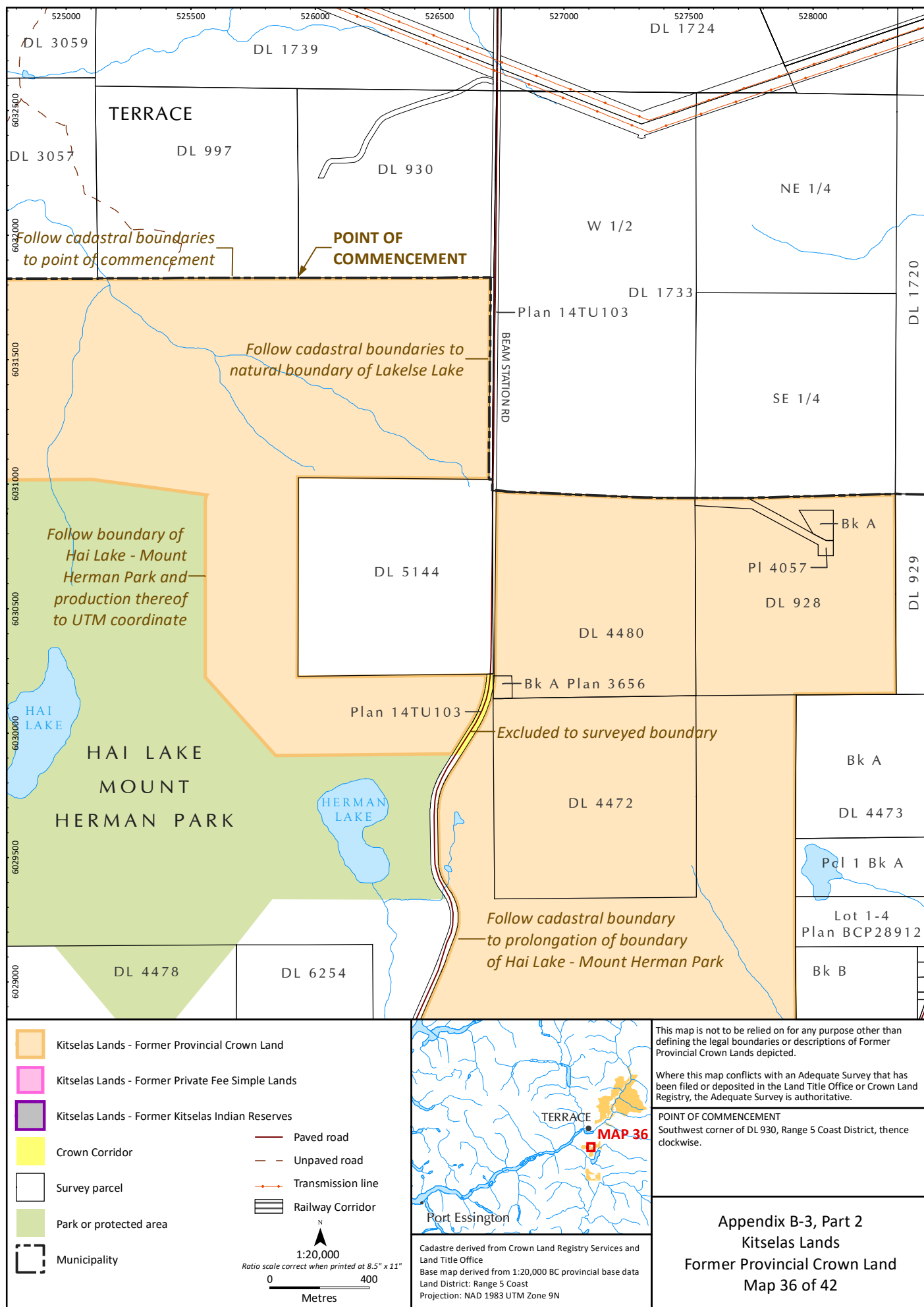


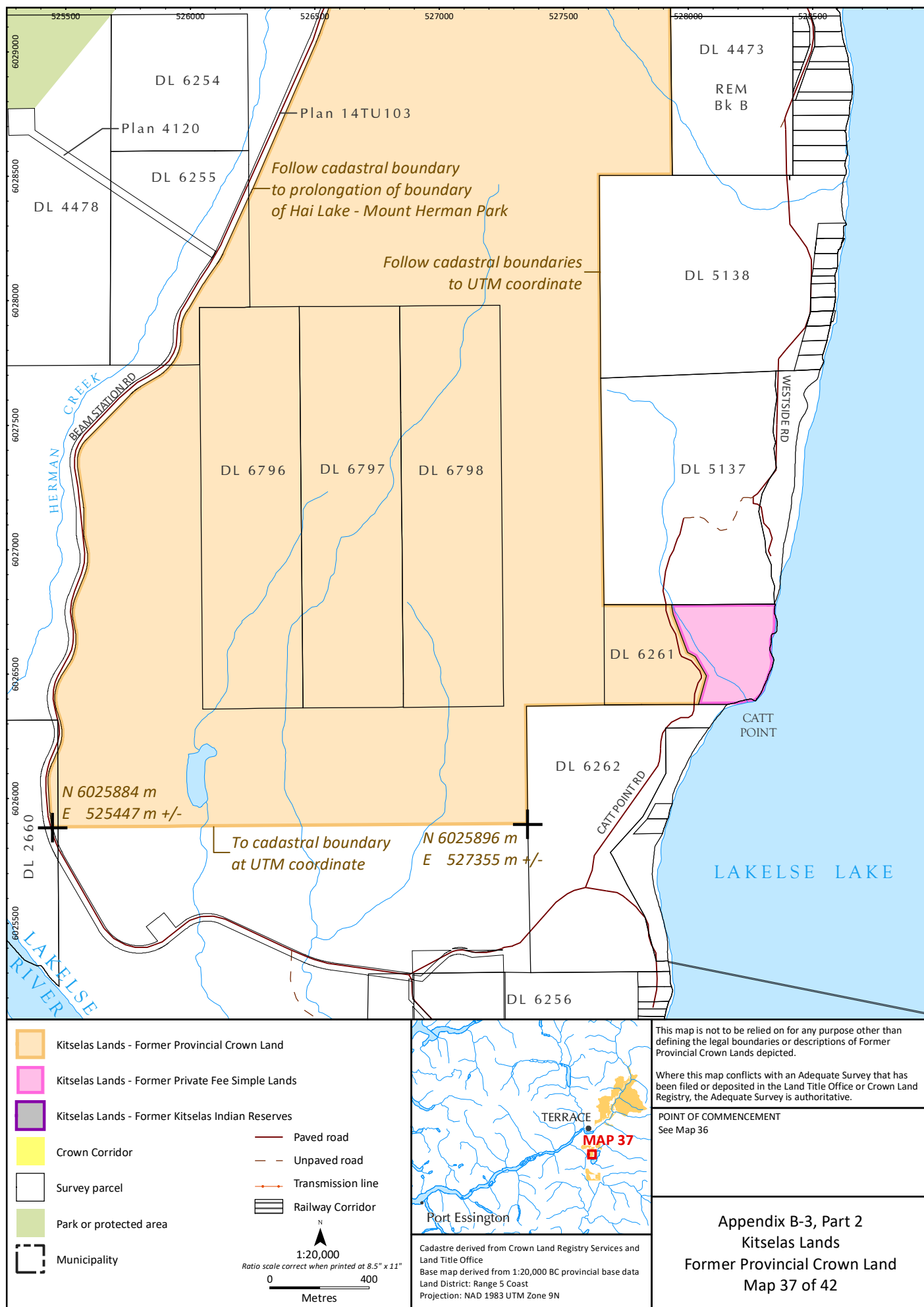


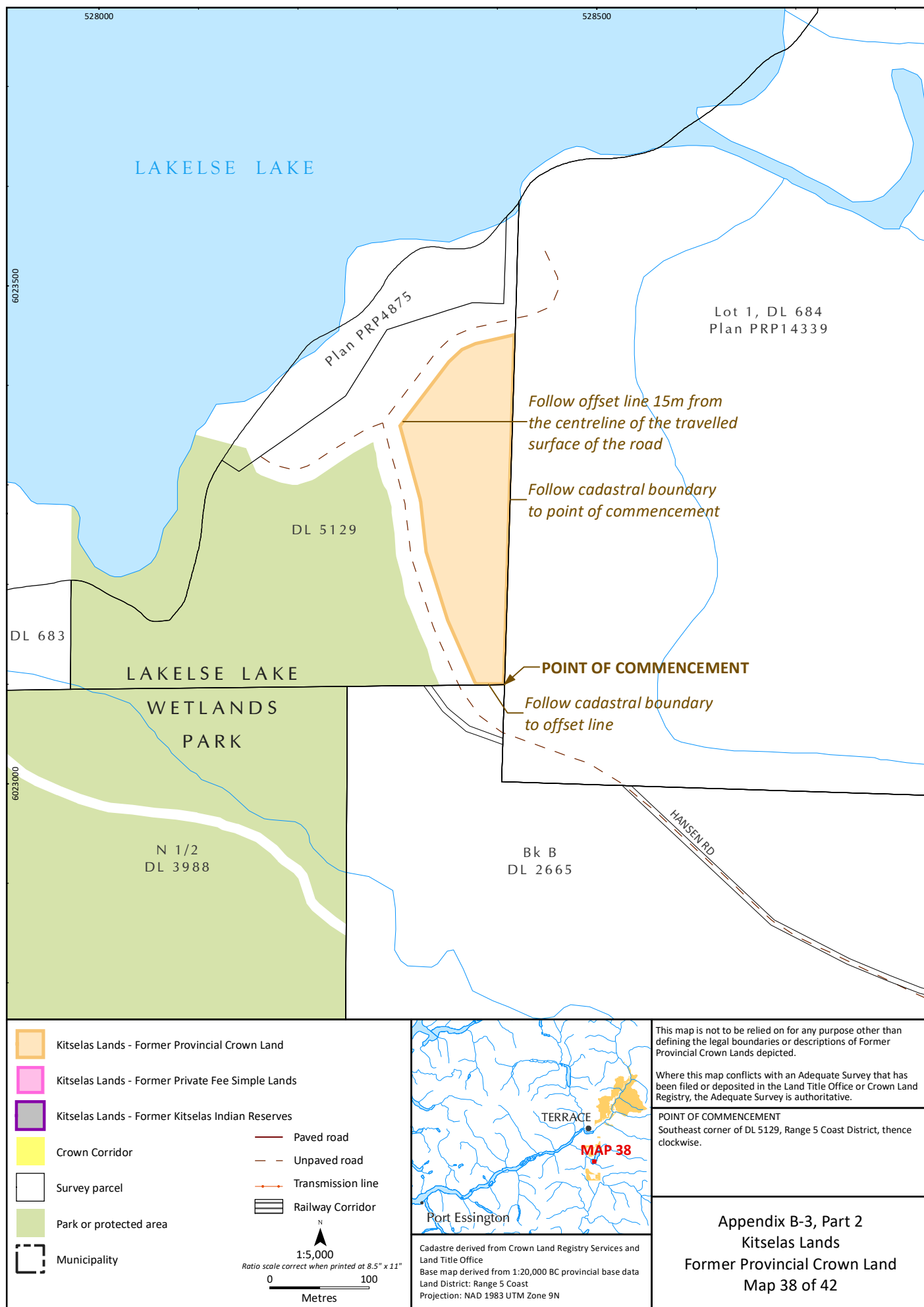


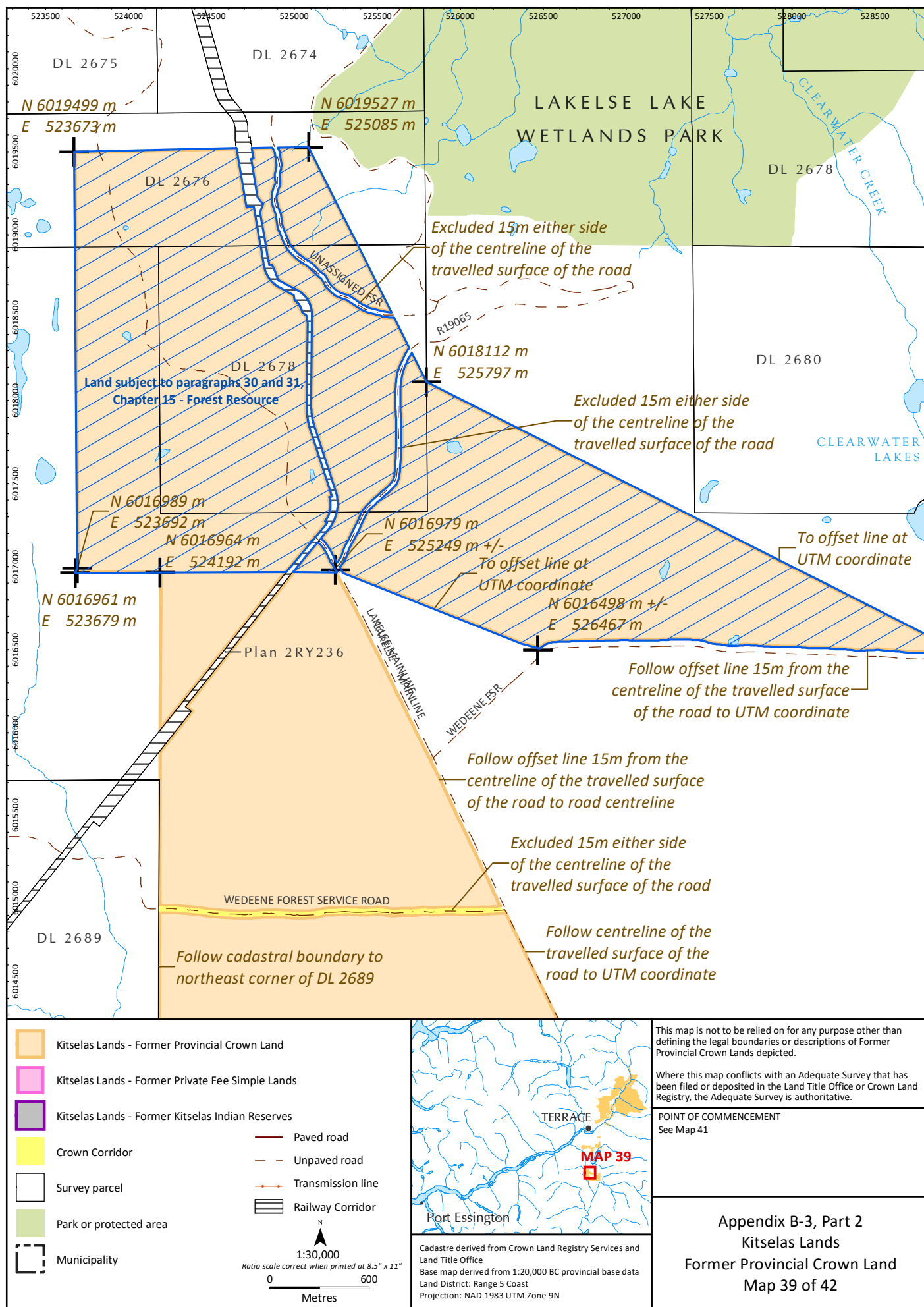


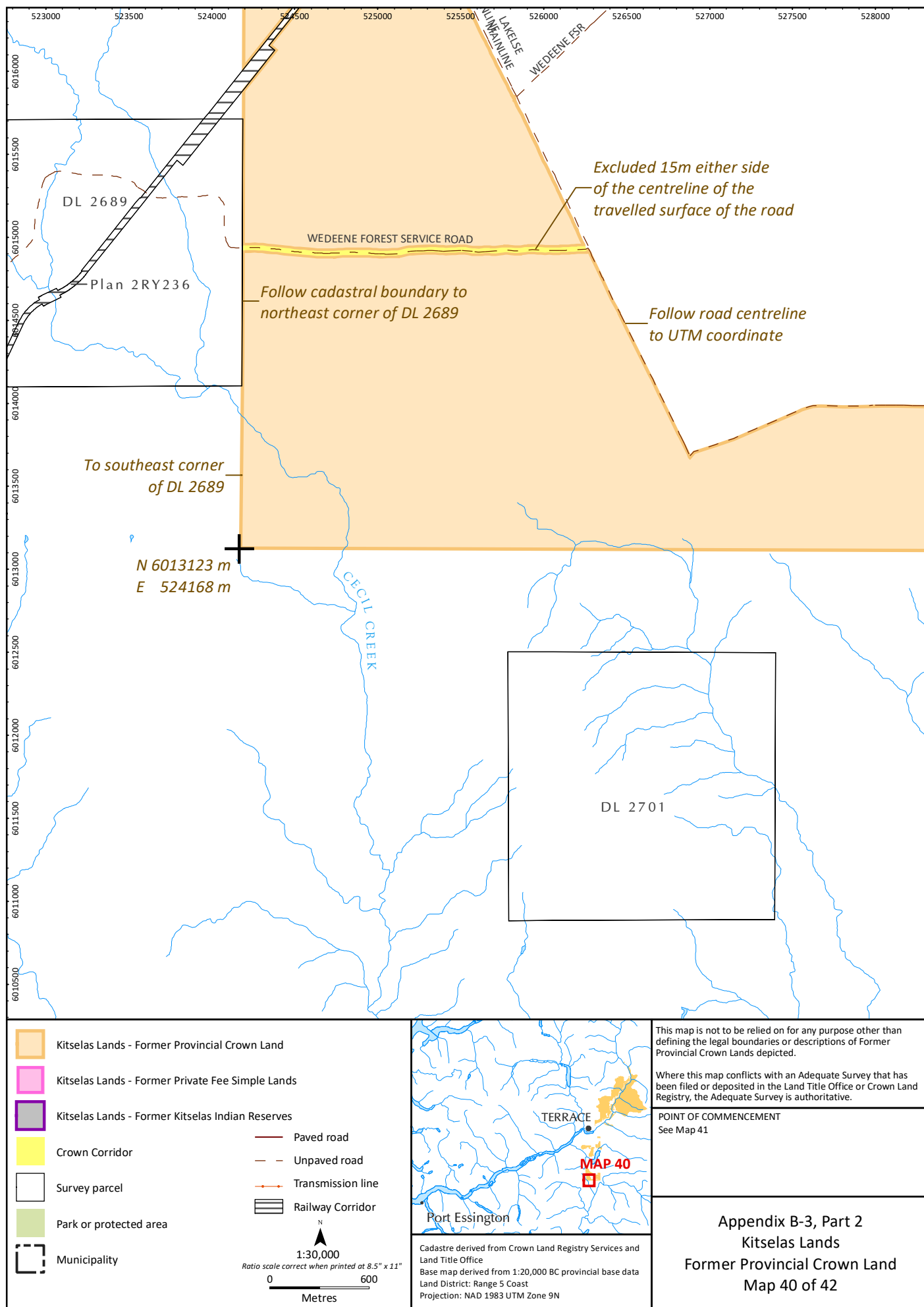


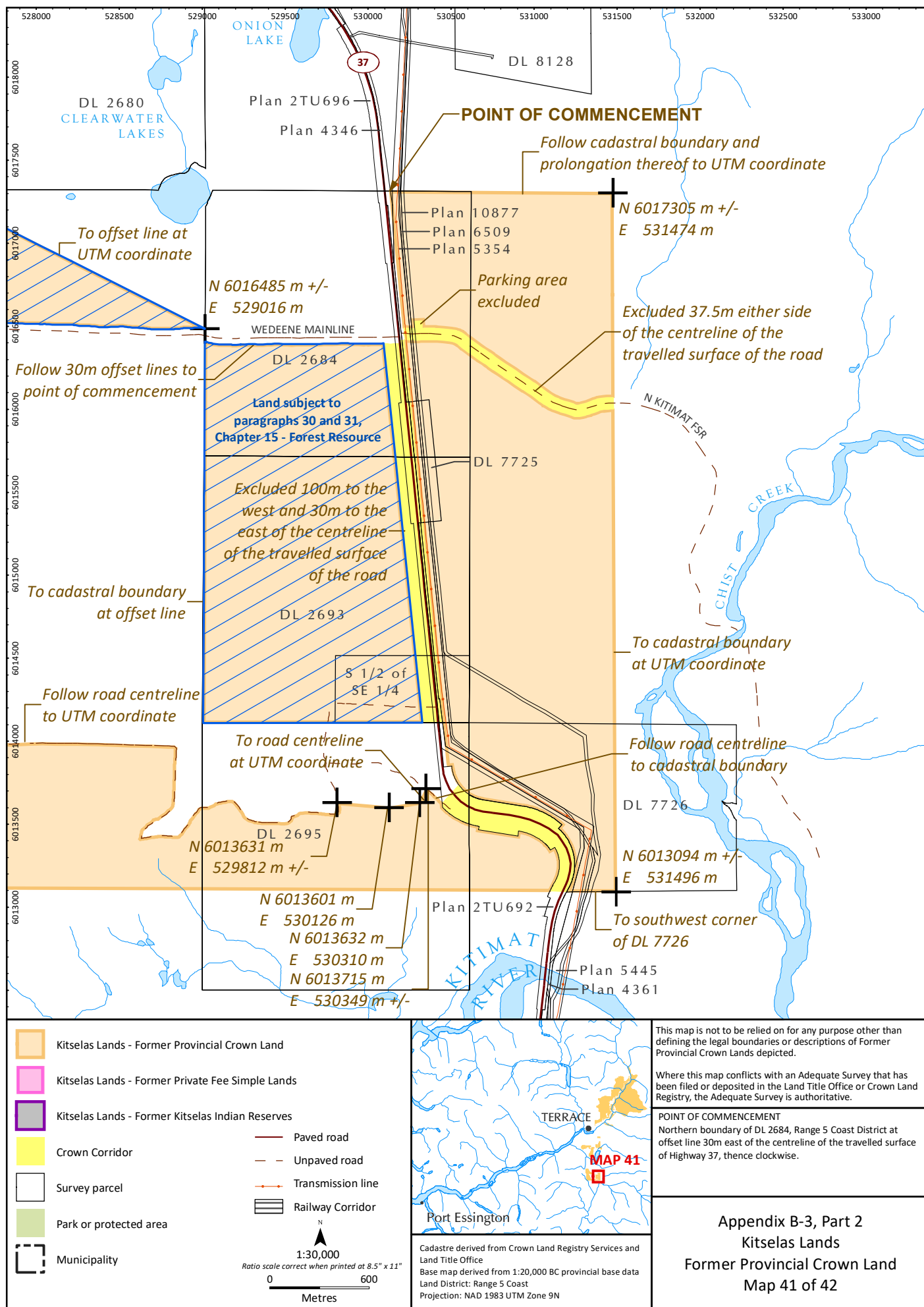


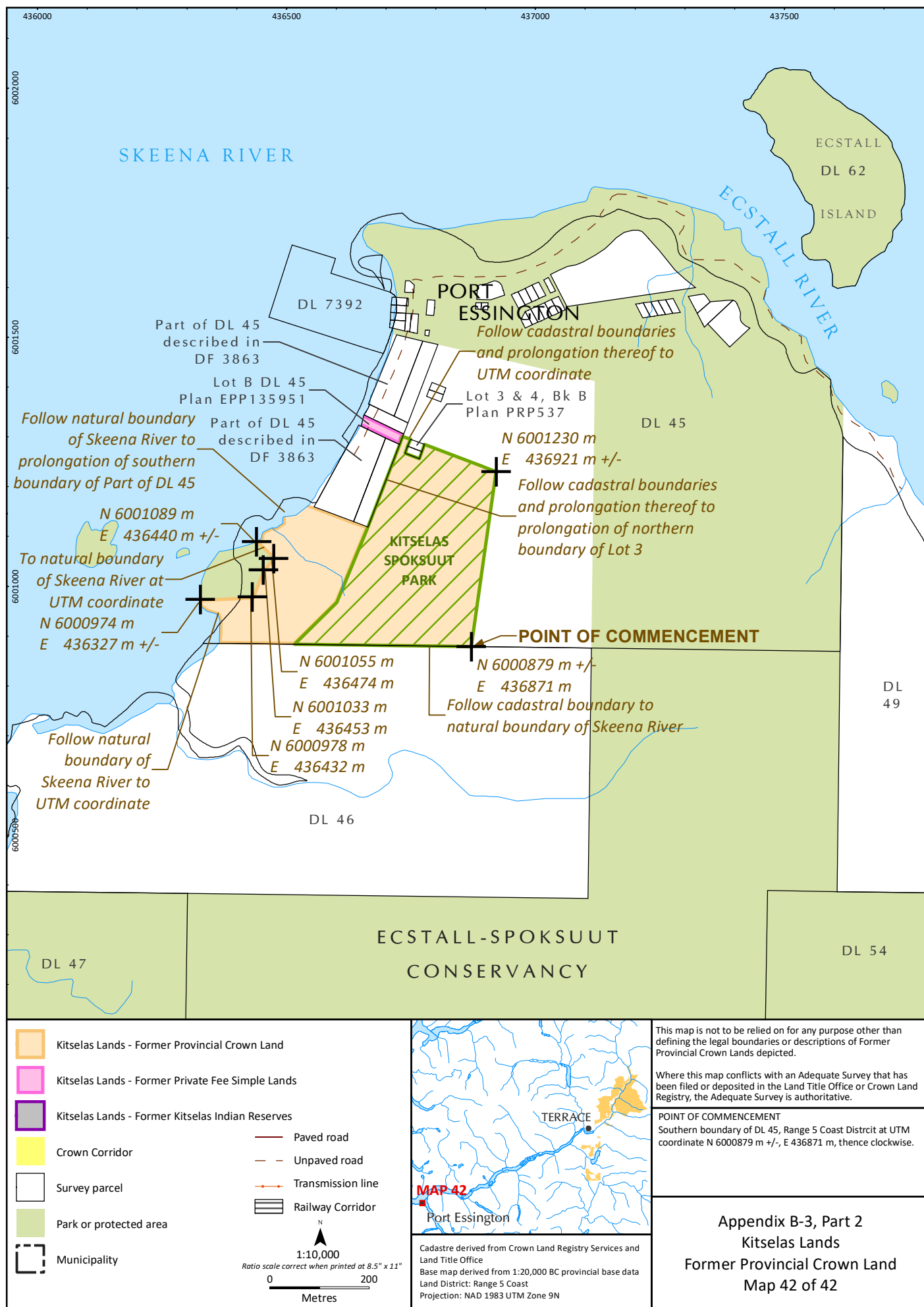












Appendix B-4 Former Private Fee Simple Lands

Part 1: Legal Descriptions of Former Private Fee Simple Lands

Part 2: Maps of Former Private Fee Simple Lands

Part 3: Applicable Forms of Documents for Inclusion of Former Private Fee Simple Lands, Acquisition and Addition of Fee Simple Lands or Pre-Approved Fee Simple Addition Lands in Kitselas Lands

Document 1. Certificate of Fee Simple Ownership and Consent

Document 2. Certificate of Charge and Consent

Document 3. Release

Appendix B-4 Former Private Fee Simple Lands

Part 1: Legal Descriptions of Former Private Fee Simple Lands

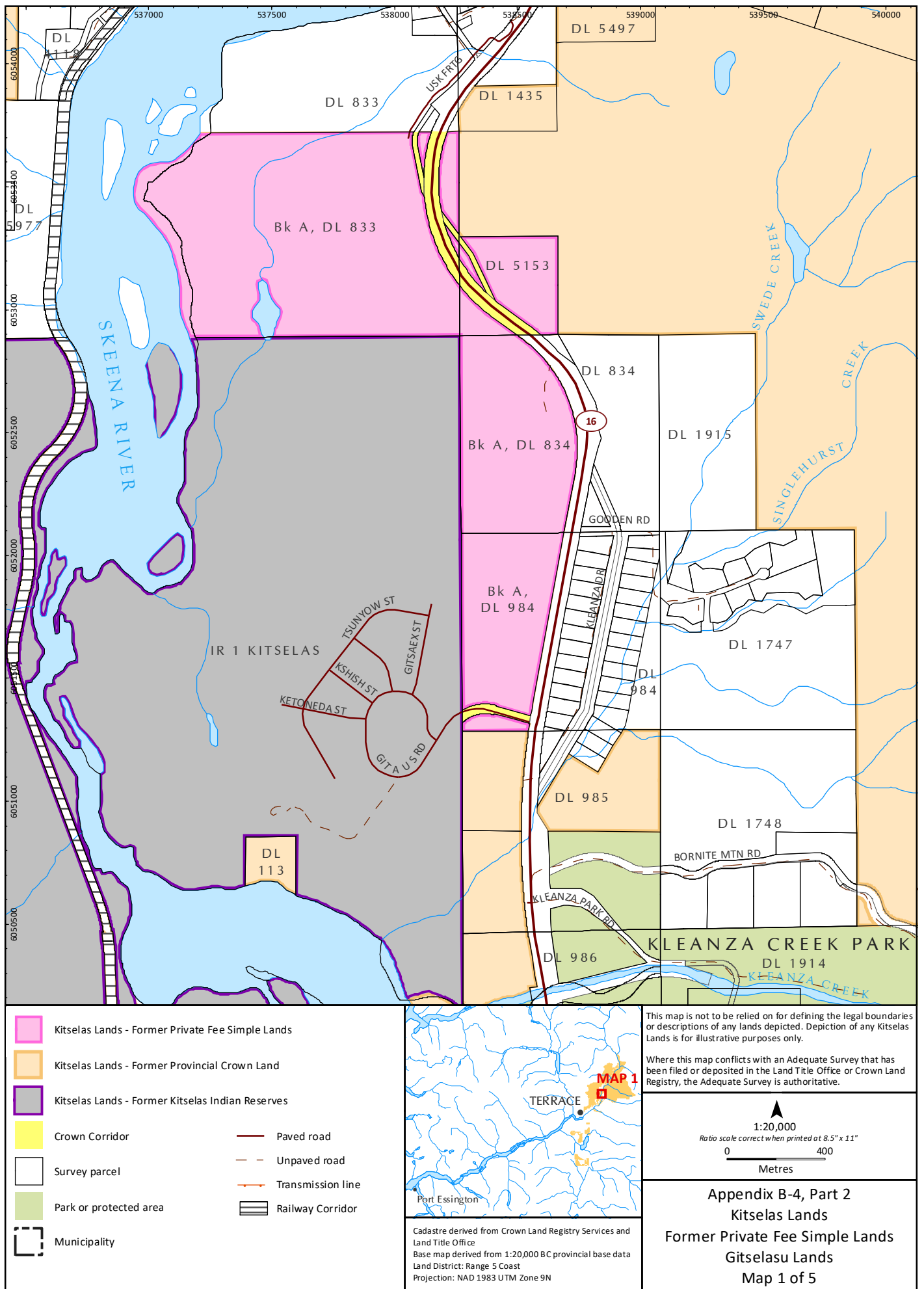
Note: The Parties will update the Appendices before the Effective Date, as required.

Parcel Name	Legal Description	PID	General Location
Gitaus	Block A, District Lot 984, Range 5, Coast District	029-350-701	Appendix B-4 Part 2 Map 1
	Block A, District Lot 834, Range 5, Coast District	029-350-697	
	Block A, District Lot 5153, Range 5, Coast District	029-350-662	
	Block A, District Lot 833, Range 5, Coast District	029-350-689	
K5T Learning Village	Lot 2, plan PRP46201, District Lot 840, Range 5, Coast Range 5 Land District	024-891-991	Appendix B-4 Part 2 Map 2
	Block 2, Plan PRP1246, District Lot 840, Range 5, Coast Range 5 Land District, Except Plan 4254, 5031 & 7633	012-883-875	Appendix B-4 Part 2 Map 2
Hai Lake	Block C, District Lot 5146, Range 5, Coast District	029-350-654	Appendix B-4 Part 2 Map 3
Catt Point	Block A, District Lot 6261, Range 5, Coast District	029-350-671	Appendix B-4 Part 2 Map 4
United Church (Spoksuut)	Lot B, District Lot 45, Range 5, Coast District Plan EPP135951	032-233-191	Appendix B-4 Part 2 Map 5

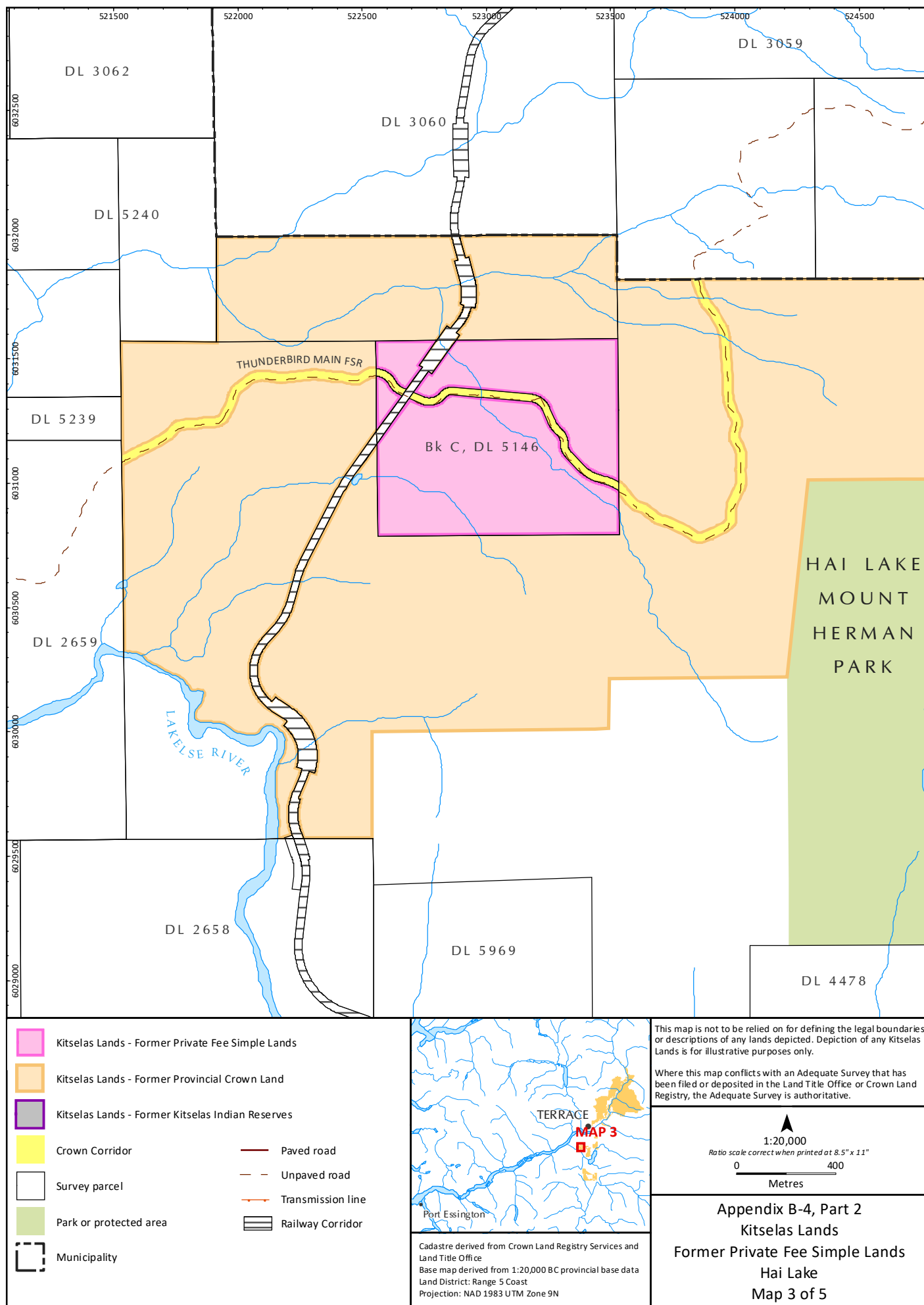
Appendix B-4 Former Private Fee Simple Lands

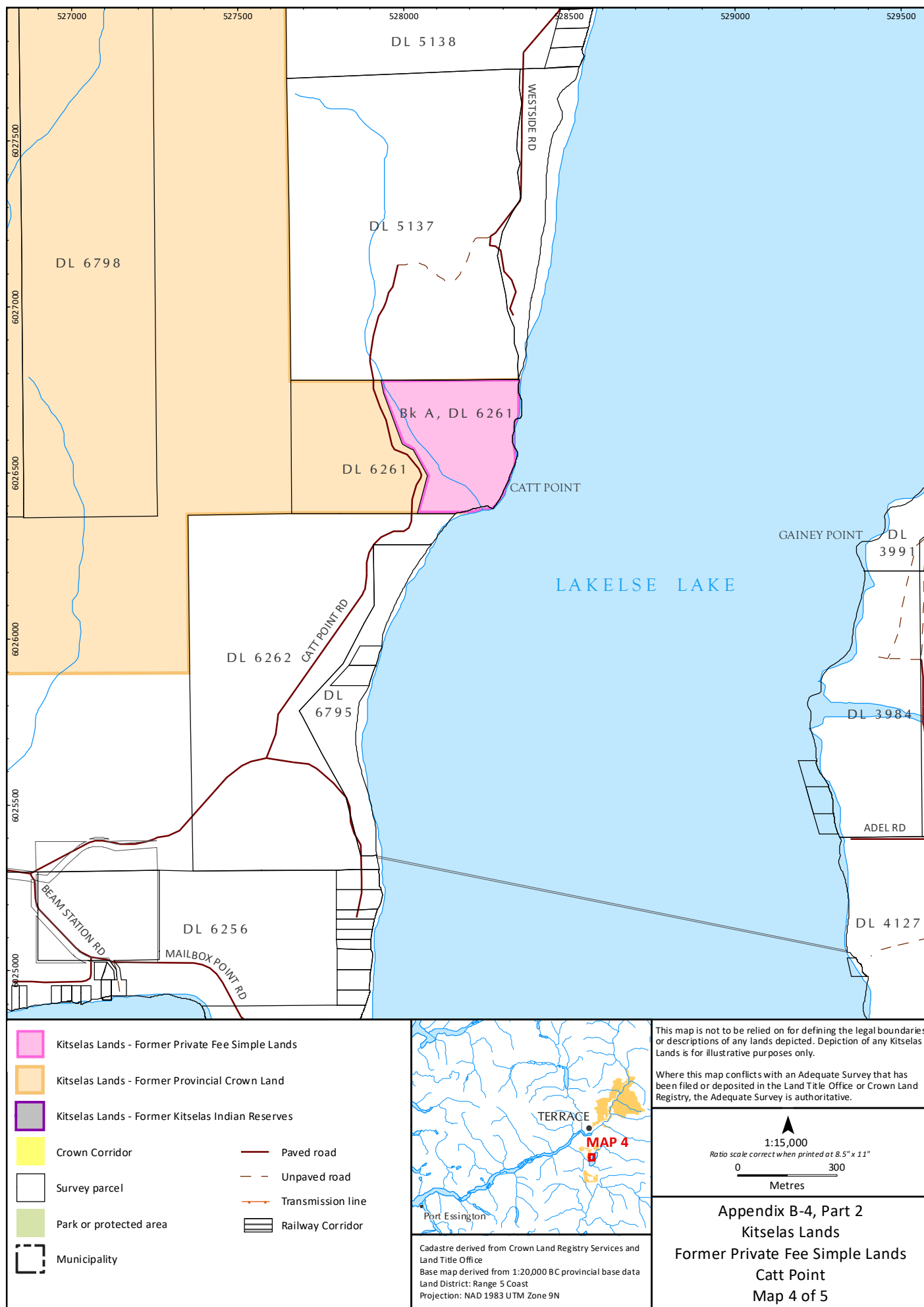
Part 2: Maps of Former Private Fee Simple Lands

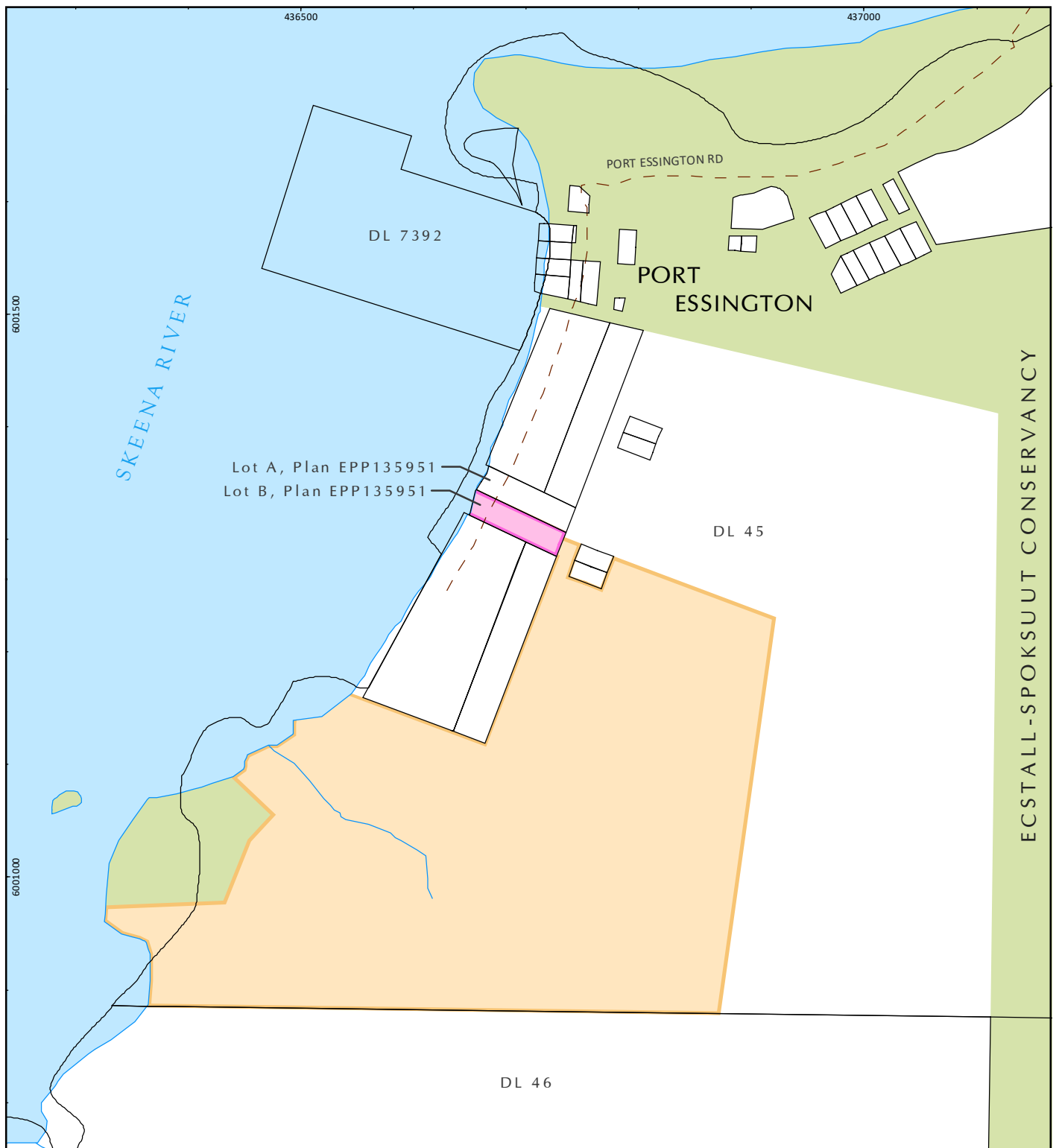
Note: The Parties will update the Appendices before the Effective Date, as required.



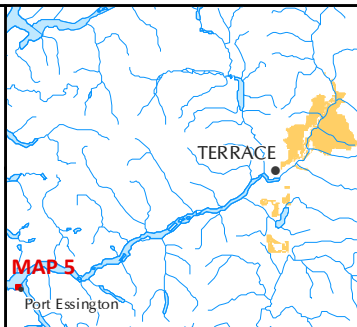








	Kitselas Lands - Former Private Fee Simple Lands		Paved road
	Kitselas Lands - Former Provincial Crown Land		Unpaved road
	Kitselas Lands - Former Kitselas Indian Reserves		Transmission line
	Crown Corridor		Railway Corridor
	Survey parcel		
	Park or protected area		
	Municipality		



Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 B.C. provincial base data
 Land District: Range 5 Coast
 Projection: NAD 1983 UTM Zone 9N

This map is not to be relied on for defining the legal boundaries or descriptions of any lands depicted. Depiction of any Kitselas Lands is for illustrative purposes only.

Where this map conflicts with an Adequate Survey that has been filed or deposited in the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.

1:5,000
 Ratio scale correct when printed at 8.5" x 11"
 0 100
 Metres

Appendix B-4, Part 2
 Kitselas Lands
 Former Private Fee Simple Lands
 Church Parcel
 Map 5 of 5

Appendix B-4 Former Private Fee Simple Lands

**Part 3: Applicable Forms of Documents for Inclusion of Former Private Fee Simple Lands,
Acquisition and Addition of Fee Simple Lands or Pre-Approved Fee Simple Addition
Lands in Kitselas Lands**
Document 1. Certificate of Fee Simple Ownership and Consent

I, *[name]*, hereby certify that:

1. I am the *[title]* of *[company name]* and I am duly authorized to execute this Certificate.

As of the date of this Certificate, *[company name]* is the registered owner in fee simple of the lands legally described as:

- a. *[legal description]*
 - b. *[legal description]*
2. *[company name]* hereby consents to the addition of the above lands to Kitselas Lands as defined in the Kitselas Treaty.

Dated _____	
_____ Name of Authorized Signatory	_____ Name of Witness
_____ Title of Authorized Signatory	_____ Address of Witness
_____ Signature of Authorized Signatory	_____ Signature of Witness

Note: This form will be modified, as appropriate, where the registered owner is an individual

Appendix B-4 Former Private Fee Simple Lands

Part 3: Applicable Forms of Documents for Inclusion of Former Private Fee Simple Lands, Acquisition and Addition of Fee Simple Lands or Pre-Approved Fee Simple Addition Lands in Kitselas Lands
Document 2. Certificate of Charge and Consent

Notes: This document is not required if a land title search reveals no charges or encumbrances immediately before the [Effective Date or date of addition to Kitselas Lands].

I, [name], hereby certify that:

1. I am the [title] of [company name] and I am duly authorized to execute this Certificate.
2. As of the date of this Certificate, [company name] is holder of the following charge or encumbrance:

[describe charge or encumbrance]

charging or encumbering the lands legally described as:

a. [INSERT LEGAL DESCRIPTION]

3. [company name] hereby consents to the addition of the above lands to Kitselas Lands as defined in the Kitselas Treaty.

Dated _____ _____ Name of Authorized Signatory _____ Title of Authorized Signatory _____ Signature of Authorized Signatory	_____ Name of Witness _____ Address of Witness _____ Signature of Witness

Note: This form will be modified, as appropriate, where the holder of the charge or encumbrance is an individual.

Appendix B-4 Former Private Fee Simple Lands

Part 3: Applicable Forms of Documents for Inclusion of Former Private Fee Simple Lands, Acquisition and Addition of Fee Simple Lands or Pre-Approved Fee Simple Addition Lands in Kitselas Lands**Document 3. Release**

I, [name] hereby certify that I am the [title] of [company name] and I am duly authorized to execute this Release.

[company name], on behalf of itself and its successors and assigns (the “Releasing Parties”), and in consideration of the agreement of His Majesty the King in right of Canada (“Canada”) and His Majesty the King in right of the Province of British Columbia (“British Columbia”) to the addition to Kitselas Lands of the lands legally described as:

- a. [legal description]; and
- b. [legal description]

the sufficiency of which is hereby acknowledged, does hereby, [as of the Effective Date of the Kitselas Treaty or as of the date of addition to Kitselas Lands]:

- c. release, acquit and forever discharge each of Canada and British Columbia, including their respective employees, servants, agents, officers, directors, members, successors and assigns of and from any and all claims, demands, actions, or proceedings of whatsoever kind and howsoever arising, whether known or unknown, and which any of the Releasing Parties now have, have had or at any time hereafter can, shall or may have, in any way resulting from, arising from, or related to, the addition of the above lands to Kitselas Lands; and
- d. acknowledge and agree that:
 - i. it has sought and received independent legal advice in connection with this matter; and
 - ii. it has voluntarily provided this Release in exchange for the addition of the above lands to Kitselas Lands.

Dated _____	
_____ Name of Authorized Signatory	_____ Name of Witness
_____ Title of Authorized Signatory	_____ Address of Witness
_____ Signature of Authorized Signatory	_____ Signature of Witness

Note: This form will be modified, as appropriate, where the registered owner is an individual.

Appendix B-5 Kitselas Lands to be Registered in the Land Title Office on the Effective Date

Legal Descriptions of Kitselas Lands (former provincial Crown Land) to be Registered in the Land Title Office on the Effective Date

Note: The Parties will update the Appendices before the Effective Date, as required.

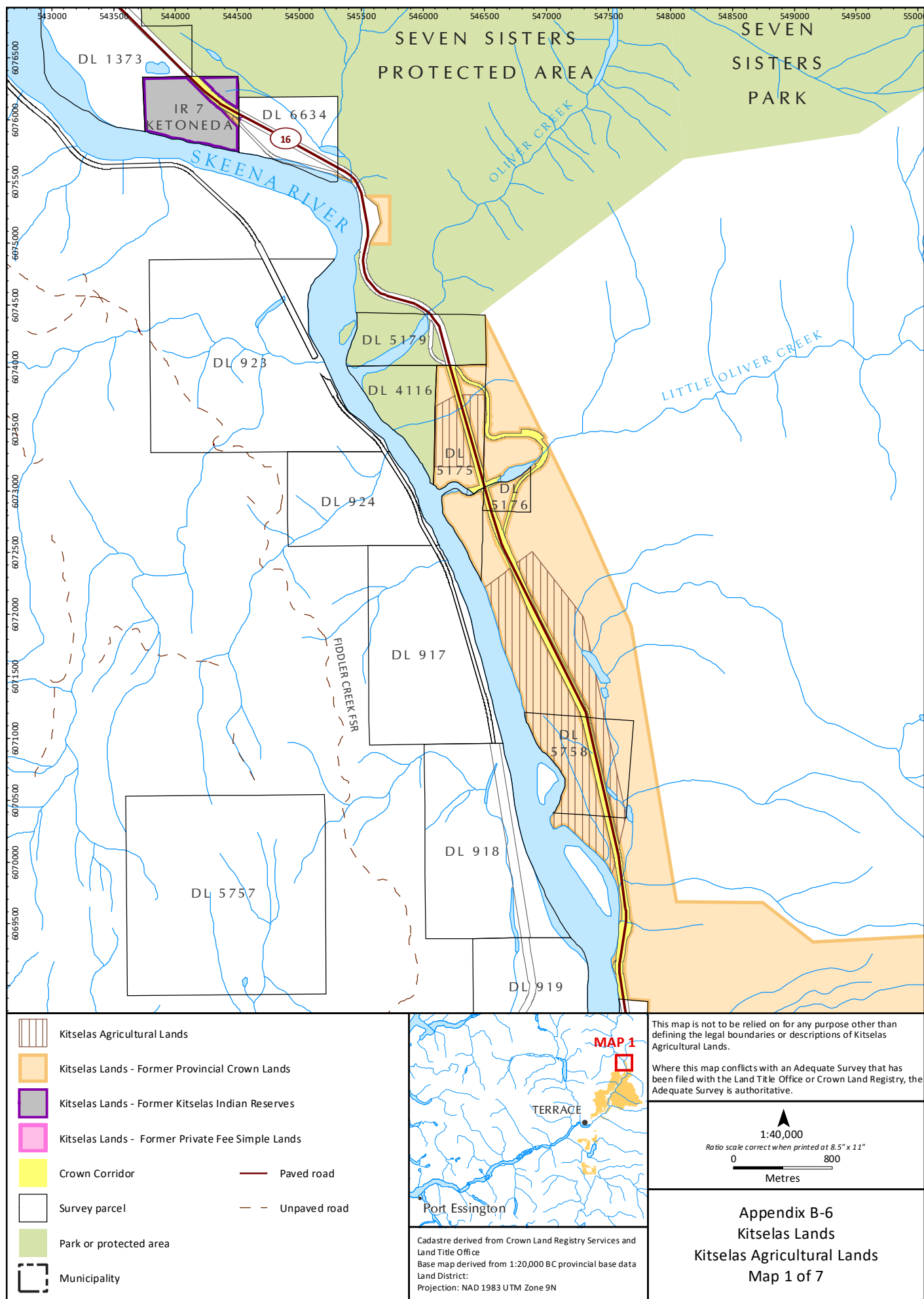
Parcel Name	Legal Description	PID	General Location
Lands underlying the Ministry of Transportation and Transit, Sand & Gravel Quarrying. Crown Land File #6405306	To be inserted on completion of survey		Appendix B-3, Part 2 Map 2
Lands underlying the Ministry of Transportation and Transit, Sand & Gravel Quarrying. Crown Land File #6405696	To be inserted on completion of survey		Appendix B-3, Part 2 Maps 25, 29
Lands underlying the Ministry of Transportation and Transit, Sand & Gravel Quarrying. Crown Land File #6401200	To be inserted on completion of survey		Appendix B-3, Part 2 Map 41
Lands underlying the Ministry of Transportation and Transit, Sand & Gravel Quarrying. Crown Land File #6404766	To be inserted on completion of survey		Appendix B-3, Part 2 Map 41
Lands underlying the Ministry of Transportation and Transit, Sand & Gravel Quarrying. Crown Land File #6405546	To be inserted on completion of survey		Appendix B-3, Part 2 Map 10
Lands underlying the Ministry of Transportation and Transit, Sand & Gravel Quarrying. Crown Land File #6402750	To be inserted on completion of survey		Appendix B-3, Part 2 Map 26
Lands underlying the British Columbia Hydro and Power Authority Transmission Line Statutory Right of Way	To be inserted on completion of survey		Appendix B-3, Part 2 Maps 30- 34, 36, 41
Lands underlying the Pacific Northern Gas Ltd. Statutory Right of Way	To be inserted on completion of survey		Appendix B-3, Part 2 Maps 30- 34, 41
Lands underlying the Pacific Trail Pipeline Management Inc. Statutory Right of Way	To be inserted on completion of survey		Appendix B-3, Part 2 Maps 39, 40-41
Lands underlying the Onion Lake Ski & Recreational Trails	To be inserted on completion of survey		Appendix B-3, Part 2 Map 41

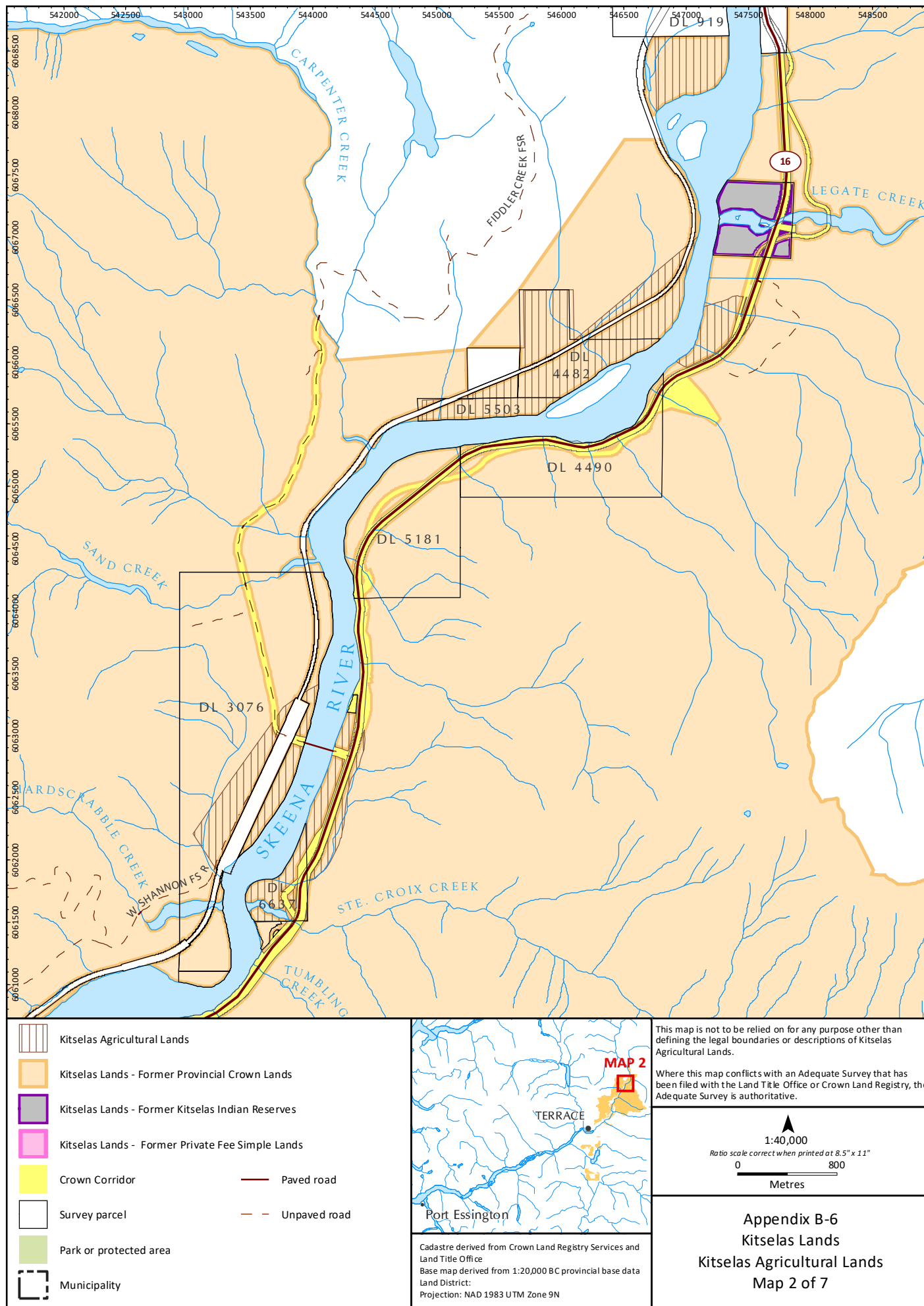
Lands underlying the portion of Wagon Road through Kshish Indian Reserve No. 4	to be inserted on completion of survey		Appendix B-2, Part 2 Map 5
Lands underlying the Onion Flats Treaty Settlement land	To be inserted on completion of survey		Appendix B-3, Part 2 Maps 39- 41
Lands underlying the portion of DL 5129 East of Hansen Rd	To be inserted on completion of survey		Appendix B-3, Part 2 Map 38
Lands underlying the Treaty Settlement Land along Zymoetz River near Zaimoetz IR 5	To be inserted on completion of survey		Appendix B-3, Part 2 Maps 25, 30-31

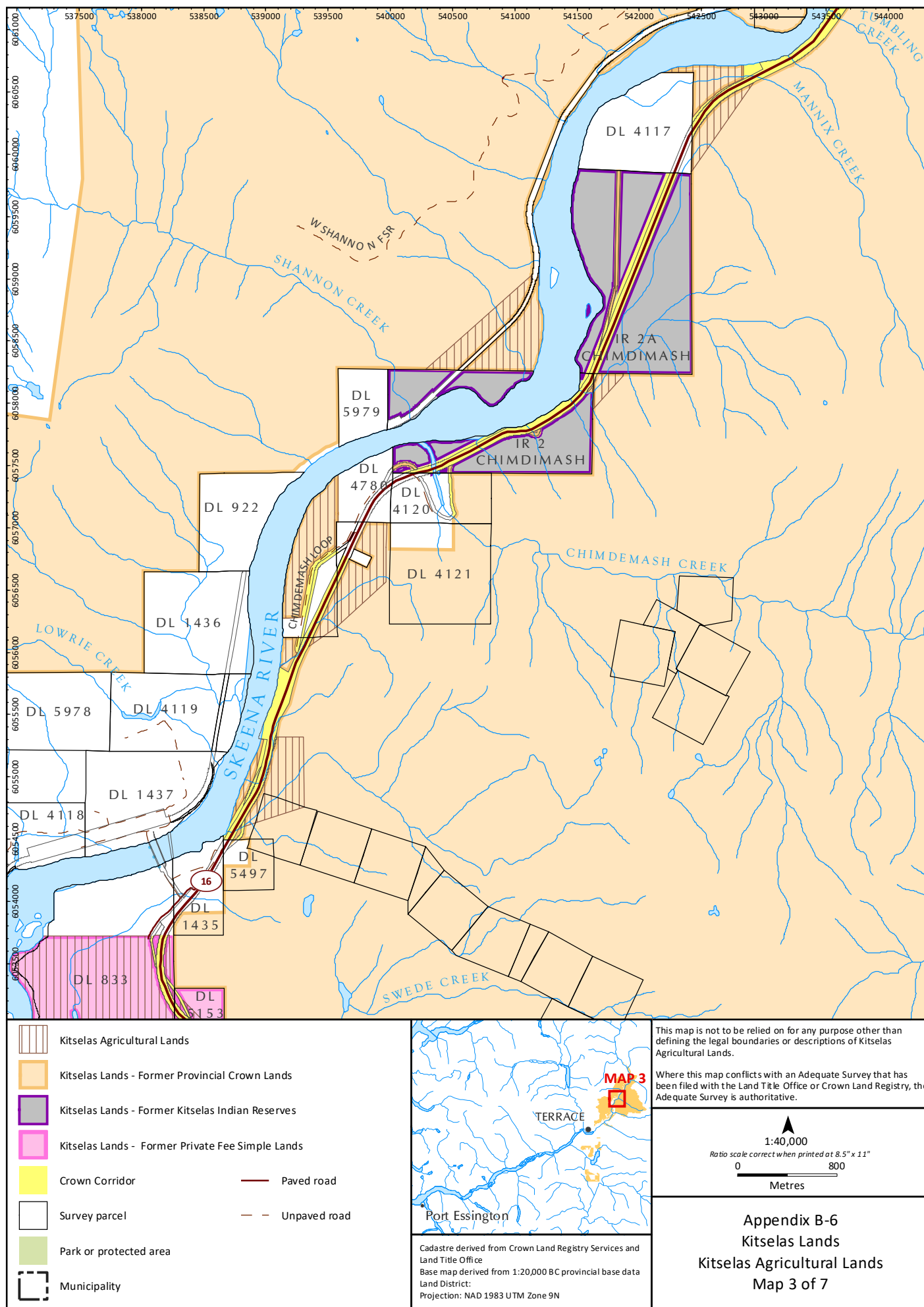
Appendix B-6 Kitselas Agricultural Lands

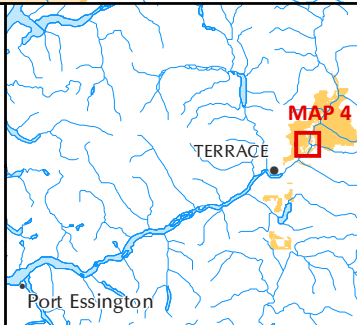
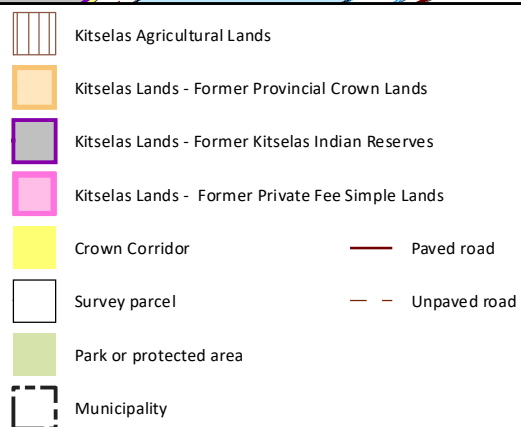
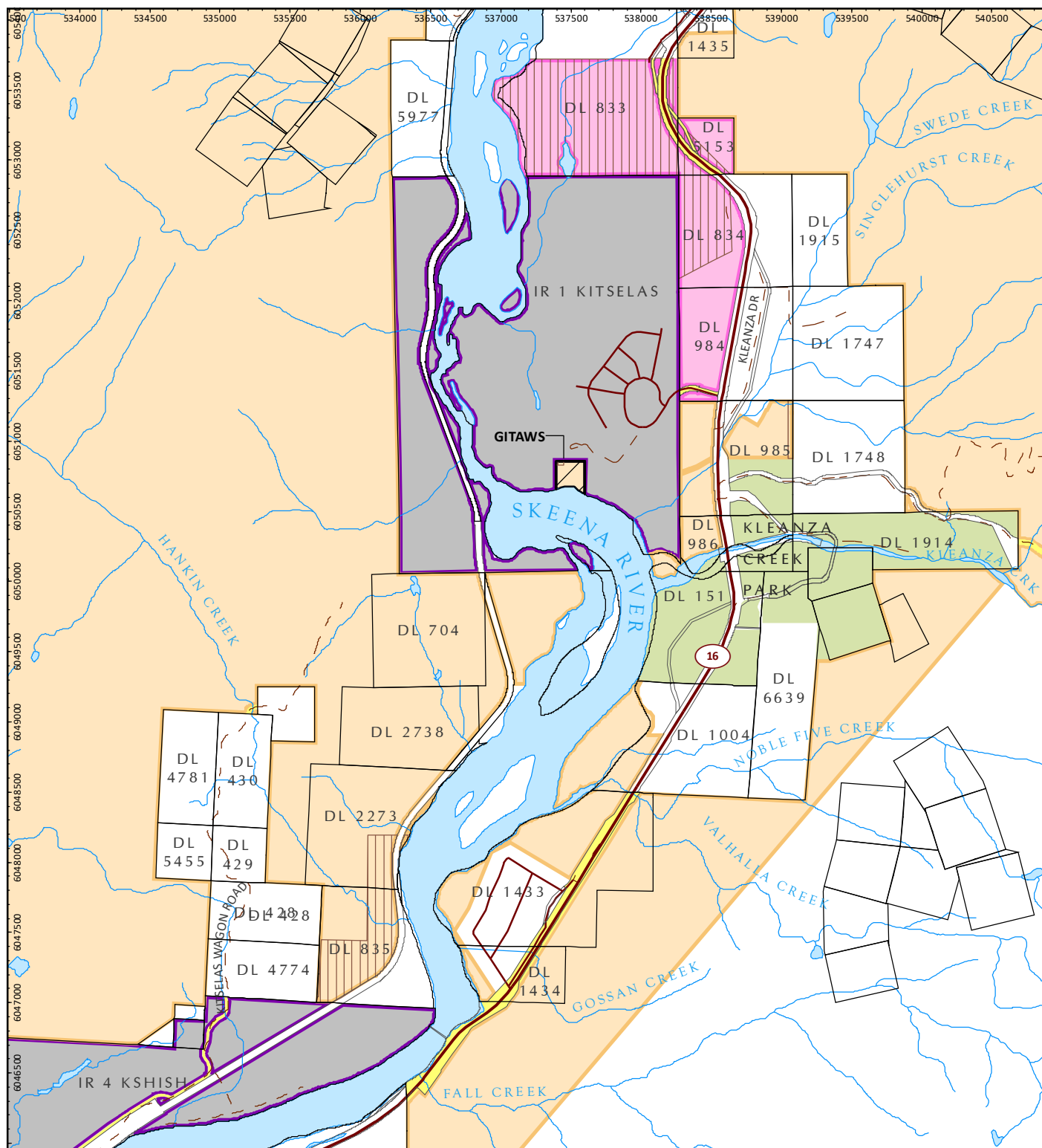
Maps of Kitselas Agricultural Lands

Note: The Parties will update the Appendices before the Effective Date, as required.





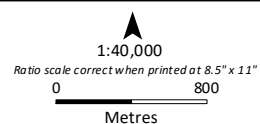




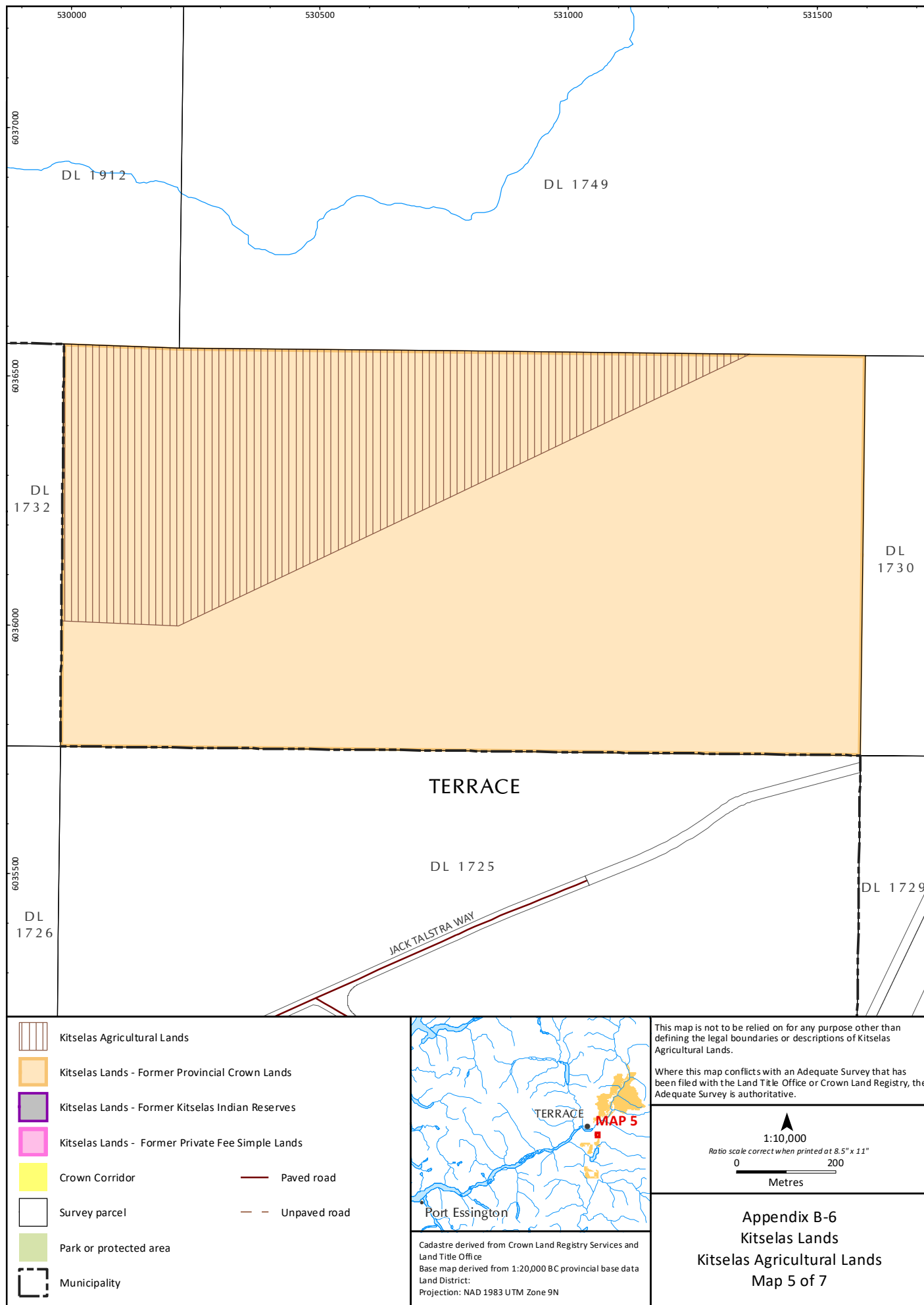
Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District:
 Projection: NAD 1983 UTM Zone 9N

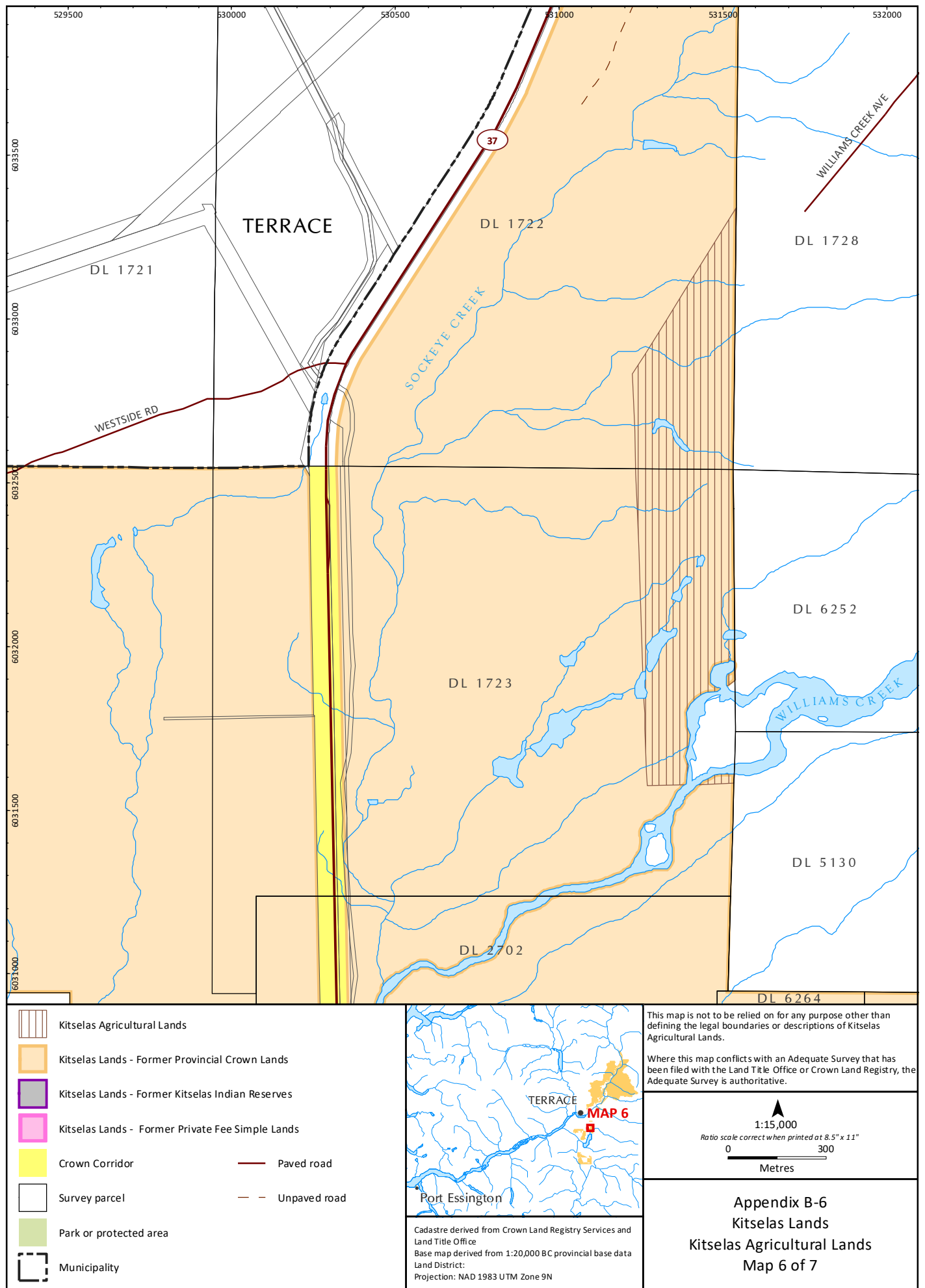
This map is not to be relied on for any purpose other than defining the legal boundaries or descriptions of Kitselas Agricultural Lands.

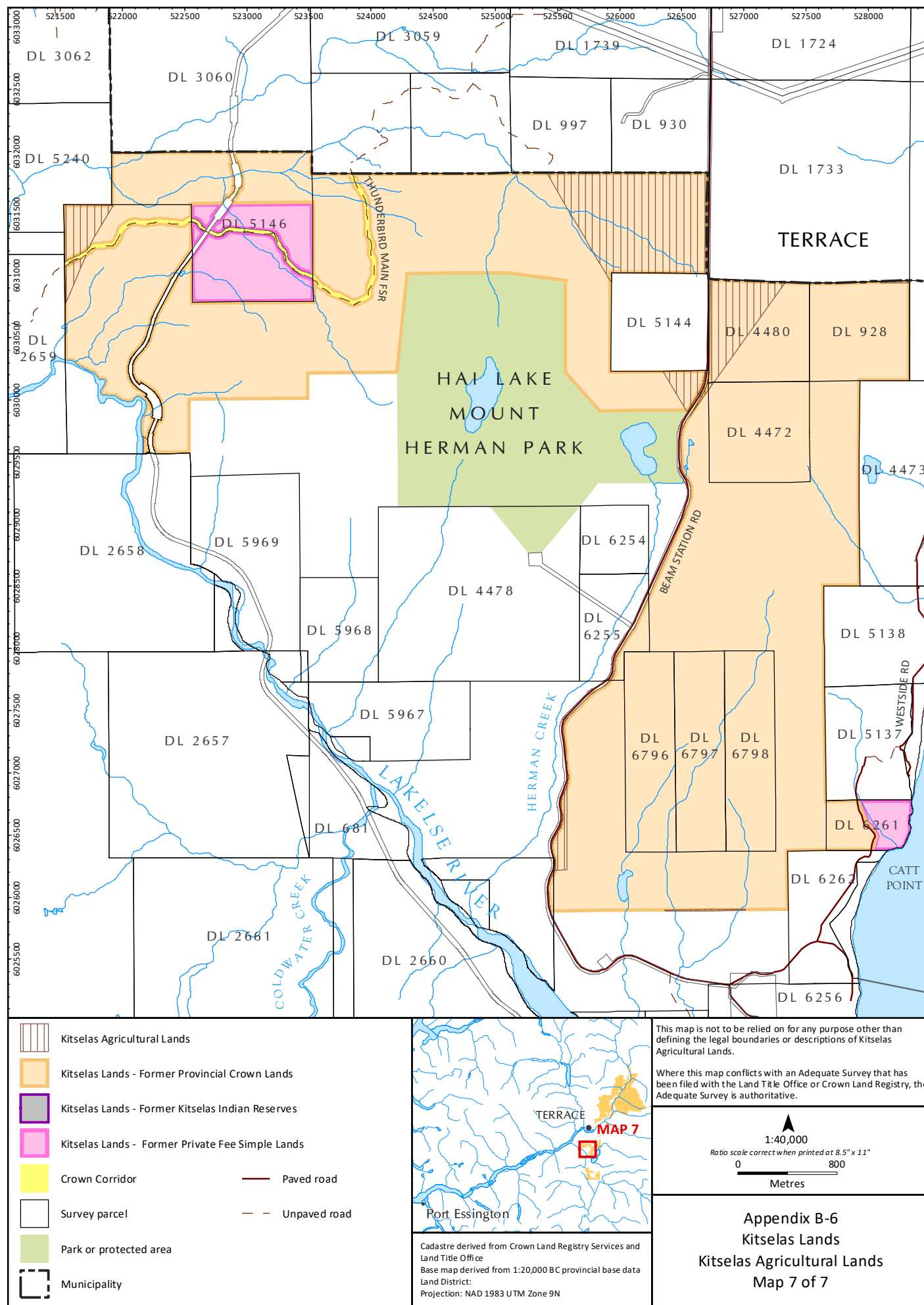
Where this map conflicts with an Adequate Survey that has been filed with the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.



Appendix B-6
Kitselas Lands
Kitselas Agricultural Lands
Map 4 of 7







Appendix C Port Essington Lands

Part 1: Legal Descriptions of Port Essington Lands

Part 2: Map of Port Essington Lands

Appendix C Port Essington Lands

Part 1: Legal Descriptions of Port Essington Lands

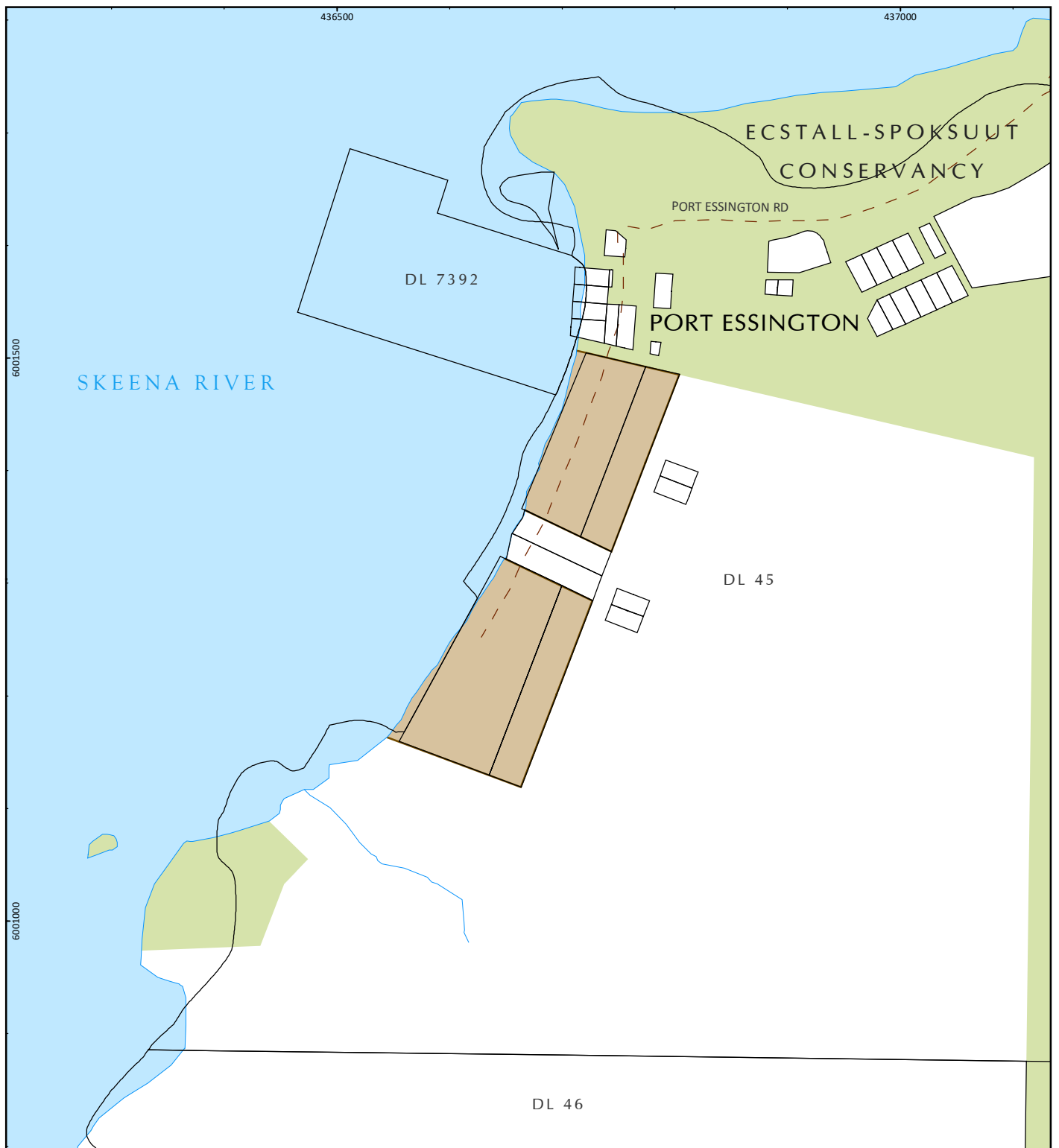
Note: The Parties will update the Appendices before the Effective Date, as required.

Parcel Identifier (PID) and Parcel Identification Number (PIN)	Legal Description
PID: 028-217-039	Those parts of District Lot 45, Range 5, Coast District as described in DF 3863
PIN: 2377050	Those parts of District Lot 45, Range 5, Coast District described as exceptions in DF 3863

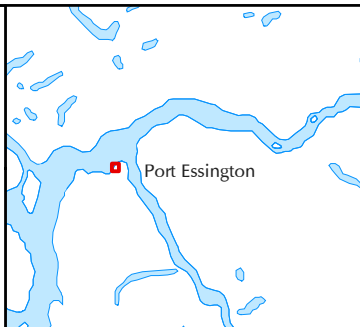
Appendix C Port Essington Lands

Part 2: Map of Port Essington Lands

Note: The Parties will update the Appendices before the Effective Date, as required.

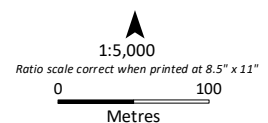


- Port Essington Lands
- Survey parcel
- Park or protected area
- Unpaved road



Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District: Range 5 Coast
 Projection: NAD 1983 UTM Zone 9N

This map is not to be relied on for defining the legal boundaries or descriptions of any lands depicted



Appendix C, Part 2 Port Essington Lands

Appendix D Kitselas Coastal Site Lands

Part 1: Overview Map of Kitselas Coastal Site Lands and Coastal Site Conservancy Lands

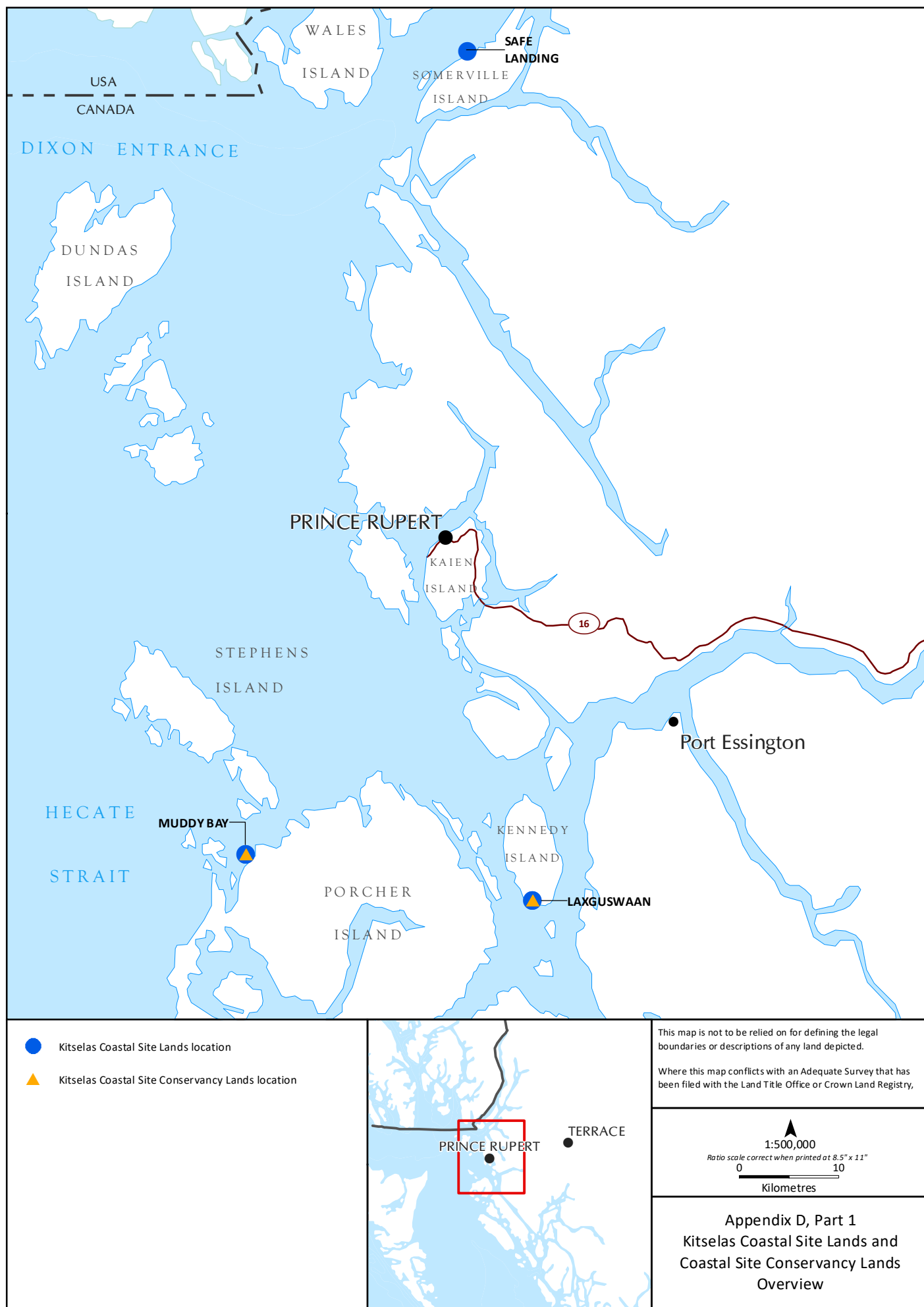
Part 2: Maps of Kitselas Coastal Site Lands

Part 3: Maps of Kitselas Coastal Site Conservancy Lands

Appendix D Kitselas Coastal Site Lands

Part 1: Overview Map of Kitselas Coastal Site Lands and Coastal Site Conservancy Lands

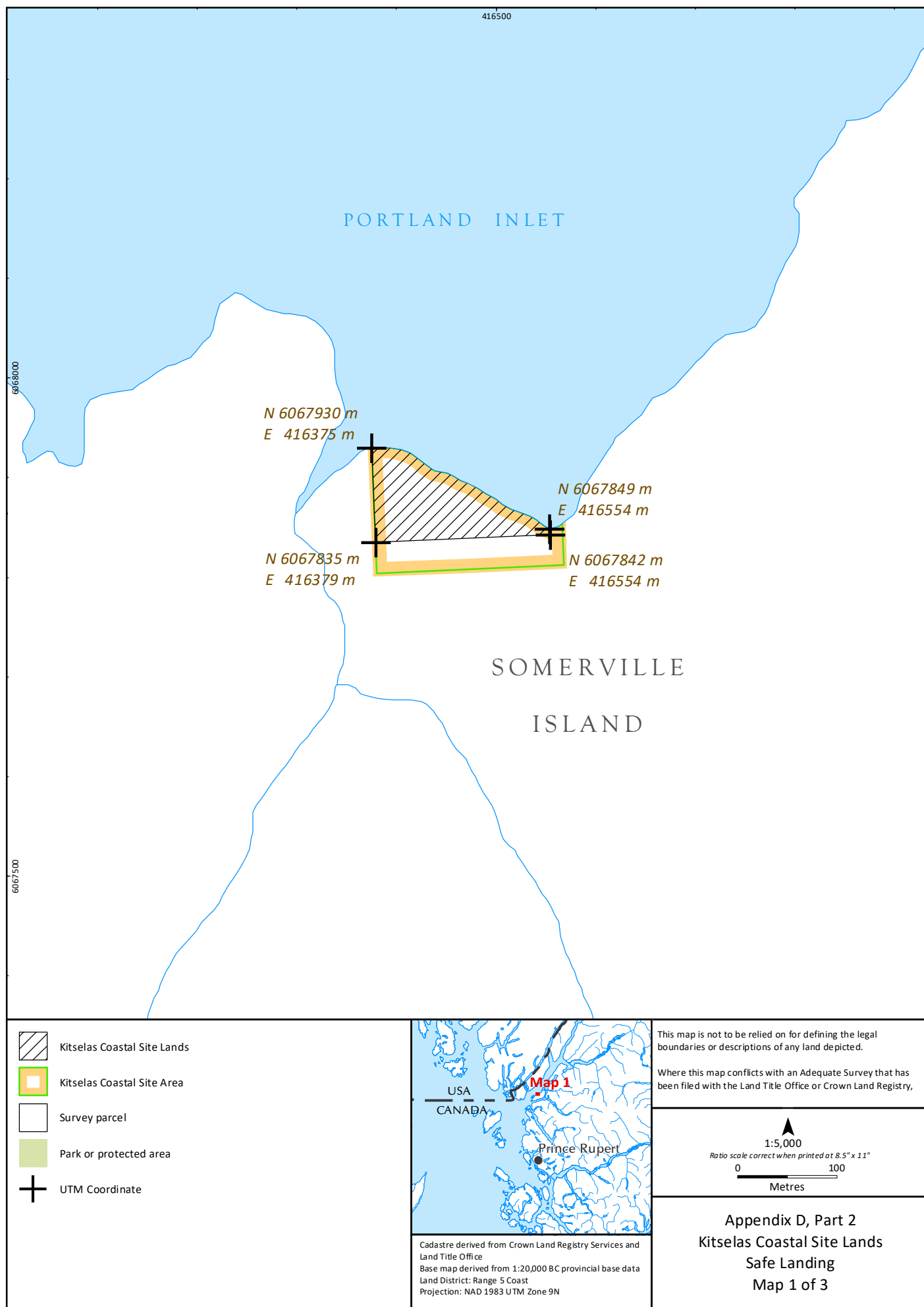
Note: The Parties will update the Appendices before the Effective Date, as required.

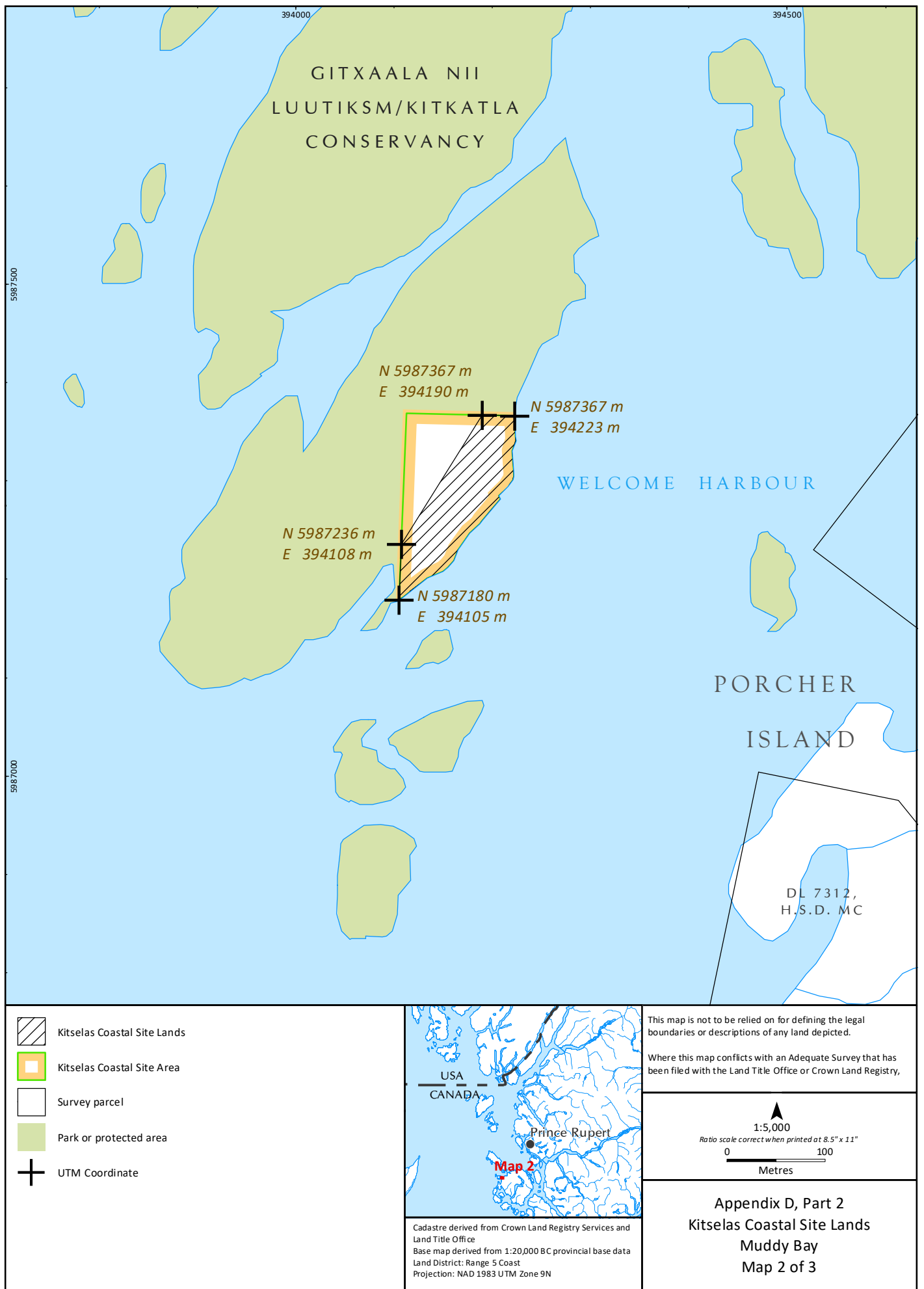


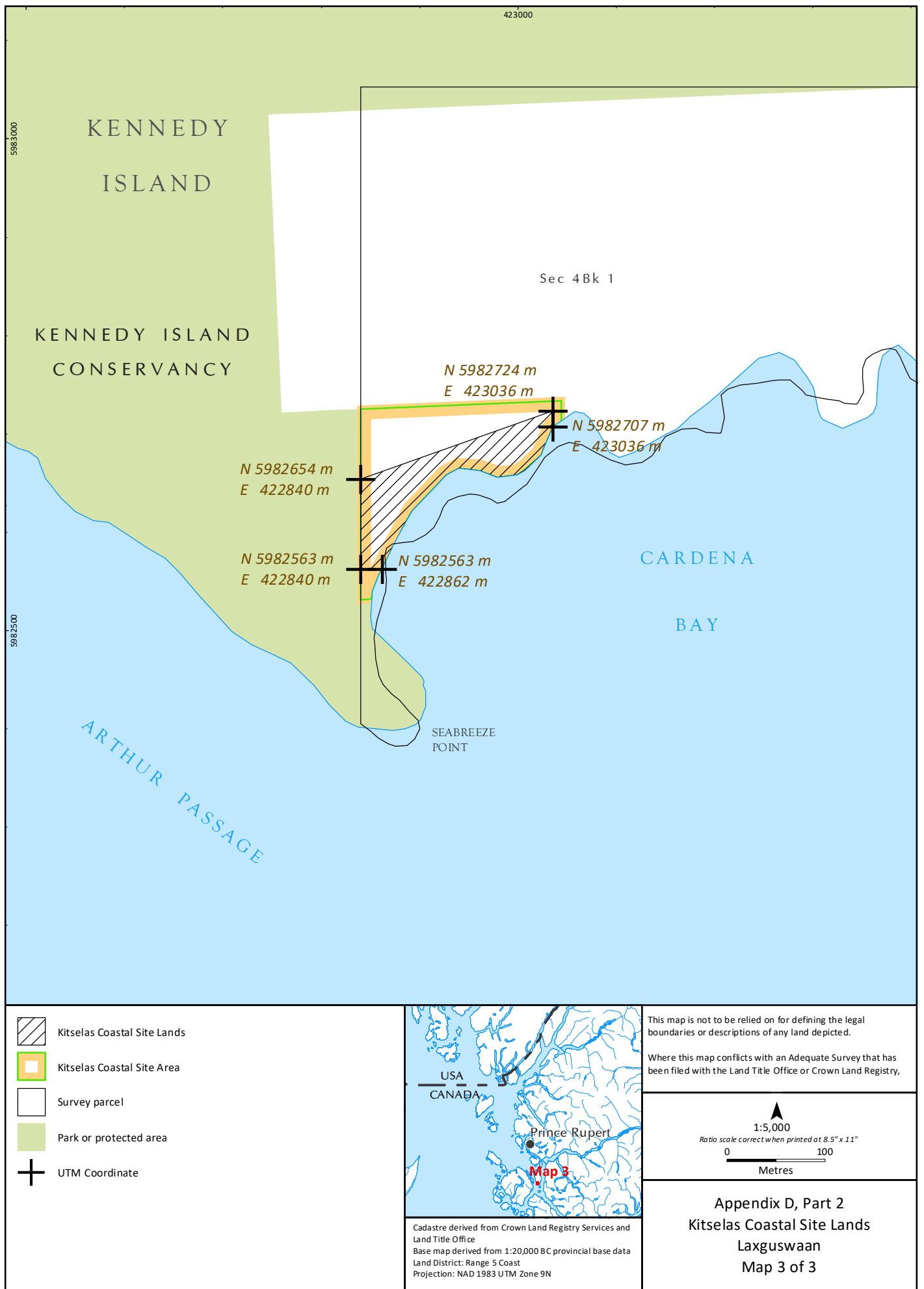
Appendix D Kitselas Coastal Site Lands

Part 2: Maps of Kitselas Coastal Site Lands

Note: The Parties will update the Appendices before the Effective Date, as required.



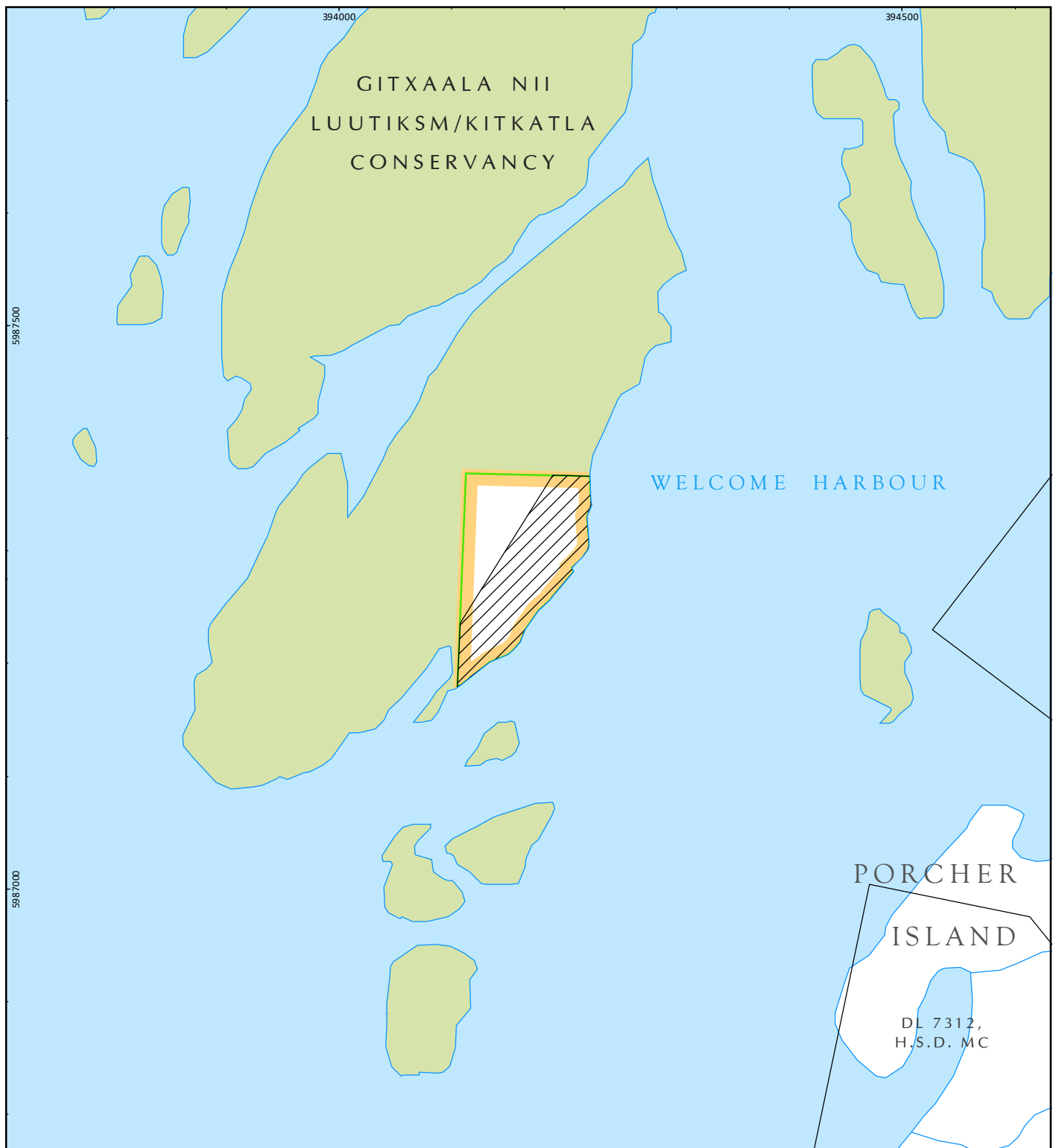




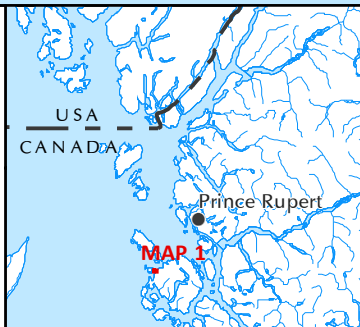
Appendix D Kitselas Coastal Site Lands

Part 3: Maps of Kitselas Coastal Site Conservancy Lands

Note: The Parties will update the Appendices before the Effective Date, as required.

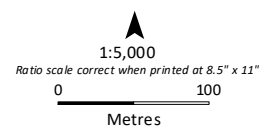


-  Kitselas Coastal Site Conservancy Lands
-  Kitselas Coastal Site Area
-  Survey parcel
-  Park or protected area



Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District: Range 5 Coast
 Projection: NAD 1983 UTM Zone 9N

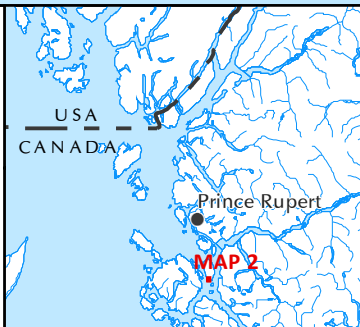
This map is not to be relied on for any purpose other than defining the legal boundaries or descriptions of Kitselas Coastal Site Conservancy Lands.
 Where this map conflicts with an Adequate Survey that has been filed with the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.



Appendix D, Part 3
 Kitselas Coastal Site
 Conservancy Lands
 Muddy Bay
 Map 1 of 2

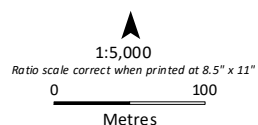


-  Kitselas Coastal Site Conservancy Lands
-  Kitselas Coastal Site Area
-  Survey parcel
-  Park or protected area



Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District: Range 5 Coast
 Projection: NAD 1983 UTM Zone 9N

This map is not to be relied on for any purpose other than defining the legal boundaries or descriptions of Kitselas Coastal Site Conservancy Lands.
 Where this map conflicts with an Adequate Survey that has been filed with the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.



Appendix D, Part 3
 Kitselas Coastal Site
 Conservancy Lands
 Laxguswaan
 Map 2 of 2

Appendix E Kitselas Coastal Site Areas

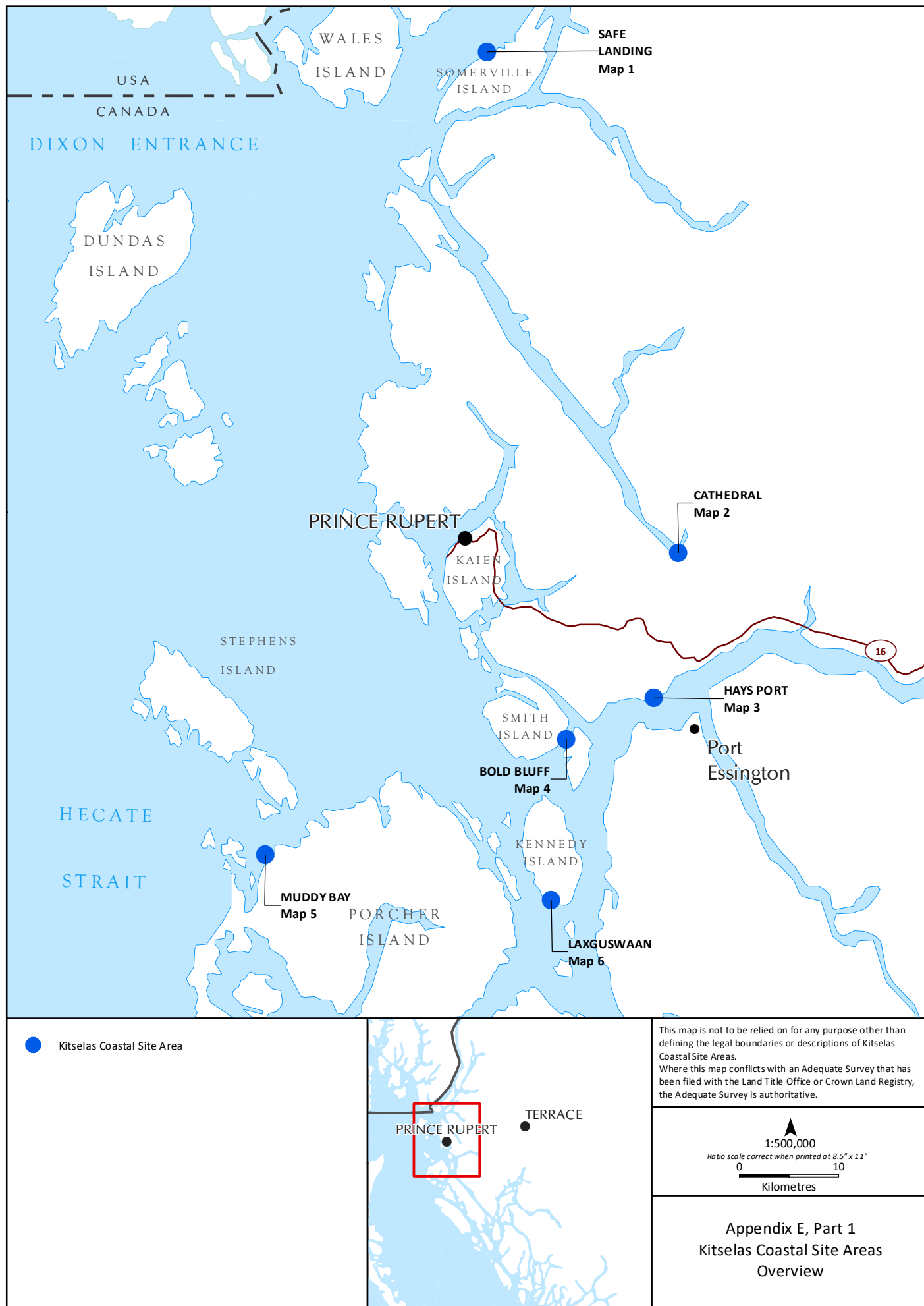
Part 1: Overview Map of Kitselas Coastal Site Areas

Part 2: Maps of Kitselas Coastal Site Areas

Appendix E Kitselas Coastal Site Areas

Part 1: Overview Map of Kitselas Coastal Site Areas

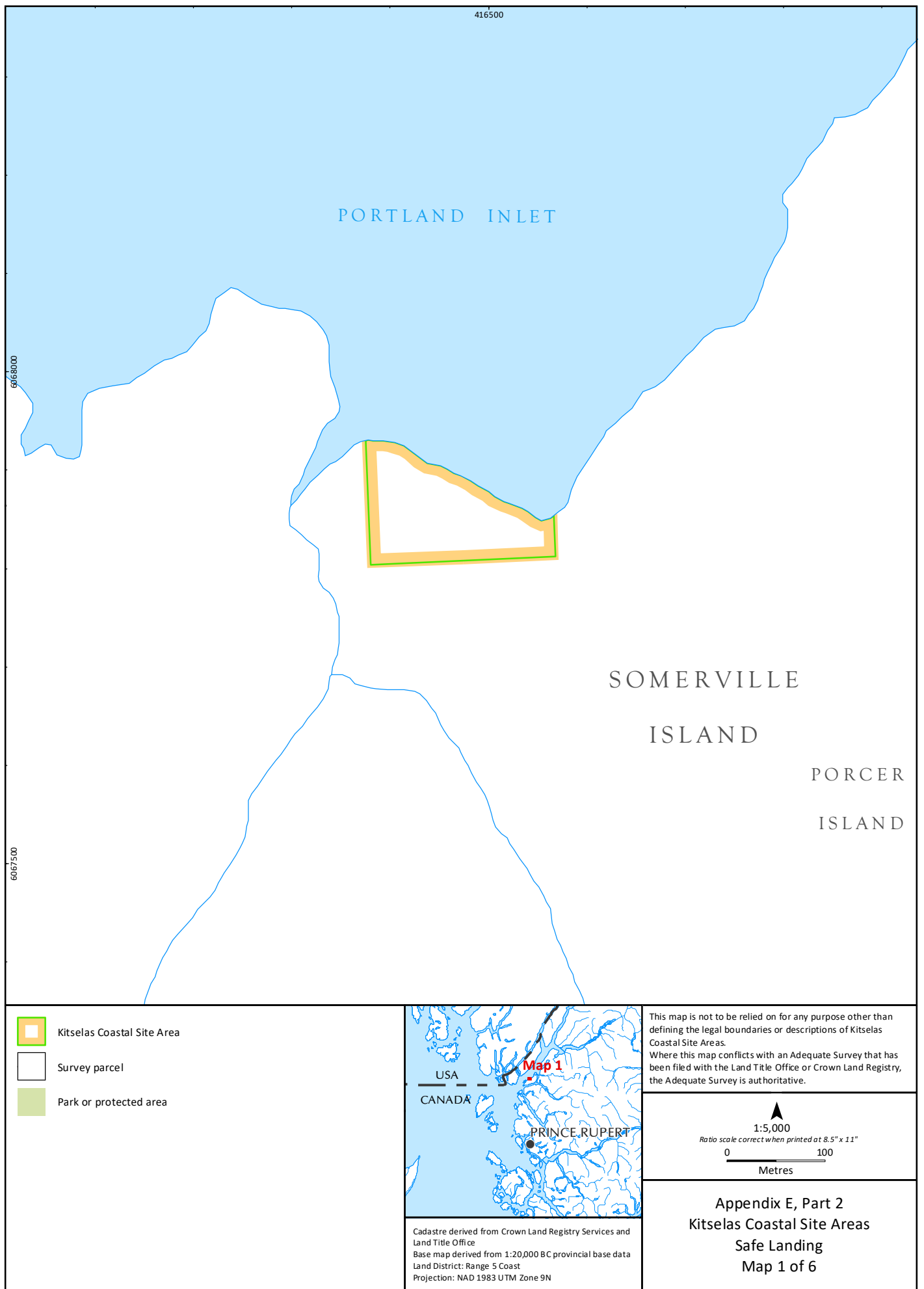
Note: The Parties will update the Appendices before the Effective Date, as required.

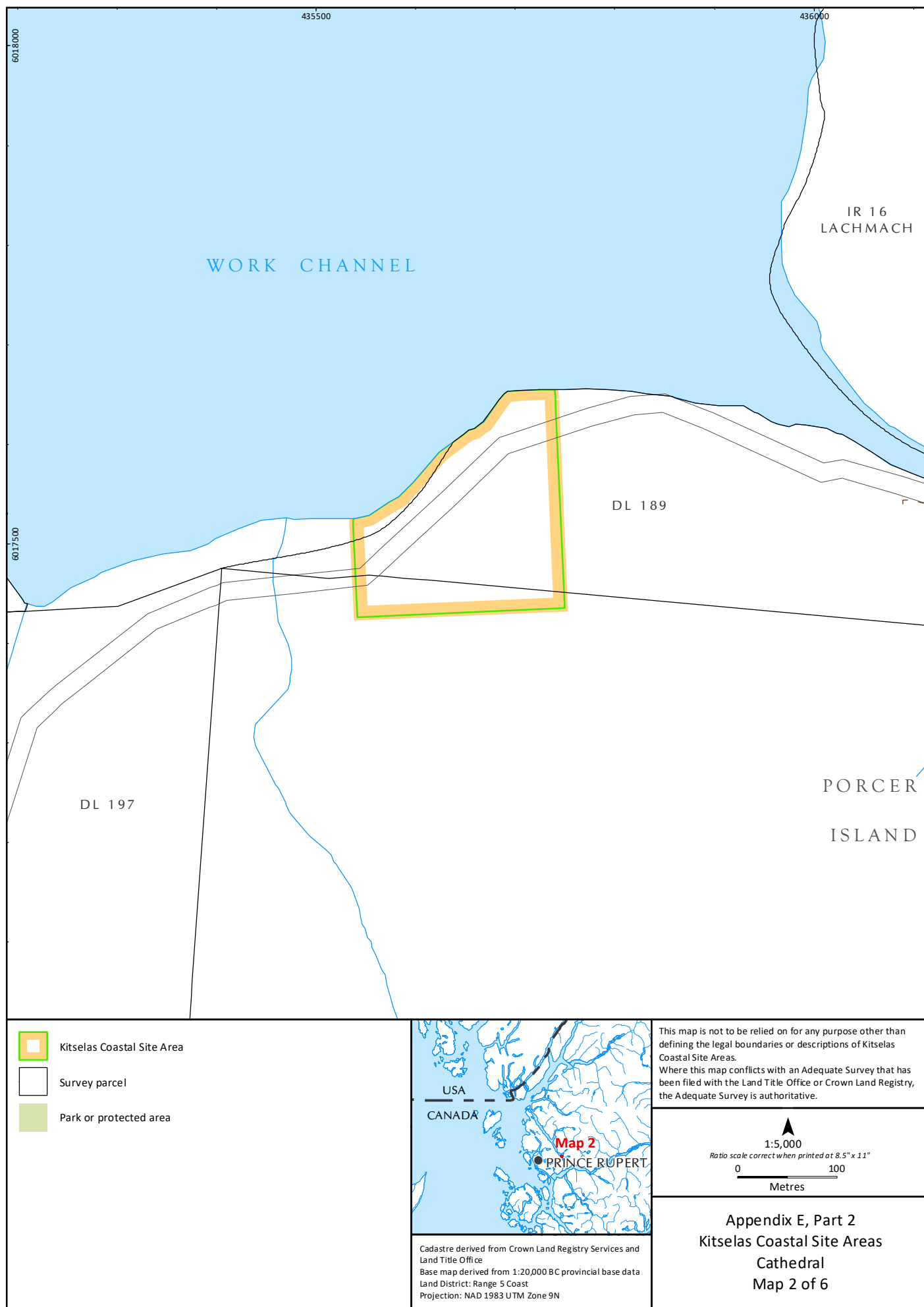


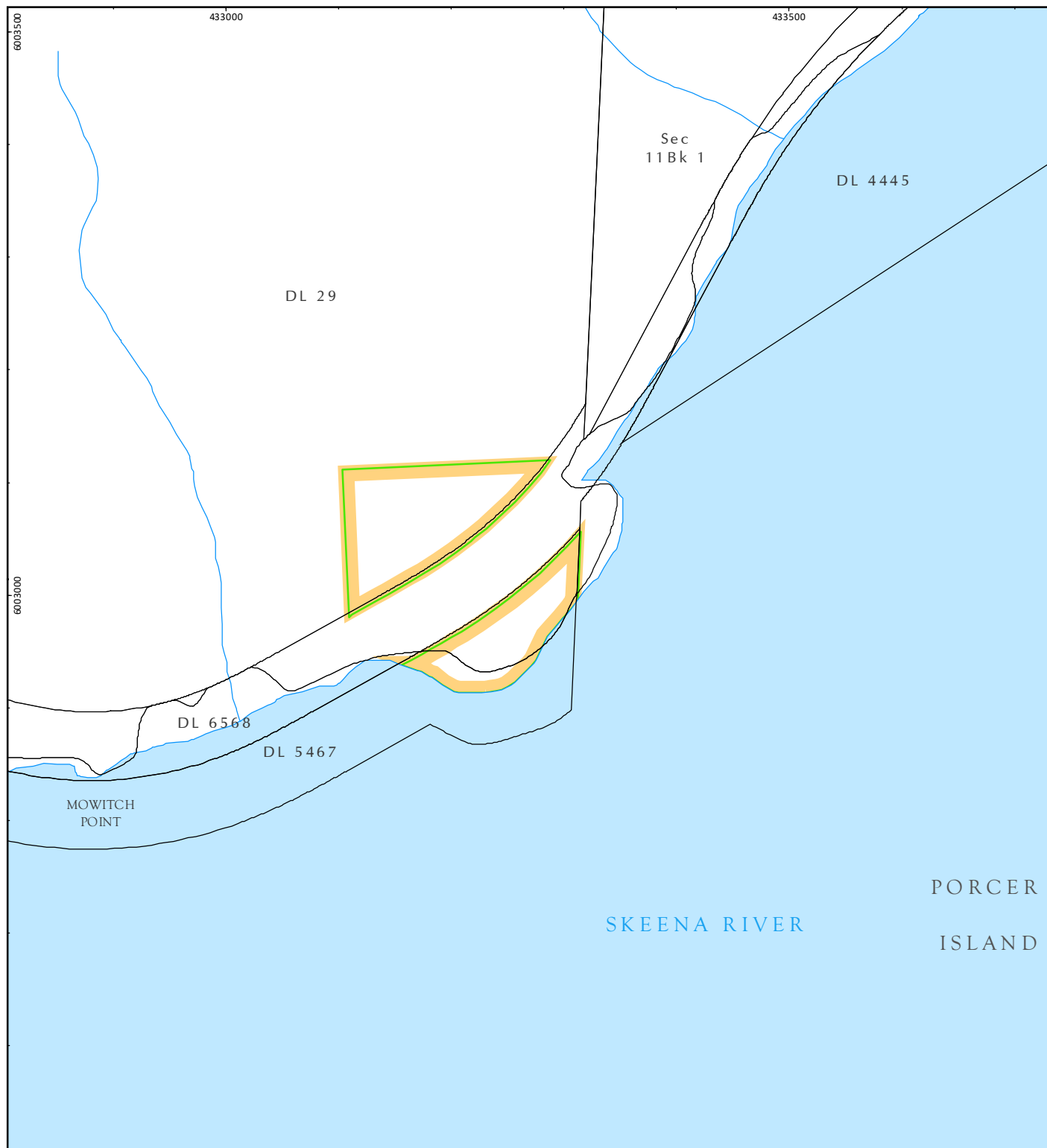
Appendix E Kitselas Coastal Site Areas

Part 2: Maps of Kitselas Coastal Site Areas

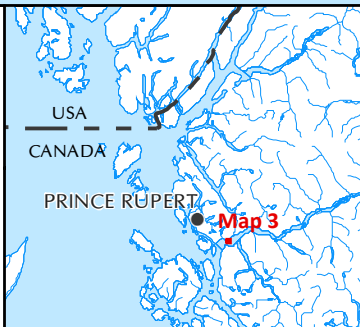
Note: The Parties will update the Appendices before the Effective Date, as required.







-  Kitselas Coastal Site Area
-  Survey parcel
-  Park or protected area

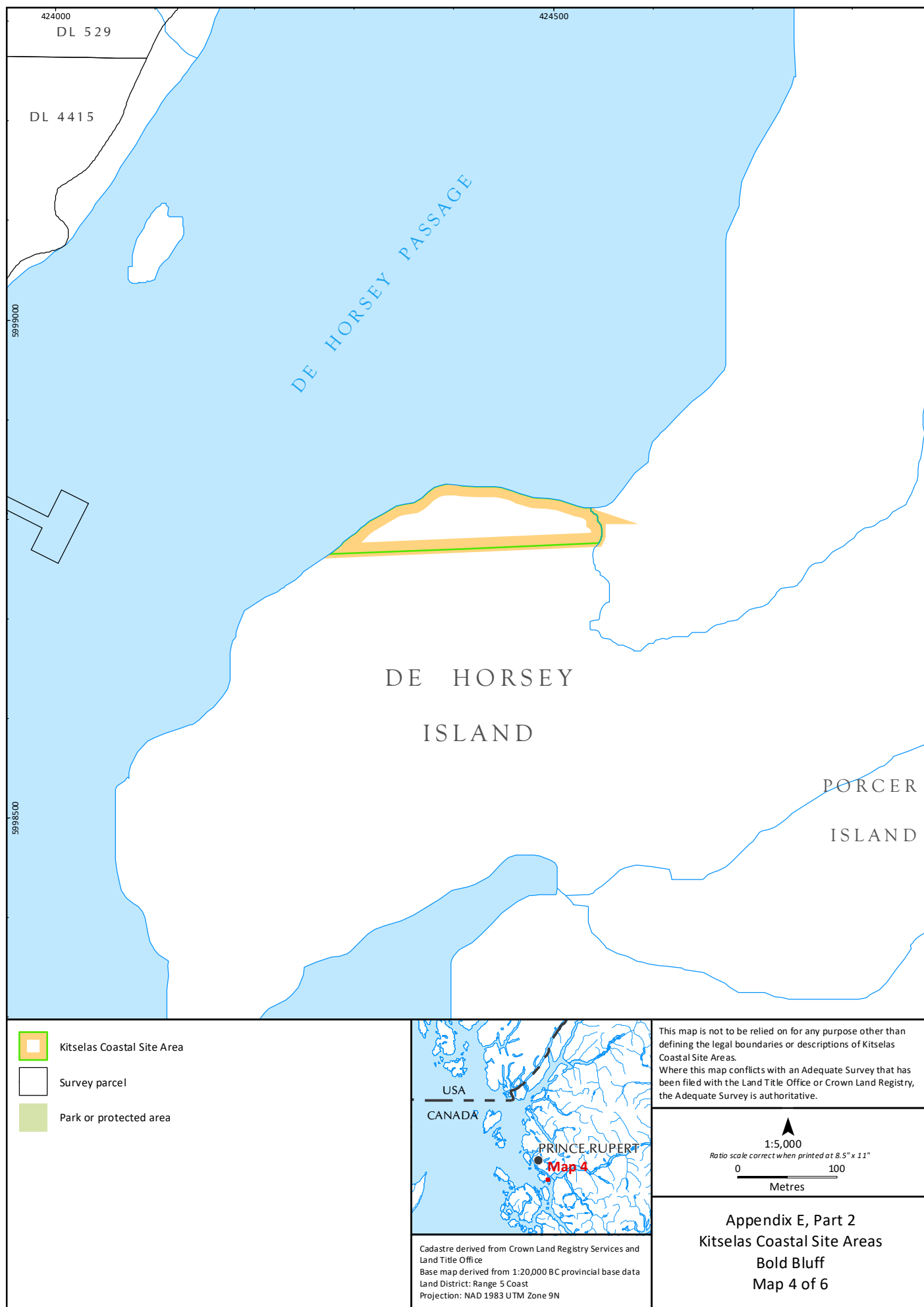


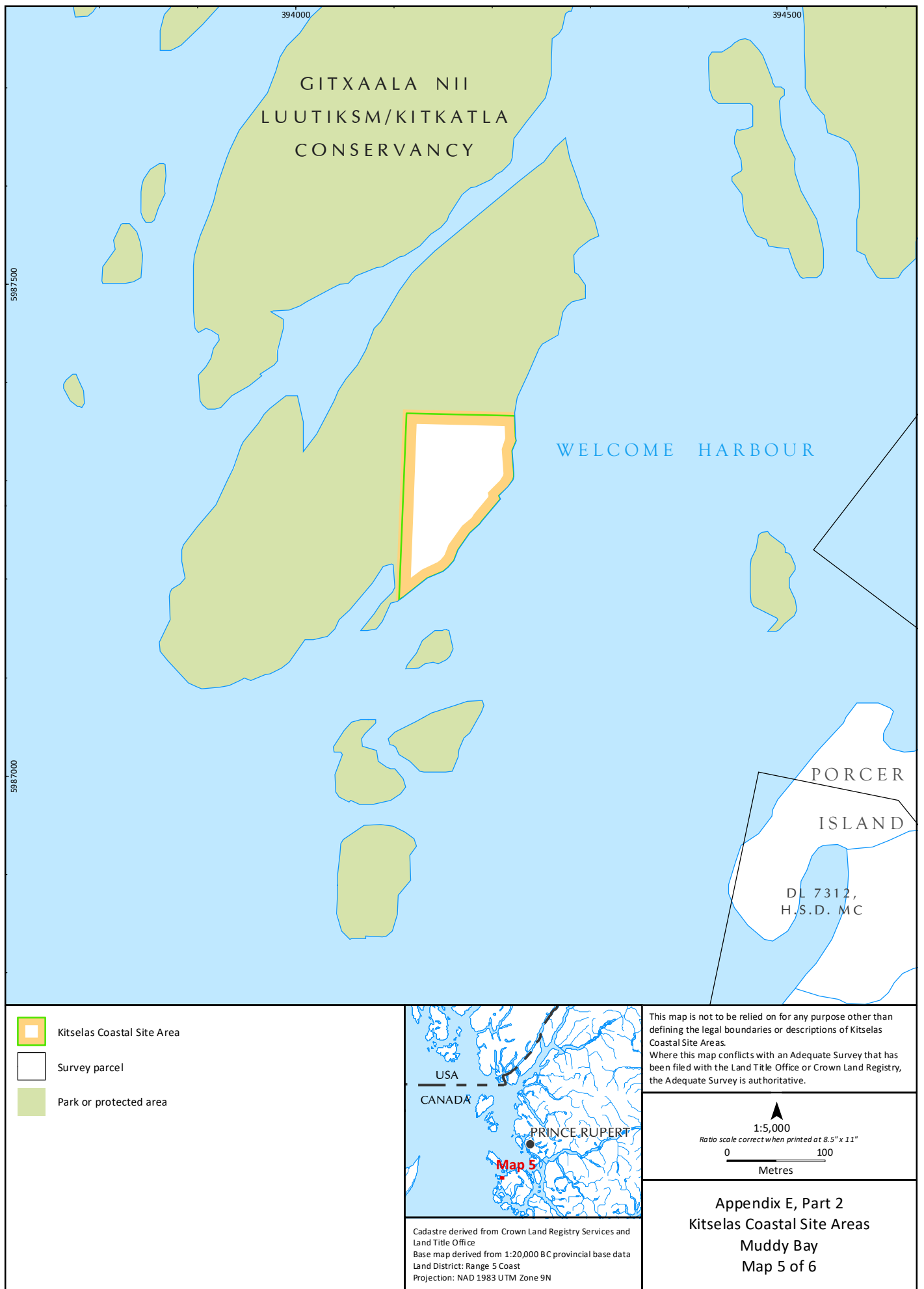
Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District: Range 5 Coast
 Projection: NAD 1983 UTM Zone 9N

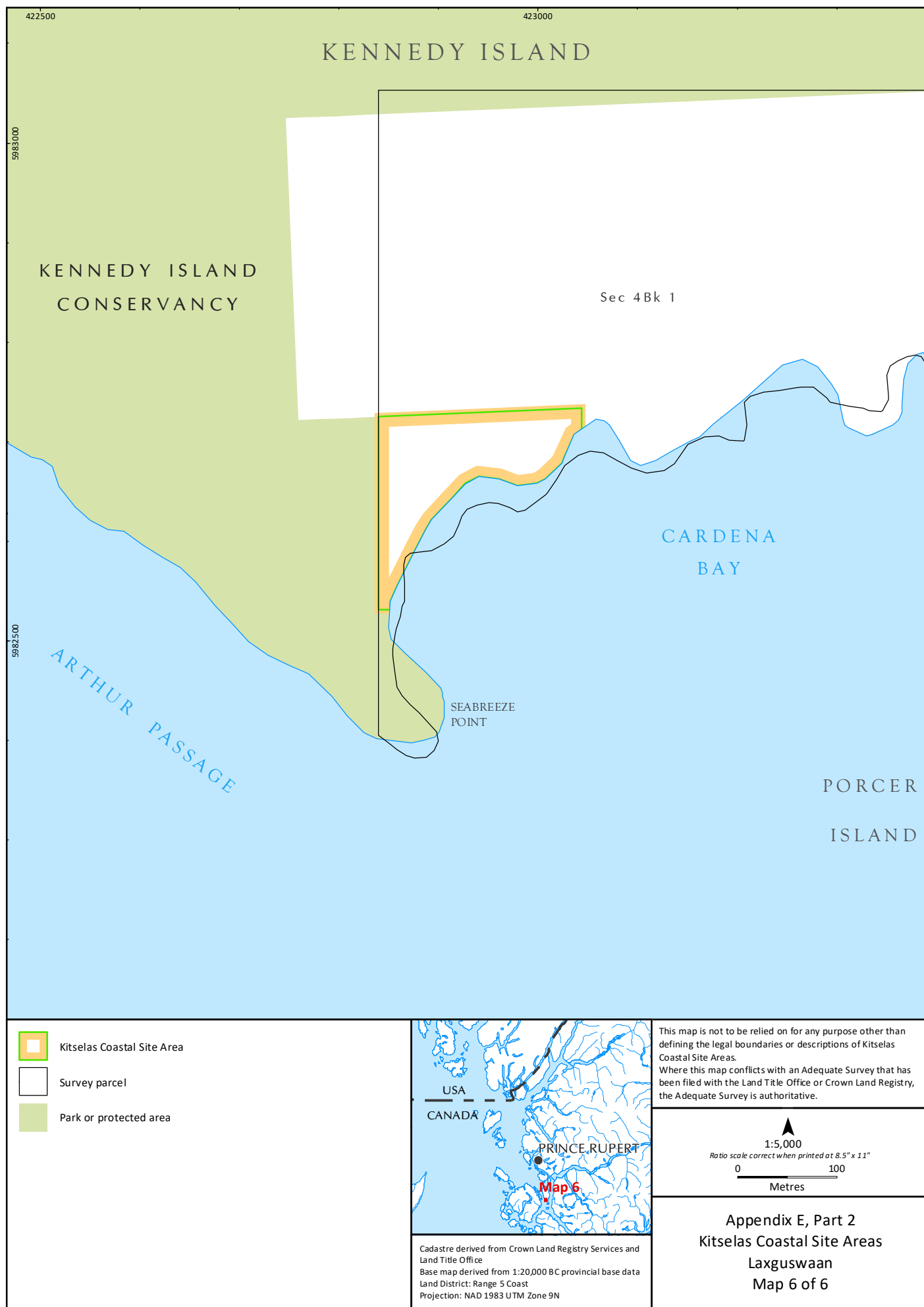
This map is not to be relied on for any purpose other than defining the legal boundaries or descriptions of Kitselas Coastal Site Areas.
 Where this map conflicts with an Adequate Survey that has been filed with the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.

1:5,000
 Ratio scale correct when printed at 8.5" x 11"
 0 100
 Metres

Appendix E, Part 2
 Kitselas Coastal Site Areas
 Hays Port
 Map 3 of 6







**Appendix F Pre-Approved Addition, Subject Lands for Potential Acquisition and Addition,
Subject Lands at Port Essington, and Pre-Approved Fee Simple Addition Lands**

Part 1: Map of Pre-Approved Addition to Kitselas Lands

Part 2: Maps of Subject Lands for Potential Acquisition and Addition to Kitselas Lands

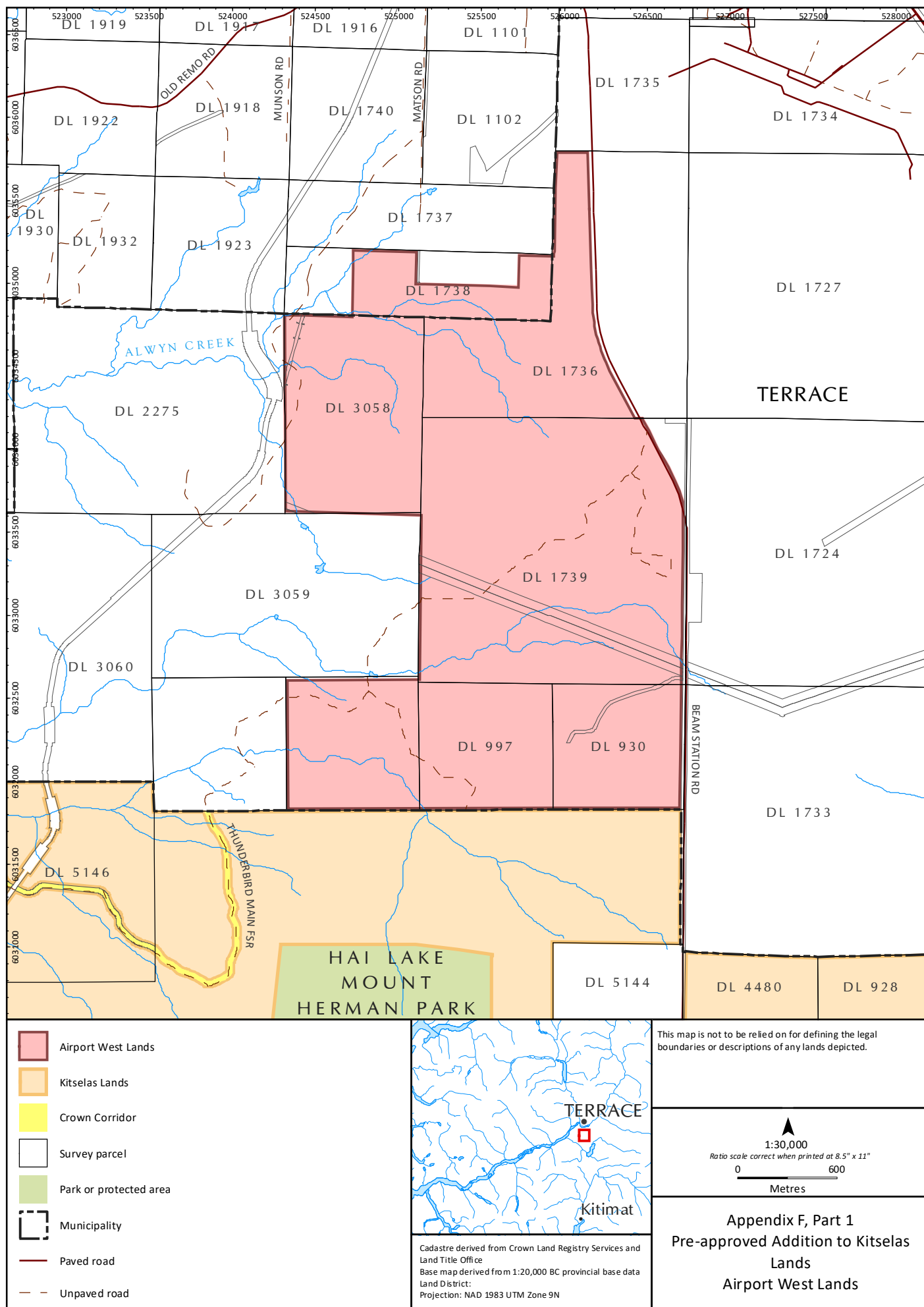
Part 3: Map of Subject Lands at Port Essington

Part 4: Legal Descriptions of Pre-Approved Fee Simple Addition Lands

**Appendix F Pre-Approved Addition, Subject Lands for Potential Acquisition and Addition,
Subject Lands at Port Essington, and Pre-Approved Fee Simple Addition Lands**

Part 1: Map of Pre-Approved Addition to Kitselas Lands

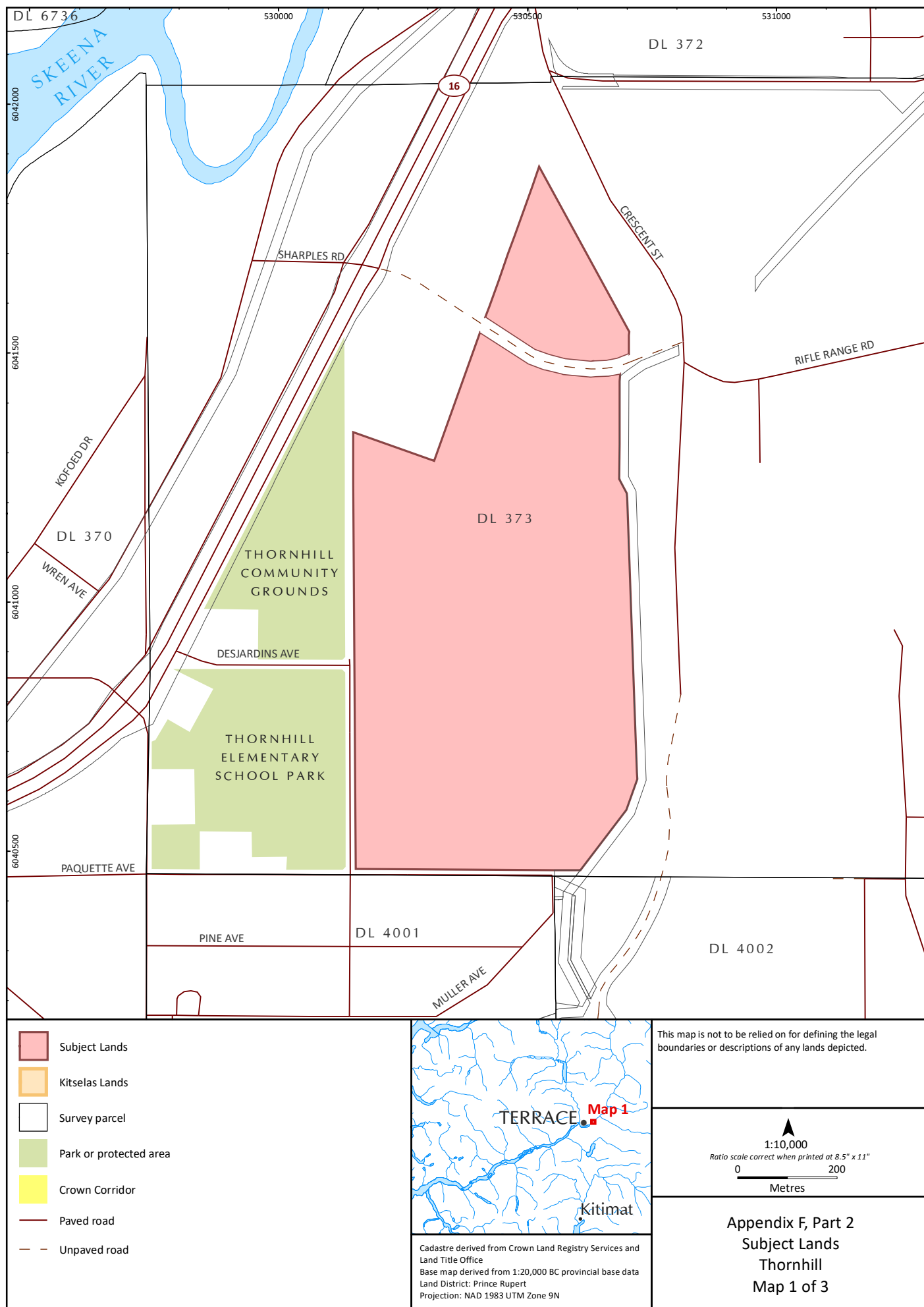
Note: The Parties will update the Appendices before the Effective Date, as required.

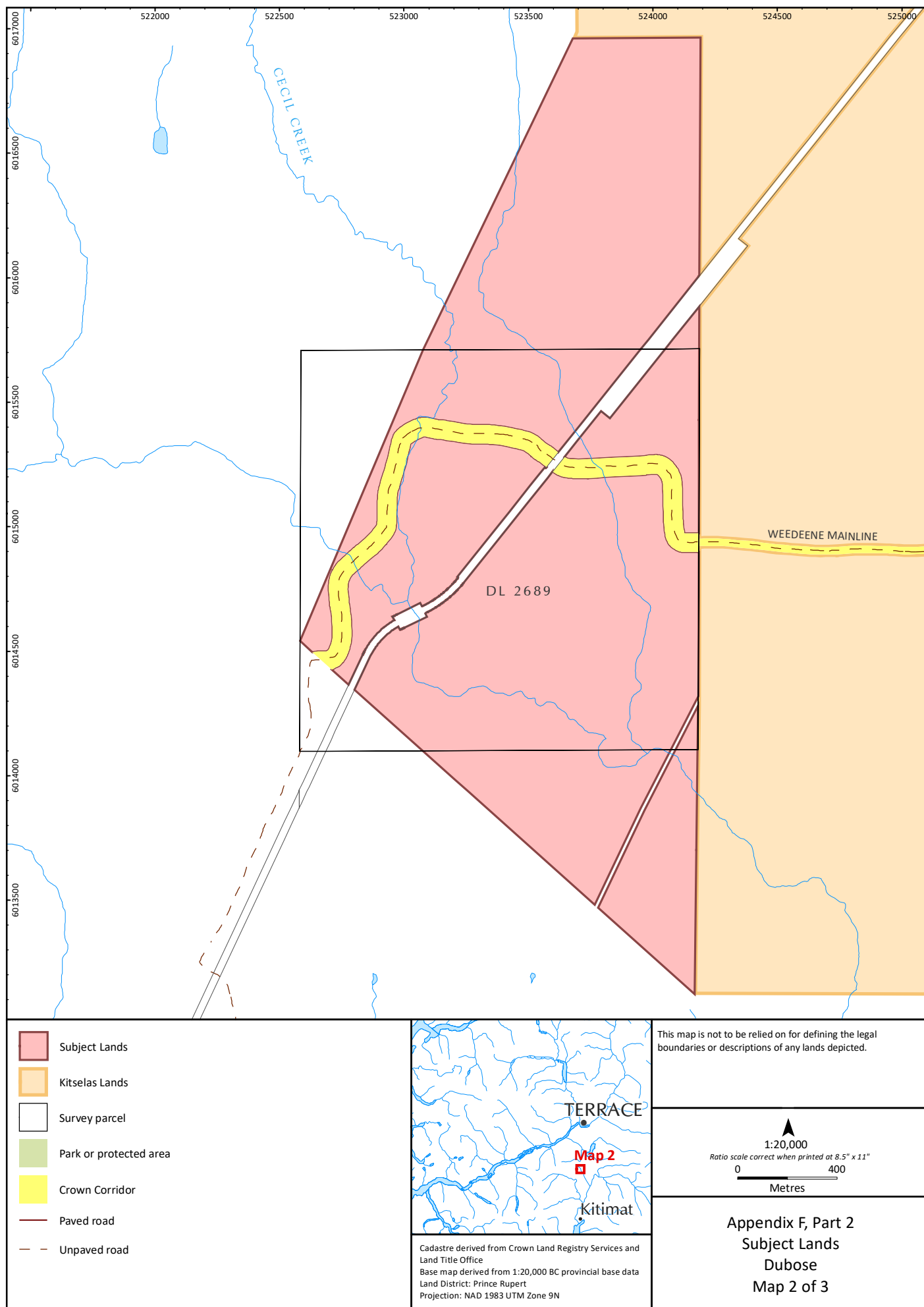


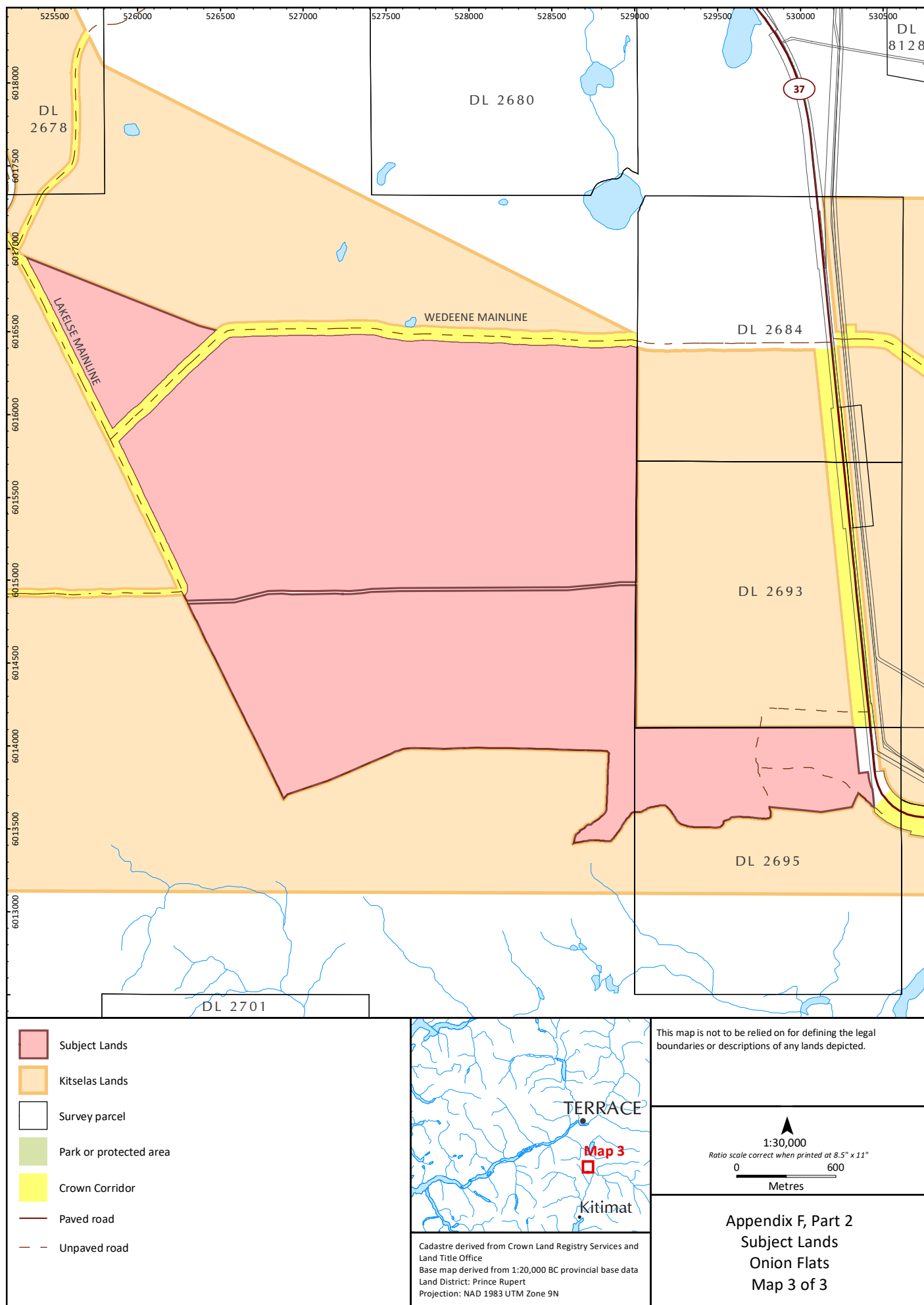
**Appendix F Pre-Approved Addition, Subject Lands for Potential Acquisition and Addition,
Subject Lands at Port Essington, and Pre-Approved Fee Simple Addition Lands**

Part 2: Maps of Subject Lands for Potential Acquisition and Addition to Kitselas Lands

Note: The Parties will update the Appendices before the Effective Date, as required.



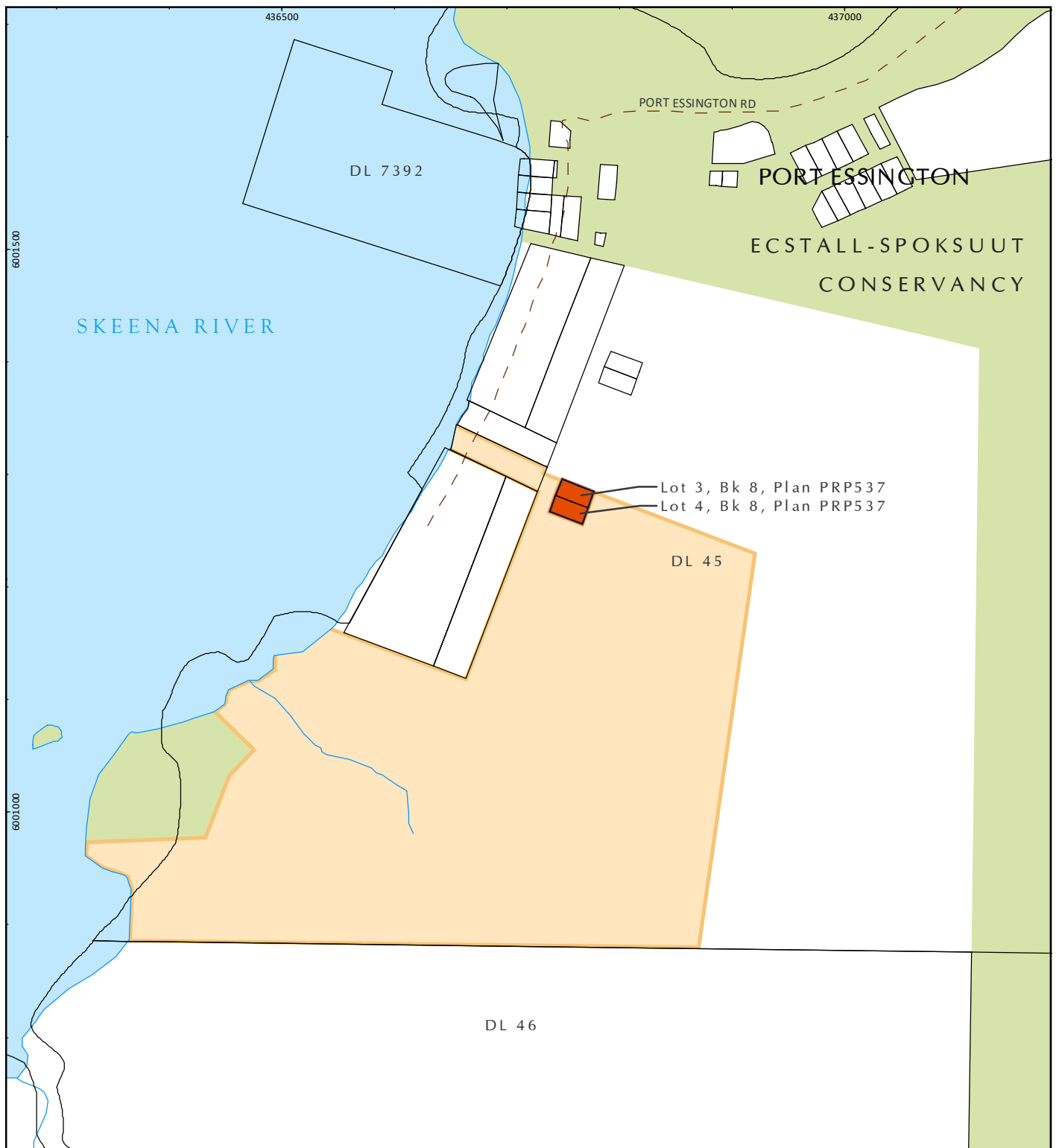




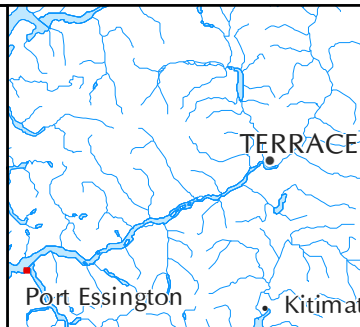
**Appendix F Pre-Approved Addition, Subject Lands for Potential Acquisition and Addition,
Subject Lands at Port Essington, and Pre-Approved Fee Simple Addition Lands**

Part 3: Map of Subject Lands at Port Essington

Note: The Parties will update the Appendices before the Effective Date, as required.



- Other Port Essington Lands
- Kitselas Lands
- Crown Corridor
- Survey parcel
- Park or protected area
- Municipality
- Unpaved road



Cadastre derived from Crown Land Registry Services and Land Title Office
 Base map derived from 1:20,000 BC provincial base data
 Land District:
 Projection: NAD 1983 UTM Zone 9N

This map is not to be relied on for defining the legal boundaries or descriptions of any lands depicted.


 1:5,000
 Ratio scale correct when printed at 8.5" x 11"
 0 100
 Metres

Appendix F, Part 3 Subject Lands at Port Essington

**Appendix F Pre-Approved Addition, Subject Lands for Potential Acquisition and Addition,
Subject Lands at Port Essington, and Pre-Approved Fee Simple Addition Lands**

Part 4: Legal Descriptions of Pre-Approved Fee Simple Addition Lands

Note: The Parties will update the Appendices before the Effective Date, as required.

Parcel Name	Legal Description	PID	General Location

Appendix G Interests on Kitselas Lands

Appendix G-1: Interests on Former Kitselas Indian Reserves to be Replaced on the Effective Date

Part 1: Certificates of Possession and Other Interests Under the *Indian Act* or *Kitselas Reserve Lands Management Act*

Part 2: Public Utility Works - Transmission

Part 3: Public Utility Works - Distribution

Part 4: Other Interests to be Replaced by Kitselas

Part 5: Other Interests to be Granted by Third Party

Appendix G-2: Interests on Former Provincial Crown Land to be Replaced on the Effective Date

Part 1: Public Utility Works - Transmission

Part 2: Public Utility Works - Telecommunications

Part 3: Permits to Occupy Kitselas Lands Associated with Water Licenses

Part 4: Resource Road Permits

Part 5: Other Interests

Appendix G-3: Interests to be Created by Kitselas on the Effective Date

Part 1: Public Utility Works – Distribution and Ancillary Rights

Part 2: Non-commercial Recreation

Part 3: Ministry of Forests Inventory Ground Plots

Part 4: Ministry of Forests Forest Research Plots

Part 5: Ministry of Transportation and Transit Statutory Right of Ways and Profit à Prendre

Appendix G-4: Applicable Forms of Document for Granting Interests Listed in Appendices G-1, G-2 and G-3

Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves Listed in Appendix G-1

- Document 1. BC Housing Lease
- Document 2. Mortgage Repayable
- Document 3. Mortgage Forgivable
- Document 4. Assignments of Rents Repayable
- Document 5. Assignment of Rents Forgivable

Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land Listed in Appendices G-2

- Document 1. Licence of Occupation for Telecommunication Sites
- Document 2. Permit to Occupy Kitselas Lands
- Document 3. Resource Road Permit
- Document 4. Airport Beacon Lease
- Document 5. Licence of Occupation for Monitoring and Testing Wells
- Document 6. Licence of Occupation for Roadway
- Document 7. Licence of Occupation for Heli Skiing
- Document 8. Licence of Occupation for Electric Distribution Power Line, Roadway, and Telecommunications

Part 3: Applicable Forms of Documents for Interests to be Created Listed in Appendices G-3

- Document 1. Statutory Right of Way for Recreational Trails
- Document 2. Licence of Occupation for Cycling Trails
- Document 3. Licence of Occupation for Forest Research Plots
- Document 4. Gravel Pits Statutory Right of Way
- Document 5. Kitselas Wagon Road Statutory Right of Way

Part 4: Applicable Forms of Documents for Interests that Cross Both Former Kitselas Indian Reserves and Former Provincial Crown Land

- Document 1. Transmission Statutory Right of Way Agreement

Document 2. Ancillary Rights Statutory Right of Way Agreement

Document 3. Right of Way for Electrical Distribution and Telecommunication Works

Document 4. PNG Form of Statutory Right of Way

Document 5. Enbridge PTP Statutory Right of Way- Pipeline

Appendix G-5: Interests on Former Provincial Crown Land to Continue in Accordance with Provincial Law

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

Part 2: Water Rights Under the *Water Sustainability Act*

Part 3: Guide Outfitter Licences and Guiding Territory Certificates Issued Under the *Wildlife Act*

Part 4: Traplines Issued Under the *Wildlife Act*

Appendix G-6: Interests on Former Private Fee Simple Lands

Appendix G-7: Privately Held Subsurface Resources

Appendix G-1 Interests on Former Kitselas Indian Reserves to be Replaced on the Effective Date

Part 1: Certificates of Possession and Other Interests Under the *Indian Act* or *Kitselas Reserve Lands Management Act*

Note: The Parties will update the Appendices before the Effective Date, as required.

Parcel Description and FNLRS PIN³, if applicable	Interest Holder	Interest	Location
Lot 4 RSBC 2396 PIN: 903015773	LAWSON, Victoria Leona	Certificate of Allocation	Kitselas 1
Lot 5 RSBC 2396 PIN: 902524994	WELLS, Michael David	Certificate of Allocation	Kitselas 1
Lot 7 RSBC 2396 PIN: 902530107	MOORE, Deborah Grace	Certificate of Allocation	Kitselas 1
Lot 8 RSBC 2396 PIN: 903035780	WRIGHT, Anne Margret Patricia	Certificate of Allocation	Kitselas 1
Lot 9 RSBC 2396 PIN: 902530106	MCKEE, Douglas Brian	Certificate of Allocation	Kitselas 1
Lot 10 RSBC 2396 PIN: 903018575	SEYMOUR, Teressa Lea SEYMOUR, Alvin Keith as joint tenants	Certificate of Allocation	Kitselas 1
Lot 11 RSBC 2396 PIN: 903035916	MCMILLAN, Dorreen Sarah	Certificate of Allocation	Kitselas 1
Lot 13 RSBC 2396 PIN: 903034726	Estate of COSTELLO, Beatrice Elizabeth	Certificate of Allocation	Kitselas 1

³ First Nation Land Registry System Parcel Identification Number

“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Parcel Description and FNLRS PIN³, if applicable	Interest Holder	Interest	Location
Lot 15 RSBC 2396 PIN: 902530206	Estate of MCGILLIS, Darlene Sandra	Certificate of Allocation	Kitselas 1
Lot 18 RSBC 2396 PIN: 903023210	Estate of BOLTON, Orlando Christopher	Certificate of Allocation	Kitselas 1
Lot 36 RSBC 2396 PIN: 902530104	MOULD, Edward Arthur	Certificate of Allocation	Kitselas 1
N/A	MASON, Serena	Tenancy Rental Agreement	Kitselas 1
N/A	BOLTON, Leeta	Tenancy Rental Agreement	Kitselas 1
N/A	WEST-JOHNSON, Tyler NYCE, Shannon	Tenancy Rental Agreement	Kitselas 1
N/A	MAITLAND, Anne	Tenancy Rental Agreement	Kitselas 1
N/A	DUNCAN, Maria WALKER, Jeremy	Tenancy Rental Agreement	Kitselas 1
N/A	ADAMS, Brenda	Tenancy Rental Agreement	Kitselas 1
N/A	SEYMOUR, Darlene BIBAUD, Louis	Tenancy Rental Agreement	Kitselas 1
N/A	MOORE, Lateasha BEVAN, Jesse SEYMOUR, Jada	Tenancy Rental Agreement	Kitselas 1
N/A	JOSEPH, Norma	Tenancy Rental Agreement	Kitselas 1
N/A	SEYMOUR, Gerald SEYMOUR, Gailya	Tenancy Rental Agreement	Kitselas 1
N/A	MOORE, Leslie	Tenancy Rental Agreement	Kitselas 1

“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Parcel Description and FNLRS PIN³, if applicable	Interest Holder	Interest	Location
N/A	WELLS, Phyllis	Tenancy Rental Agreement	Kitselas 1
N/A	SEYMOUR, Crystal	Tenancy Rental Agreement	Kitselas 1
N/A	WRIGHT, Larry	Tenancy Rental Agreement	Kitselas 1
N/A	CHIEF, Tashina	Tenancy Rental Agreement	Kitselas 1
N/A	McDAMES, William McDAMES, Rachel	Tenancy Rental Agreement	Kitselas 1
N/A	LAWSON, Andrew	Tenancy Rental Agreement	Kitselas 1
N/A	LAWSON, Andrew	Tenancy Rental Agreement	Kitselas 1
N/A	McDAMES, Ken SQUIRES, Sara	Tenancy Rental Agreement	Kitselas 1
N/A	MOORE, Charlene	Tenancy Rental Agreement	Kitselas 1
N/A	MASON, Tiffany	Tenancy Rental Agreement	Kitselas 1
N/A	SPENCER, Marcia	Tenancy Rental Agreement	Kitselas 1
N/A	PARKER, Danny WRIGHT, Lynn	Tenancy Rental Agreement	Kitselas 1
N/A	INNES, Edward	Tenancy Rental Agreement	Kitselas 1
N/A	SEYMOUR, Danielle	Tenancy Rental Agreement	Kitselas 1
N/A	GEORGE, Marlene	Tenancy Rental Agreement	Kitselas 1
N/A	CAMPBELL, Cheryl	Tenancy Rental Agreement	Kitselas 1

“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Parcel Description and FNLRS PIN³, if applicable	Interest Holder	Interest	Location
N/A	McMILLAN, Aaron	Tenancy Rental Agreement	Kitselas 1
N/A	McMILLAN, Eli VIPOND, Catherine	Tenancy Rental Agreement	Kitselas 1
N/A	BOLTON, William	Tenancy Rental Agreement	Kitselas 1
N/A	BEVAN, Deborahanne	Tenancy Rental Agreement	Kitselas 1
N/A	MASON, Joan NYCE, Gerald	Tenancy Rental Agreement	Kitselas 1
N/A	LOW, Amanda	Tenancy Rental Agreement	Kitselas 1
N/A	McMILLAN, Nathan	Tenancy Rental Agreement	Kitselas 1
N/A	BENNETT, Andrea	Tenancy Rental Agreement	Kitselas 1
N/A	HENRY, Marlene	Tenancy Rental Agreement	Kitselas 1
N/A	DERRICK, Dawn DERRICK, Edmond	Tenancy Rental Agreement	Kitselas 1
N/A	WALE, Lili	Tenancy Rental Agreement	Kitselas 1
N/A	McDAMES, Susan	Tenancy Rental Agreement	Kitselas 1
N/A	WOODS, Leanne	Tenancy Rental Agreement	Kitselas 1
N/A	LINCOLN, Natasha LINCOLN, Jason	Tenancy Rental Agreement	Kitselas 1
N/A	WESLEY, Keith	Tenancy Rental Agreement	Kitselas 1
N/A	BOLTON, Evangeline Evelyn	Tenancy Rental Agreement	Kitselas 1

“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Parcel Description and FNLRS PIN³, if applicable	Interest Holder	Interest	Location
N/A	SQUIRES, Patricia	Tenancy Rental Agreement	Kitselas 1
PCL 200'X 200' Shown on Sketch Attached to BCR no plan PIN: 900032102	MCKENZIE, Wilfred Henry (undivided 1/2 interest) Estate of MCKENZIE, Frederick Charles (undivided 1/2 interest)	Allotment (Indian Act)	Kshish 4 (includes Kshish 4A)
Lot 1 CLSR 78200 PIN: 900032110	ALEXANDER, Ramona Lee (undivided 4/15 interest) STEGNER, Frances Laura (undivided 4/15 interest) STEGNER, Katherine Mae (undivided 7/15 interest)	Certificate of Possession	Kshish 4 (includes Kshish 4A)
Lot 25 CLSR 111388 PIN: 903037163	MCDAMES, Esther Anne	Certificate of Allocation	Kshish 4 (includes Kshish 4A)
Lot 60 CLSR 111388 PIN: 903037164	MCDAMES, Esther Anne	Certificate of Allocation	Kshish 4 (includes Kshish 4A)
Lot 1 CLSR 58777 PIN: 902530071	BEVAN, Zoe Amber Rachel	Certificate of Allocation	Kulspai 6
Lot 6 CLSR 58777 PIN: 902008407	Estate of MAISON, Salina	Certificate of Possession	Kulspai 6
Lot 7 CLSR 58777 PIN: 902008406	MASON, Frederick Roger	Certificate of Possession	Kulspai 6

“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Parcel Description and FNLRs PIN³, if applicable	Interest Holder	Interest	Location
Lot 78 CLSR 99960 PIN: 903037032	BEVAN, Deborah-Ann Priscilla	Certificate of Allocation	Kulspai 6
Lot 38 CLSR 58777 PIN: 903013072	Estate of SEYMOUR, Rhoda Alvina	Certificate of Allocation	Kulspai 6
Lot 43 CLSR 58777 PIN: 902530655	Estate of BOLTON, Beverly Hanna	Certificate of Allocation	Kulspai 6
Lot 45 CLSR 58777 PIN: 903014490	BENNETT, Maude Serena Rapheal	Certificate of Allocation	Kulspai 6
Lot 56 CLSR 96119 PIN: 903013060	Estate of JOHNSON, Lorna Annabelle	Certificate of Allocation	Kulspai 6
Lot 57 CLSR 96119 PIN: 902528993	BEVAN, Susan Lynn	Certificate of Allocation	Kulspai 6
Lot 61 CLSR 99960 PIN: 902528993	BEVAN, Susan Lynn	Certificate of Allocation	Kulspai 6
Lot 62 CLSR 99960 PIN: 902530204	MCDAMES, Harold Lloyd MCDAMES, Sherry Darlene as joint tenants	Certificate of Allocation	Kulspai 6
Lot 70 CLSR 99960 PIN: 903035540	MCKAY, Joanne Selina Lila	Certificate of Allocation	Kulspai 6
Lot 71 CLSR 99960 PIN: 903034390	COSTELLO, Chelsea Carmen	Certificate of Allocation	Kulspai 6

³“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Parcel Description and FNLRS PIN³, if applicable	Interest Holder	Interest	Location
Lot 76 CLSR 99960 PIN: 903035394	MCDAMES, Kenneth Robert MCDAMES, Hedy Laura as joint tenants	Certificate of Allocation	Kulspai 6
Lot 77 CLSR 99960 PIN: 903034391	BEVAN, Stanley George	Certificate of Allocation	Kulspai 6
N/A	CARLICK, Calvin CARLICK, Jericho	Tenancy Rental Agreement	Kulspai 6
N/A	WRIGHT, Frances BENNETT, Glenn	Tenancy Rental Agreement	Kulspai 6

“Certificate of Allocation” is an interest registered under the *Kitselas Reserve Lands Management Act*

“Allotment (*Indian Act*)” is an interest registered as a NETI (No Evidence of Title) Under the *Indian Act*

“Certificate of Possession” is an interest registered under the *Indian Act*

Appendix G-1 Interests on Former Kitselas Indian Reserves to be Replaced on Effective Date

Part 2: Public Utility Works - Transmission

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest	Interest Holder	Location	FNLRS⁴ Registration Number	Replacement Interest
Permit (transmission)	British Columbia Hydro and Power Authority	Kulspai 6	305	Transmission Statutory Right of Way Agreement
Right of Way (transmission)	Pacific Northern Gas Ltd.	Zaimoetz 5	2235-48	PNG Form of Statutory Right of Way

⁴ First Nation Land Registry System

Appendix G-1 Interests on Former Kitselas Indian Reserves to be Replaced on Effective Date

Part 3: Public Utility Works- Distribution

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest	Interest Holder	Location	FNLRS⁵ Registration Number	Replacement Interest
Right of Way (distribution)	British Columbia Hydro and Power Authority and Telus Communications Inc.	Kitselas 1 Chimdimash 2 Chimdimash 2A Ikshenigwolk 3 Kshish 4 (includes Kshish 4A) Kshish 4B Zaimoetz 5 Kulspai 6 Ketoneda 7	LMA04798	British Columbia Hydro and Power Authority Statutory Right of Way Agreement - Distribution Line
Permit (distribution)	Pacific Northern Gas Ltd.	Kulspai 6	219729	To be determined

⁵ First Nation Land Registry System

Appendix G-1 Interests on Former Kitselas Indian Reserves to be Replaced on Effective Date

Part 4: Other Interests to be Replaced by Kitselas

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest	Interest Holder	Location	FNLRs⁶ Registration Number	Replacement Interest
Lease	Kitselas Housing Society, British Columbia Housing Management Commission	Kitselas 1 Lots 122, 123, 124, 125, 126, 127	4043927	BC Housing Lease
Lease	Kitselas Development Limited Partnership	Kulspai 6 Lot 53-3	4027048	To be determined
Licence of Occupation (road use and storage of materials)	Terus Construction Ltd. - a Division of Colas Canada Inc.	Zaimoetz 5 Lots 1, 2	4018681 4018682 4018683	To be determined
Permit (operating and maintaining a fire hall)	Regional District of Kitimat-Stikine	Kitselas 1 Lot 55	320344	To be determined

⁶ First Nation Land Registry System

Appendix G-1 Interests on Former Kitselas Indian Reserves to be Replaced on Effective Date

Part 5: Interests to be Replaced by Kitselas Housing Society

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest	Interest Holder	Location	FNLRS⁷ Registration Number	Replacement Interest
Mortgage	British Columbia Housing Management Commission	Kitselas 1 Lots 122, 123, 124, 125, 126, 127	4046340	Mortgage Repayable
Mortgage	British Columbia Housing Management Commission	Kitselas 1 Lots 122, 123, 124, 125, 126, 127	4046361	Mortgage Forgivable
Assignment of Rents	British Columbia Housing Management Commission	Kitselas 1 Lots 122, 123, 124, 125, 126, 127	4046362	Assignments of Rents Repayable
Assignment of Rents	British Columbia Housing Management Commission	Kitselas 1 Lots 122, 123, 124, 125, 126, 127	4046362	Assignments of Rents Forgivable

⁷ First Nation Land Registry System

Appendix G-2 Interests on Former Provincial Crown Land to be Replaced on the Effective Date

Part 1: Public Utility Works - Transmission

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Purpose	Interest Being Replaced	General Location	Replacement Interest
British Columbia Hydro and Power Authority	Transmission	Right of Way File No. 0260382 Document No. SK941521	Appendix B-3 Part 2 Maps 33-34, 41	Transmission Statutory Right of Way
British Columbia Hydro and Power Authority	Transmission	Right of Way File No. 0275862 Document No. 632258	Appendix B-3 Part 2 Maps 30-31	Transmission Statutory Right of Way
British Columbia Hydro and Power Authority	Ancillary Rights	Right of Way File No. 6409198 Document No. SK940312	Appendix B-3 Part 2 Map 34	Ancillary Rights Statutory Right of Way
British Columbia Hydro and Power Authority	Ancillary Rights	n/a	Appendix B-3 Part 2 Maps 30-31, 33-34, 41	Ancillary Rights Statutory Right of Way
Pacific Northern Gas Ltd.	Gas Pipeline	Right of Way File No. 0348345 Document No. 1382	Appendix B-3 Part 2 Maps 30-34, 41	PNG Form of Statutory Right of Way
Pacific Northern Gas Ltd.	Gas Pipeline	Right of Way File No. 6400350 Document No. 632109	Appendix B-3 Part 2 Maps 34, 41	PNG Form of Statutory Right of Way
Pacific Northern Gas Ltd.	Gas Pipeline	Right of Way File No. 6405878 Document No. 634642	Appendix B-3 Part 2 Map 34	PNG Form of Statutory Right of Way
Enbridge	Future LNG Pipeline	Licence of Occupation File No. 9636609 Document No. 945575	Appendix B-3 Part 2 Map 41	Enbridge PTP Statutory Right of Way – Pipeline

Appendix G-2 Interests on Former Provincial Crown Land to be Replaced on the Effective Date

Part 2: Public Utility Works –Telecommunications

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Purpose	Interest Being Replaced	General Location	Replacement Interest
Rogers Communications Inc.	Telecommunications site	Licence of Occupation File No. 6409294 Document No. SK943983	Appendix B-3 Part 2 Map 19	Licence of Occupation for Telecommunication Sites
Rogers Communications Inc.	Telecommunications site	Licence of Occupation File No. 6409296 Document No. SK943982	Appendix B-3 Part 2 Map 19	Licence of Occupation for Telecommunication Sites

Appendix G-2 Interests on Former Provincial Crown Land to be Replaced on the Effective Date

Part 3: Permits to Occupy Kitselas Lands Associated with Water Licences

Note: The Parties will update the Appendices before the Effective Date, as required.

Permit to Occupy Crown Land (PCL) Issued Under the <i>Water Sustainability Act</i>	Appurtenance	Appurtenant to Water Licence No. Issued Under the <i>Water Sustainability Act</i>	General Location	Replacement Interest
PCL 11284	PID 015-276-490, District Lot 5423, Range 5, Coast District lying east of Hwy No. 16 (plan 7241)	C049458	Appendix B-3 Part 2 Map 4	Permit to Occupy Kitselas Lands
PCL 26680	PID 015-276-490, District Lot 5423, Range 5, Coast District, except part lying west of Plan 7241 and except Plan 2035 and 7241	C126762	Appendix B-3 Part 2 Map 4	Permit to Occupy Kitselas Lands
PCL 7582	PID 012-408-034, L 4 of Lot 833, Range 5, Coast District Plan 3050	C035711	Appendix B-3 Part 2 Maps 18, 19, 21	Permit to Occupy Kitselas Lands
PCL 11460	PID 007-573-332, 20 AC Of BLK A of Lot 6639, Range 5, Coast District	C050314	Appendix B-3 Part 2 Map 27	Permit to Occupy Kitselas Lands
PCL 26911	PID 015-008-029, Powerhouse Site on Lot 1915, Range 5, Coast District	C127559	Appendix B-3 Part 2 Map 22	Permit to Occupy Kitselas Lands
PCL 14628	PID 014-970-511, BLK A of Lot	C061588	Appendix B-3 Part 2 Map 25	Permit to Occupy Kitselas Lands

Permit to Occupy Crown Land (PCL) Issued Under the <i>Water Sustainability Act</i>	Appurtenance	Appurtenant to Water Licence No. Issued Under the <i>Water Sustainability Act</i>	General Location	Replacement Interest
	428, Range 5, Coast District			
PCL 12403	PID 006-364-438, BLK C of Lot 5130, Range 5, Coast District Plan 9106	C054003	Appendix B-3 Part 2 Map 34	Permit to Occupy Kitselas Lands

Appendix G-2 Interests on Former Provincial Crown Land to be Replaced on the Effective Date

Part 4: Resource Road Permits

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	File ID	Road Description	General Location	Replacement Interest
Coast Tsimshian Resources LP.	R03784 Section A	P of C is located at the connection point with FSR 7880 01 in the vicinity of coordinates N 540006 m +/-, E 6059330 m +/- and exits Kitselas Lands in the vicinity of coordinates N 537520 m +/-, E 6059890 m +/-	Appendix B-3 Part 2 Maps 13-14	Resource Road Permit
Coast Tsimshian Resources LP.	R04081 Section A	P of C is located at the connection point with FSR 7880 13 in the vicinity of coordinates N 543273 m +/-, E 6063290 m +/- and exits Kitselas Lands in the vicinity of coordinates N 538663 m +/-, E 6062810 m +/-	Appendix B-3 Part 2 Maps 6, 11-13	Resource Road Permit
Coast Tsimshian Resources LP.	R08641 Section A	P of C is located in the vicinity of coordinates N 547611 m +/-, E 6066640 m +/- and exits Kitselas Lands in the vicinity of coordinates N 551050 m +/-, E 6065990 m +/-	Appendix B-3 Part 2 Maps 5, 9	Resource Road Permit
Coast Tsimshian Resources LP.	R09132 Section A	First P of C is located in the vicinity of coordinates N 538024 m +/-, E 6048490 m +/- and exits Kitselas Lands in the vicinity of coordinates N 539328 m +/-, E 6048510 m +/- . It then re-enters Kitselas Lands at the P of C located in the vicinity of coordinates N 539602 m +/-, E 6048830 m +/- and exits Kitselas Lands in the	Appendix B-3 Part 2 Maps 26-27	Resource Road Permit

Interest Holder	File ID	Road Description	General Location	Replacement Interest
		vicinity of coordinates N 539811 m +/-, E 6049070 m +/-		
Coast Tsimshian Resources LP.	R09132 Section C	P of C is located in the vicinity of coordinates N 536379 m +/-, E 6046340 m +/- and exits Kitselas Lands in the vicinity of coordinates N 537981 m +/-, E 6046930 m +/-	Appendix B-3 Part 2 Maps 26, 28	Resource Road Permit
Coast Tsimshian Resources LP.	R09274 Section A	First P of C is located in the vicinity of coordinates N 538074 m +/-, E 6041950 m +/- and exits Kitselas Lands in the vicinity of coordinates N 537980 m +/-, E 6041820 m +/- . It then re-enters Kitselas Lands at the P of C located in the vicinity of coordinates N 537693 m +/-, E 6041910 m +/- and exits Kitselas Lands in the vicinity of coordinates N 537642 m +/-, E 6041920 m +/-	Appendix B-3 Part 2 Map 31	Resource Road Permit
Coast Tsimshian Resources LP.	R09696 Section A	P of C is located in the vicinity of coordinates N 547839 m +/-, E 6067630 m +/- and exits Kitselas Lands in the vicinity of coordinates N 547970 m +/-, E 6067570 m +/-	Appendix B-3 Part 2 Map 4	Resource Road Permit
Coast Tsimshian Resources LP.	R09696 Section B	P of C is located in the vicinity of coordinates N 547843 m +/-, E 6068040 m +/- and connects to R09696 B-1 within Kitselas Lands in the vicinity of coordinates N 550082 m +/-, E 6067230 m +/-	Appendix B-3 Part 2 Maps 4-5	Resource Road Permit

Interest Holder	File ID	Road Description	General Location	Replacement Interest
Coast Tsimshian Resources LP.	R09696 Section B-1	P of C is located in the vicinity of coordinates N 550082 m +/-, E 6067230 m +/- and exits Kitselas Lands in the vicinity of coordinates N 550117 m +/-, E 6067230 m +/-	Appendix B-3 Part 2 Maps 4-5	Resource Road Permit
Coast Tsimshian Resources LP.	R11190 Section A	P of C is located in the vicinity of coordinates N 544914 m +/-, E 6047630 m +/- and exits Kitselas Lands in the vicinity of coordinates N 545935 m +/-, E 6047480 m +/-	Appendix B-3 Part 2 Map 23	Resource Road Permit
Coast Tsimshian Resources LP.	R15611 Section Q100	First P of C is located in the vicinity of coordinates N 536094 m +/-, E 6043100 m +/- and exits Kitselas Lands in the vicinity of coordinates N 535863 m +/-, E 6043500 m +/- . It then re-enters Kitselas Lands at the P of C located in the vicinity of coordinates N 535822 m +/-, E 6043530 m +/- and exits Kitselas Lands in the vicinity of coordinates N 535428 m +/-, E 6043830 m +/-	Appendix B-3 Part 2 Maps 25, 30-31	Resource Road Permit
Coast Tsimshian Resources LP.	R18243 Section A	P of C is located in the vicinity of coordinates N 546694 m +/-, E 6072770 m +/- and exits Kitselas Lands in the vicinity of coordinates N 547249 m +/-, E 6072900 m +/-	Appendix B-3 Part 2 Map 2	Resource Road Permit
Coast Tsimshian Resources LP.	R18886 Section A	P of C is located in the vicinity of coordinates N 545897 m +/-, E 6047710 m +/- and exits Kitselas Lands in the vicinity of coordinates N 545973 m +/-, E 6047760 m +/-	Appendix B-3 Part 2 Map 23	Resource Road Permit

Interest Holder	File ID	Road Description	General Location	Replacement Interest
Terrace Community Forest Ltd.	R18059 Section B	First P of C is located in the vicinity of coordinates N 532656 m +/-, E 6045300 m +/- and exits Kitselas Lands in the vicinity of coordinates N 530904 m +/-, E 6045830 m +/- . It then re-enters Kitselas Lands at the P of C located in the vicinity of coordinates N 531455 m +/-, E 6047240 m +/- and terminates within Kitselas Lands in the vicinity of coordinates N 531890 m +/-, E 6047900 m +/-	Appendix B-3 Part 2 Maps 25, 29	Resource Road Permit
Terrace Community Forest Ltd.	R19065 Section D-2	P of C is located at the connection point to FSR 8261 01 in the vicinity of coordinates N 524072 m +/-, E 6018800 m +/- and exits Kitselas Lands in the vicinity of coordinates N 523678 m +/-, E 6018810 m +/-	Appendix B-3 Part 2 Map 39	Resource Road Permit
Terrace Community Forest Ltd.	R19065 Section H-1	P of C is located in the vicinity of coordinates N 528177 m +/-, E 6016510 m +/- and exits Kitselas Lands in the vicinity of coordinates N 528197 m +/-, E 6016900 m +/-	Appendix B-3 Part 2 Maps 39, 41	Resource Road Permit
A & A Trading Ltd.	R19997 Section RP3	P of C is located in the vicinity of coordinates N 531591 m +/-, E 6036060 m +/- and exits Kitselas Lands in the vicinity of coordinates N 530582 m +/-, E 6035750 m +/-	Appendix B-3 Part 2 Map 32	Resource Road Permit
A & A Trading Ltd.	R16688 Section A	First P of C is located in the vicinity of coordinates N 547668 m +/-, E 6069620 m +/- and exits Kitselas Lands in the vicinity of coordinates N 548686 m +/-, E 6069680 m +/- . It then re-enters Kitselas Lands at the P of C	Appendix B-3 Part 2 Maps 3-5	Resource Road Permit

Interest Holder	File ID	Road Description	General Location	Replacement Interest
		located in the vicinity of coordinates N 548867 m +/- , E 6069580 m +/- and terminates within Kitselas Lands in the vicinity of coordinates N 549277 m +/- , E 6068650 m +/-		

Appendix G-2 Interests on Former Provincial Crown Land to be Replaced on the Effective Date

Part 5: Other Interests

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Purpose	Interest Being Replaced	General Location	Replacement Interest
Terrace-Kitimat Airport Society	Airport Beacon & Electric Powerline	Lease File No. 6406785 Document No. 635297	Appendix B-3 Part 2 Map 36	Airport Beacon Lease
Regional District of Kitimat-Stikine	Monitoring and Testing Wells associated with adjacent landfill	Licence of Occupation File No. 6407789 Document No. SK926067	Appendix B-3 Part 2 Map 41	Licence of Occupation for Monitoring and Testing Wells
Muller Bay Residents Associations	Roadway	Licence of Occupation File No. 6408198 Document No. SK936457	Appendix B-3 Part 2 Map 33	Licence of Occupation for Roadway
White Wilderness Heliskiing Inc.	Commercial Recreation Heli Skiing	Licence of Occupation File No. 6408851 Document No. SK937448	Appendix B-3 Part 2 Maps 2-3, 5-17, 19-25, 27-28, 30- 31	Licence of Occupation for Heli Skiing

Interest Holder	Purpose	Interest Being Replaced	General Location	Replacement Interest
Muller Bay Residents Associations; Westside Lakelse Hydro Association	Electric Power Line, Roadway, and Telecommunications	Licence of Occupation File No. 6405246 Document No. SK943432	Appendix B-3 Part 2 Map 37	Licence of Occupation for Electric Distribution Power Line, Roadway and Telecommunications
Rogers Communications Inc.	Roadway	Licence of Occupation File No. 6409295 Document No. 943984	Appendix B-3 Part 2 Map 19	Licence of Occupation for Roadway

Appendix G-3 Interests to be Created by Kitselas on the Effective Date

Part 1: Public Utility Works – Distribution and Ancillary Rights

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Purpose	General Location	Interest to be Created
British Columbia Hydro and Power Authority and Telus Communications Inc	Electrical Distribution and Telecommunications	Appendix B-3 Part 2 All Maps	Right of Way for Electrical Distribution and Telecommunication Works
British Columbia Hydro and Power Authority	Ancillary Rights	Appendix B-2 Part 2 Map 7	Ancillary Rights Statutory Right of Way

Appendix G-3 Interests to be Created by Kitselas on the Effective Date

Part 2: Non-commercial Recreation

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Purpose	General Location	Interest to be Created
Ministry of Environment and Parks	Cross Country Ski Trails	Appendix B-3 Part 2 Map 29	Statutory Right of Way for Recreational Trails
Terrace Off Road Cycling Association	Cycling Trails	Appendix B-3 Part 2 Map 29	Licence of Occupation for Cycling Trails

Appendix G-3 Interests to be Created by Kitselas on the Effective Date

Part 3: Ministry of Forests Forest Inventory Ground Plots

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	File No.	General Location	Interest to be Created
Ministry of Forests	Thunderbird EP0813.61.10	Appendix B-3 Part 2 Map 35	Licence of Occupation for Forest Research Plots
Ministry of Forests	Thunderbird EP1123.01	Appendix B-3 Part 2 Map 36	Licence of Occupation for Forest Research Plots
Ministry of Forests	Kitimat Valley Onion Lake Flats 1-4 EP1325	Appendix B-3 Part 2 Maps 40, 41	Licence of Occupation for Forest Research Plots
Ministry of Forests	West Lake EP1013.661	Appendix B-3 Part 2 Map 39	Licence of Occupation for Forest Research Plots
Ministry of Forests	Dog Trail EP1013.662	Appendix B-3 Part 2 Map 41	Licence of Occupation for Forest Research Plots
Ministry of Forests	Wedeeene EP1013.663	Appendix B-3 Part 2 Map 39	Licence of Occupation for Forest Research Plots

Appendix G-3 Interests to be Created by Kitselas on the Effective Date

Part 4: Ministry of Forests Forest Research Plots

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	File No.	General Location	Interest to be Created
Ministry of Forests	64-6-43G	Appendix B-3 Part 2 Map 33	Licence of Occupation for Forest Research Plots
Ministry of Forests	64-6-44G	Appendix B-3 Part 2 Map 33	Licence of Occupation for Forest Research Plots
Ministry of Forests	65-29-36G	Appendix B-3 Part 2 Map 12	Licence of Occupation for Forest Research Plots
Ministry of Forests	65-19-44G	Appendix B-3 Part 2 Map 23	Licence of Occupation for Forest Research Plots
Ministry of Forests	65-19-45G	Appendix B-3 Part 2 Map 22	Licence of Occupation for Forest Research Plots
Ministry of Forests	65-19-46G	Appendix B-3 Part 2 Map 22	Licence of Occupation for Forest Research Plots

Appendix G-3 Interests to be Created by Kitselas on the Effective Date

Part 5: Ministry of Transportation and Transit Statutory Rights of Way and Profit à Prendre

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Purpose	General Location	Interest to be Created
Ministry of Transportation and Transit	Gravel Pits	Appendix B-3 Part 2 Map 2, 7, 12, 29, 44	Gravel Pits Statutory Right of Way and Profit à Prendre
Ministry of Transportation and Transit	Road	Appendix B-2 Part 2 Map 5	Kitselas Wagon Road Statutory Right of Way

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves
Listed in Appendix G-1**

Note: The Parties will update this Appendix before the Effective Date, as required.

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves
Listed in Appendix G-1**

Note: The Parties will update the Appendices before the Effective Date, as required.

Document 1. BC Housing Lease

TERMS OF INSTRUMENT - PART 2

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WHEREAS:

- A. The Lessee wishes to provide affordable housing for Indigenous individuals and families with limited income and agrees to use the Lands for this purpose.
- B. The Lessor has completed the Kitselas Treaty under the British Columbia Treaty Process.
- C. Prior to the effective date of the Kitselas Treaty, the Lessor and the Lessee had entered into a lease of the Lands (the “**Prior Lease**”), which lease shall be terminated upon the effective date of the Kitselas Treaty.
- D. The Commission, a representative of the Province, has agreed to provide financial assistance for the construction and operating costs of the Improvements and the programs to be offered to the residents of the Improvements.
- E. The Lessor is the owner of the Lands and has agreed to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein, and this lease shall replace the Prior Lease.

WITNESS that in consideration of the rents reserved and the covenants and agreements set forth below, the Parties agree as follows:

The Lessor hereby demises and leases the Lands unto the Lessee and the Lessee does hereby take and rent the Lands, for and during the Term as herein provided.

In consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid and provided by the Commission to both the Lessor and the Lessee, both the Lessor and the Lessee covenant and agree with the Commission that the Commission will hold and enjoy the rights, benefits, privileges, authority and discretions granted to the Commission in this Lease.

ARTICLE 1
DEFINITIONS AND INTERPRETATION

- 1.1 Capitalized terms used in this Lease have the meanings specified in this section 1.1, unless otherwise provided in this Lease:
 - (a) “**Additional Rent**” means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent;
 - (b) “**Alterations**” means all alterations, changes, replacements, substitutes, additions and improvements to the Improvements;

- (c) “**Approved Lender**” means any Mortgagee approved by Canada Mortgage and Housing Corporation for the purpose of making loans under the *National Housing Act* (Canada);
- (d) “**Approved Plans and Specifications**” mean any Plans and Specifications and any amendments thereto which the Lessor and the Commission have approved pursuant to section 4.1 or 4.2(a);
- (e) “**Architect**” means the architect qualified as such pursuant to the laws of the province of British Columbia who is supervising the design, construction, repair, renovation and/or reconstruction of the Improvements;
- (f) “**Basic Rent**” means ten dollars (\$10.00);
- (g) “**Commencement of Construction**” means the later of the date when the first building permit for the Improvements is issued to the Lessee by the First Nation and the date when the Lessee’s contractor commences any work on the Lands related to construction of the Improvements;
- (h) “**Commission**” means British Columbia Housing Management Commission or its successors in function;
- (i) “**Corporation**” means Canada Mortgage and Housing Corporation or its successors in function, or the Commission;
- (j) “**Date of Damage or Destruction**” means any date upon which the Alterations are wholly or partially damaged or destroyed by any cause;
- (k) “**Eligible Occupant**” means a person who, during the time that such person is an occupant in the Improvements, meets the criteria prescribed in an Operating Agreement;
- (l) “**First Nation**” means Kitselas First Nation;
- (m) “**General Instrument**” means the Form C - *Land Title (Transfer Forms) Regulation* pursuant to the *Land Title Act* (British Columbia), and all schedules and addenda to the Form C;
- (n) “**Improvements**” mean those improvements, structures, buildings, fixtures, equipment and systems which now exist, or which may be constructed by the Lessee on the Lands from time to time, including the heating, ventilating, air conditioning, plumbing, electrical and mechanical systems and equipment;
- (o) “**Insured Loan**” means a loan in respect of which an insurance policy has been issued under the *National Housing Act* (Canada) and is in force;

- (p) **“Lands”** means all of the Lessor’s interest in the land described in the General Instrument, including every incidental right, benefit or privilege attaching to that land or running with it, excepting those interests, rights, privileges and titles provided for in section [REDACTED] of [REDACTED] *Land Act*; [NTD: Insert reference to the Kitselas legislation, once enacted.]
- (q) **“Lease”** means this lease;
- (r) **“Lease Commencement Date”** means [REDACTED];
- (s) **“Leasehold Interest”** means the leasehold interest in and to the Lands which the Lessee will acquire and hold by virtue of this Lease;
- (t) **“Lessee”** means Kitselas Housing Society;
- (u) **“Lessor”** means the First Nation;
- (v) **“Losses”** means liabilities, actions, judgments, claims, losses, damages, orders, fines, penalties, expenses, including related professional and other fees and disbursements and costs;
- (w) **“Mortgage”** means a registered mortgage or registered mortgages granted by the Lessee in accordance with section 15.1 upon or in respect of the interest of the Lessee in the Lands and the Improvements or any part thereof and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (x) **“Mortgage Acknowledgment Agreement”** means an agreement entered into among the Lessor, the Lessee and the Approved Lender in substantially the same form as attached hereto as Schedule “X”;
- (y) **“Mortgagee”** means a mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder, including the Corporation;
- (z) **“Operating Agreement”** means an agreement entered into or to be entered into that relates to the management of the Improvements and the support services to be provided to the Eligible Occupants;
- (aa) **“Operator”** means a non-profit organization that has entered into an Operating Agreement, or the First Nation if the First Nation has entered into an Operating Agreement;
- (bb) **“Party”** means a party to this Lease and “Parties” means any two or more of them;

- (cc) **“Permitted Encumbrances”** means the charges and encumbrances, if any, registered on title to the Lands on the Lease Commencement Date and any other charges specifically approved in writing by both the Commission and the Lessor; **[Parties to confirm what charges and encumbrances will be registered in priority to, or subsequent to, this lease]**
- (dd) **“Personnel”** of a party means the elected officials and directors, officers, employees, servants and agents of that party, as applicable;
- (ee) **“Plans and Specifications”** mean all plans, drawings and specifications relating to the construction of the Improvements and any Alterations including architectural, structural, mechanical, electrical, and landscaping plans and specifications, and surveyors’ certificates;
- (ff) **“PRHC”** means the Provincial Rental Housing Corporation;
- (gg) **“Province”** means the province of British Columbia;
- (hh) **“Prime Rate”** means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that is used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its “prime rate”;
- (ii) **“Realty Taxes”** means all assessments for taxes, rates and duties that now are or will or may be levied, rated, charged or assessed against the Lands, the Improvements, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located on the Lands, by the First Nation or any other authority having jurisdiction;
- (jj) **“Rent”** means all payments due to the Lessor under this Lease (including all sums paid or expended by the Lessor in remedying any default of the Lessee under the provisions of this Lease) and, without limiting the generality of the foregoing, shall include the aggregate of Basic Rent and Additional Rent;
- (kk) **“Review Date”** means the date on which the constitution and bylaws of the Lessee are approved in writing by the Commission;
- (ll) **“Specific Purpose”** means the development, construction, operation and maintenance of a housing project for Eligible Occupants;
- (mm) **“Statutory Authority”** means any federal, provincial, regional, municipal or other government, including the First Nation, or authorized agency, department or ministry thereof, which has jurisdiction with respect to any matter referred to in this Lease;

- (nn) “**Term**” means the term commencing on the Lease Commencement Date and expiring on October 31, 2084;
- (oo) “**Trustee**” means a trust company duly authorized to carry on business in the province of British Columbia and appointed by the Corporation, or the Lessor if the Corporation has no interest in the Lands and the Improvements, for the purposes of ARTICLE 9 of this Lease; and
- (pp) “**Utilities**” means all charges, rates and levies on account of utilities, including heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.
- 1.2 Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

ARTICLE 2 PAYMENT OF RENT

2.1 Basic Rent

The Lessee covenants and agrees with the Lessor to pay to the Lessor the Basic Rent for the Term on the Lease Commencement Date.

2.2 Net Lease

All Basic Rent and Additional Rent required to be paid by the Lessee hereunder will be paid at such location as the Lessor may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that the Basic Rent and Additional Rent payable under this Lease will, unless otherwise expressly stipulated herein to the contrary, be absolutely net to the Lessor and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Lands, the Improvements, or any other improvements on the Lands, and the Lessee will pay or cause to be paid all such costs, payments and outgoings.

ARTICLE 3 PAYMENT OF TAXES

3.1 Payment of Realty Taxes if Lands Not Exempt

Save as otherwise provided in section 3.2, the Lessee will, during the Term, no later than the day immediately preceding the date or dates on which the Realty Taxes become due and payable, pay and discharge or cause to be paid and discharged the Realty Taxes and,

if requested by the Lessor, will deliver to the Lessor for inspection receipts for payments of the Realty Taxes within fourteen (14) days of such payment. Not later than thirty (30) days following receipt of any tax assessment or notice the Lessor will deliver a copy of such assessment or notice to the Lessee.

3.2 Payment in Lieu of Realty Taxes if Lands Exempt

The Lessee covenants and agrees with the Lessor that if during the Term all or any part of the Lands and Improvements thereon are exempt from Realty Taxes in whole or in part, then the Lessee will, in each and every year during the Term that such exemption occurs, pay to the Lessor as Additional Rent, at the same time as Realty Taxes would be payable if such exemption were not available, an amount equal to the amount that would be payable as Realty Taxes if such exemption were not available.

3.3 Right to Appeal Assessment

The Lessee will have the right from time to time to appeal in its own or the Lessor's name, any assessment of the Lands or Improvements or any Realty Taxes referred to in sections 3.1 and 3.2, provided that such appeal will be at the sole expense of the Lessee.

3.4 Business Tax and License Fees

The Lessee covenants with the Lessor to pay or cause to be paid during the Term when due every tax, permit and license fee (including penalties and interest) in respect of any and every business carried on, in or upon the Lands or Improvements or in respect of the use or occupancy of the Lands or Improvements by the Lessee (and any and every sublessee, permittee and licensee), whether such taxes or permit and license fees are charged by the First Nation or any other authority having jurisdiction.

3.5 Other Taxes

The Lessee will pay when due all goods and services taxes, harmonized sales taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments, including penalties and interest, that are from time to time payable by the Lessee as a result of, or that would not be payable but for, its rights and obligations contained in this Lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Lessee to the Lessor.

3.6 Pro-rating Obligations

In the first and last years of the Term, the Lessee's obligations under sections 3.1 and 3.2 will be pro-rated according to the portion of the year included in the Term, such pro-rating to be on a per diem basis.

ARTICLE 4
CONSTRUCTION OF IMPROVEMENTS

4.1 Prerequisites to Construction

Prior to commencing excavation in contemplation of the Improvements, the Lessee will submit to the Lessor and the Commission, or will cause its contractor to submit to the Lessor and the Commission for approval:

- (a) Plans and Specifications which meet the lawful requirements of any Statutory Authority; and
- (b) evidence that the insurance referred to in section 9.1 is in effect and that the premiums have been paid.

Each of the Lessor and the Commission will deliver to the Lessee, in a timely manner, a notice approving or refusing to approve the Plans and Specifications, and the evidence of insurance, provided that approval by either the Lessor and/or the Commission in no way makes the Lessor or the Commission, as the case may be, responsible for the Plans and Specifications, or the implementation thereof, the sole responsibility for which remains that of the Lessee. If the Lessor or the Commission refuses to approve either of the foregoing, the Lessor or the Commission, as the case may be, will give reasons for such refusal, and the Lessee will make the necessary rectifications and re-submit such changes for approval promptly. The Lessee will not commence excavation or construction, as the case may be, until the Lessor and the Commission have given all the approvals required pursuant to this section 4.1. The Lessor and the Commission will approve the Plans and Specifications, and any amendments thereto, if they meet the Lessor's and the Commission's requirements and the lawful requirements of all statutory authorities.

4.2 Lessee to Construct Improvements

The Lessee will:

- (a) submit to each of the Lessor and the Commission for approval any amendment to the Approved Plans and Specifications prior to implementing any such amendment during the course of construction, and any such amendment must meet the lawful requirements of any Statutory Authority, provided that such approval by the Lessor or the Commission in no way makes either the Lessor or the Commission responsible for the amendment to the Approved Plans and Specifications or the implementation thereof, the sole responsibility for which remains that of the Lessee;
- (b) cause the Improvements to be constructed continuously, diligently, and in a good and workmanlike manner, and in accordance with the Approved Plans and Specifications, all lawful requirements of any Statutory Authority, safety precautions and programs required under applicable construction safety

legislation and general and accepted construction practice including adequate supervision;

- (c) permit the Commission and the Lessor, and their respective representatives, from time to time without unreasonably impeding construction, to visit the Lands to inspect the progress of construction of the Improvements, and to inspect and test the materials being used and the work being done, and cause its contractors and consultants to co-operate with the Commission or its representatives so as to allow them to conduct such inspections;
- (d) cause to be promptly corrected all defects or variations in construction as reported by the Commission or its representatives;
- (e) keep the Commission advised in a timely manner of the progress of construction of the Improvements and any delays thereto;
- (f) upon request, provide the Commission with a complete list of all contractors, subcontractors, suppliers, material men, consultants, engineers, architects and other persons who have been retained by the Lessee and its contractors to perform the work in connection with the Improvements, together with the addressees of each of them; and
- (g) pay or cause to be paid when due all lawful claims of contractors, employees, labourers, suppliers, material men and consultants, and all wages, salaries, holiday pay, workers' compensation assessments, and other like charges, and deliver to the Commission evidence of all such payments on request, except that the Lessee may contest in good faith the amount or validity of any lien in accordance with ARTICLE 5.

4.3 Substantial Completion of Improvements

For the purposes of this ARTICLE 4, the Improvements will be deemed to have been substantially completed when the Architect has certified to, or otherwise satisfied, the Lessor and the Commission that, with respect to the Improvements:

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any), and utilities have been completed, are operating properly and are available for use by tenants of the Lessee, and all lobbies, stairwells and other areas intended for the common use of tenants of the Lessee are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably be deferred until the Improvements are partially or substantially occupied by tenants of the Lessee;

- (c) all building laws and regulations of the First Nation have been complied with by the Lessee;
- (d) all rentable space is completed for occupancy except for work of a superficial nature that is dependent upon unascertained requirements of individual tenants of the Lessee, and work that is reasonably and customarily performed by tenants of the Lessee;
- (e) all areas are clean and all surplus building material and rubbish have been removed;
- (f) the Improvements are in a condition in which it can be occupied by tenants of the Lessee, and any work that is still unfinished can be completed promptly and is work the incompletion of which will not be objectionable to a tenant of the Lessee acting reasonably;
- (g) the Improvements have been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, and in compliance with all building permits issued by the First Nation; and
- (h) a certificate of completion has been issued in respect of the Improvements pursuant to the *Builders Lien Act* (British Columbia).

4.4 Termination of Lease on Failure to Construct

Subject to sections 4.7 and 17.9 and ARTICLE 22, if Commencement of Construction has not taken place within one hundred and eighty (180) days of the Lease Commencement Date, or if construction of the Improvements is not substantially completed in accordance with the requirements of section 4.1 within one hundred and eighty (180) days after the second anniversary of the Lease Commencement Date, the Lessor will have the option at any time thereafter to terminate this Lease, and in such event this Lease will terminate and be of no further force or effect and without any reimbursement or compensation to the Lessee, unless the Lessor consents in writing to extend the deadline for Commencement of Construction, such consent not to be unreasonably withheld.

4.5 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Improvements, the Lessee will landscape the Lands and thereafter maintain the landscaping in accordance with landscaping plans that have been approved by the Commission.

4.6 Alterations After Substantial Completion

After substantial completion of the Improvements, the Lessee will not make or permit to be made any Alterations affecting the structure of the Improvements or the exterior appearance of the Improvements without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. No Alterations involving an estimated cost of more than Two Hundred Thousand Dollars (\$200,000.00) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor and the Commission such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor and the Commission may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. The Lessee covenants and agrees with the Lessor and the Commission that, subject to section 4.7, all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

4.7 Unavoidable Delays

If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, fire, explosion, flood, wind, water, earthquake, act of God or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in achieving Commencement of Construction or substantial completion of the Improvements in accordance with section 4.3 or the repair of the Improvements or any part or parts of the Improvements which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time, the date or period of time within which such work was to have been completed will be extended by the Lessor by a reasonable period of time at least equal to that of such prevention or delay, and the Lessee will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor, the Lessee and the Commission.

ARTICLE 5 BUILDERS LIENS

5.1 Builders Liens

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of the Improvements, the Lessee will comply with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and

in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

5.2 Discharge of Builders Liens

If and whenever any builders lien, or other lien or claim arises or is filed against the Lessor's interest in the Lands in connection with work, labour, services or materials supplied to or for the Lessee or for the cost of which the Lessee may in any way be liable, the Lessee will, within fifteen (15) days after receipt of notice of such lien or claim, procure the discharge thereof, and the discharge of any certificate of pending litigation registered in respect of any such lien or claim, by payment or giving security or in such other manner as may be required or permitted by law; provided, however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct. The Lessor may pay and discharge any lien claim if, in its reasonable judgement, the Lands or the Lessor's interest in the Lands becomes liable to forfeiture or sale, or is otherwise in jeopardy. The Lessee will reimburse to the Lessor any amount paid by the Lessor in discharging a lien claim and the Lessor's reasonable expenses in connection therewith.

5.3 Notice by Lessor

Pursuant to section 3(2) of the *Builders Lien Act* (British Columbia), the Lessor may file in the Land Title Office notice of its fee simple interest in the Lands and for all purposes of this Lease the construction of the Improvements by the Lessee will be deemed not to be done at the request of the Lessor.

ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE

6.1 Use and Operation

The Lessee will develop, use and occupy the Lands and the Improvements only for the Specific Purpose and in accordance with the Operating Agreement in effect from time to time. If the Lessee defaults on the Operating Agreement, then the Commission will notify the First Nation and exercise any remedies available under the Operating Agreement. If the Operating Agreement is terminated by the Commission, then this Lease may be assigned under section 14.1. If at any time the Commission should elect to revise the criteria prescribed for Eligible Occupants, the Lessee will not be bound by the revised criteria until the Commission has given the Lessee at least six months' notice thereof. The Lessee will operate and manage the Lands in a reputable and efficient manner as a prudent owner would do and in accordance with its obligations under this Lease and the Operating Agreement.

6.2 No Nuisance

The Lessee will not carry on, or suffer or permit to be carried on upon the Lands anything which would constitute a nuisance to the Lessor or to any neighbouring properties or their owners or occupants provided, however, that the construction of a housing project for Eligible Occupants and the occupation of the Lands and Improvements by Eligible Occupants in accordance with the terms of this Lease shall not constitute a nuisance.

6.3 No Subdivision

The Lessee covenants that it will not subdivide the Lands or the Improvements.

6.4 Constitution

The Lessee agrees that without the prior written consent of the Commission, it will not amend or permit its constitution to be amended or varied in any way from the constitution filed in the British Columbia Corporate Registry as of the Review Date. If the Review Date is not established by the Commission, the Lease Commencement Date will be deemed to be the Review Date.

6.5 Restriction on Contracting

The Lessee covenants that:

- (a) the Lessee may enter into bona fide arm's length contracts with occupants of the Improvements for the provision of services in furtherance of the good management of the Lands and the Improvements; and
- (b) notwithstanding the foregoing, the Lessee may reimburse its directors or occupants of the Improvements for out-of-pocket expenses incurred for the proper management of the Lands or the Improvements but only upon the proof of such expenditure by the production of bona fide receipts.

The Lessor may not terminate this Lease on account of a breach of this section 6.5 but such directors will forthwith and forever be disqualified from such directorship.

6.6 Permitted Encumbrances

The Lessor and the Lessee covenant and agree that, during the Term, the Lessee, at its expense, will perform and observe all of the obligations of the Lessor and may enjoy all of the rights of the First Nation as Lessor (but not those rights of the First Nation in its regulatory capacity) set out in the Permitted Encumbrances. None of the Permitted Encumbrances will merge or be deemed to have merged with the Lessor's title to the Lands, and accordingly all Permitted Encumbrances will be deemed to be in full force and effect. The Lessor will execute such documents as might reasonably be requested by the Lessee to enable it to comply with its obligations and to enjoy its rights in respect of

the Permitted Encumbrances. The Lessee further covenants and agrees with the Lessor that if the First Nation exercises any of its rights in its regulatory capacity under the Permitted Encumbrances, such exercise will not be a breach of the Lessor's covenant for quiet enjoyment.

6.7 Obligations of the Commission

The Commission will:

- (a) cause the Operator to use the Lands and the Improvements in a manner that is consistent with the Lessee's obligations contained in section 6.1;
- (b) cause the Operator to operate the Improvements on a non-profit basis; and
- (c) provide the Lessor with current copies of the Operating Agreement upon the request of the Lessor.

ARTICLE 7 REPAIRS, MAINTENANCE AND ALTERATIONS

7.1 Repair and Maintenance

The Lessor will not be obliged to repair, maintain, replace or alter the Improvements or to supply any services or utilities to them, except as otherwise agreed by the Lessor and the Lessee in writing. The Lessee will repair and maintain, as required, the Improvements, including all equipment, fixtures, machinery and other facilities in, upon or about the Improvements, commensurate with the condition in which a prudent owner would keep a development similar to the Lands, and whether such repair and maintenance is interior or exterior, ordinary or extra-ordinary, foreseen or unforeseen, except for repairs from which the Lessee has been released pursuant to sections 10.3 and 10.4. All repairs will be to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Improvements. If any repair is estimated to cost more than One Hundred Thousand Dollars (\$100,000), the Lessee will comply with the requirements of ARTICLE 4 to the extent that they are, or the Lessor and the Commission consider them to be, reasonably applicable to the repairs.

7.2 Repair According to Notice

Without restricting the Lessee's obligation to repair and maintain the Improvements pursuant to section 7.1, the Lessee, promptly upon notice by the Lessor or the Commission, will repair and maintain the Improvements as required by section 7.1.

7.3 Inspection

The Lessor, the Commission or their respective representatives may enter upon the Lands at any reasonable time, and at any time in case of emergency, to examine the condition of the Improvements.

7.4 Repair Responsibilities

If at any time during the Term the Lessee fails to maintain the Improvements pursuant to section 7.1, the Lessor may, but shall not be obligated to, make such repairs but only after giving the Lessee seven (7) days' written notice of its intention to do so, except in the case of an emergency when no notice to the Lessee is required. In making such repairs, the Lessor will act reasonably so as to minimize the disruption to the Eligible Occupants. The Lessee shall on demand reimburse any amount paid by the Lessor in making such repairs to the Improvements to the Lessor.

7.5 Sidewalks

The Lessee will keep the sidewalks adjacent to the Lands clean from rubbish, ice and snow, and free from obstruction as a prudent owner would do and in accordance with the lawful requirements of any Statutory Authority.

7.6 Alterations

The Lessee will not make, suffer or permit to be made, any Alterations, except if:

- (a) the Lessee is not then in default in observing or performing its obligations under this Lease and no event described in section 16.1 then exists;
- (b) the Alterations would not materially change the design or operation of the Improvements and the Lessee obtains the Lessor's and the Commission's consent to the Alterations;
- (c) the Lessee complies with the requirements of ARTICLE 4 to the extent that they are, or the Lessor and the Commission considers them to be, reasonably applicable to the Alterations; and
- (d) the Lessee completes the Alterations in a timely manner.

7.7 Demolition of Existing Improvements

The Lessee, with the prior written consent of the Lessor and the Commission, may at any time during the Term, upon giving one hundred and twenty (120) days prior written notice to the Lessor and the Commission, elect to demolish the Improvements. If the Lessor and the Commission consent to the demolition of the Improvements, the consents will include the following conditions:

- (a) if the Improvements are to be replaced, the new Improvements will have a value of not less than the full insurable value of the Improvements being demolished and will be constructed in accordance with the requirements of this Lease; or
- (b) if the Improvements are not to be replaced, to return the Lands to a safe, clean, and sanitary condition and free of all hazardous substances, provided that upon receipt by the Lessor of the one hundred and twenty (120) day notice setting out the Lessee's intention to so demolish, the Lessor may, within sixty (60) days of receiving such notice, require that the Lessee execute a surrender of the Lease without payment of any compensation by the Lessor to the Lessee for such surrender, and in such event the Lessee shall not demolish the existing Improvements.

ARTICLE 8 ADDITIONAL RENT

8.1 All Defaults in Payment as Additional Rent

If the Lessee defaults in the payment of any sums required to be paid by it pursuant to the terms of this Lease, or fails to fulfil any of its obligations under this Lease, the Lessor may (but will be under no obligation to) pay such sums or fulfil such obligations on behalf of the Lessee, and any losses, costs, charges and expenses suffered by the Lessor as a result, including sums payable by way of indemnity, whether or not expressed in this Lease to be rent, may at the option of the Lessor be treated as and deemed to be Additional Rent, in which event the Lessor will have all remedies for the collection of such sums, costs, expenses or other amounts when in arrears as are available to the Lessor for the collection of rent in arrears.

ARTICLE 9 INSURANCE

9.1 Insurance During Construction of Improvements

Prior to the Commencement of Construction of the Improvements, and throughout the entire period of construction until substantial completion of the Improvements pursuant to section 4.3, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage:

- (a) wrap-up liability insurance with limits of not less than Ten Million Dollars (\$10,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, issued in the joint names of the Lessee, the Lessor, the Commission, the Lessee's contractors, any subcontractors and their respective Personnel, protecting them against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands from any cause, including the risks occasioned by the construction of the Improvements; and

- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor and the Commission, protecting them from all loss or damage of or to the Improvements and all fixtures, equipment, Improvements and building materials on the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Improvements, provided that at no time will the Improvements be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the province of British Columbia by prudent owners, and such other perils as the Lessor or the Commission may reasonably require to be insured against, to the full replacement value thereof at all times.

9.2 Commercial General Liability Insurance

The Lessee will effect and keep in force commercial general liability insurance with limits of not less than Ten Million Dollars (\$10,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Lands and from any occurrence or accident on the Lands or Improvements. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor, the Commission and their respective Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease.

9.3 All Risk Property and Pressure Vessel Insurance

Immediately following substantial completion of the Improvements and at all times thereafter during the Term, the Lessee will effect and maintain property insurance in the joint names of the Lessor, the Commission and the Mortgagee (if any) as their interests may appear, to the full replacement value of the Improvements and fixtures on the Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include boiler and pressure vessel insurance. The policies described in this section 9.3 will contain a clause directing insurers to make losses payable to the Lessee, the Lessor, the Commission and the Mortgagee as their interests may appear.

9.4 Insurance – Additional Provisions

The following provisions will apply to all policies of insurance which are referred to in this ARTICLE 9:

- (a) the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the Lessor or the Commission;

- (b) the stated amount of value insured under property policies will be of sufficient amount that none of the Lessee, the Commission nor the Lessor will become co-insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written in a form acceptable to the Lessor and the Commission and with insurers licensed to do business in the province of British Columbia and acceptable to the Lessor and the Commission;
- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor and the Commission;
- (e) each policy will contain a clause requiring that the insurers provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of any cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and
- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor and the Commission.

In addition to the notification obligations of the insurers required by subsection 9.4(e), the Lessee will provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this ARTICLE 9.

9.5 Evidence of Insurance

Prior to the Lease Commencement Date the Lessee will provide the Lessor and the Commission with evidence of all insurance required to be taken out pursuant to this Lease, in the form of one or more detailed certificates of insurance, in such form(s) and contents as the Lessor and the Commission requests. Each certificate of insurance must identify the Lease number, policy holder and subject matter, and must not contain any disclaimer. Thereafter, and throughout the Term, forthwith upon request by the Lessor or the Commission, similar evidence of renewals, extensions or replacement of such insurance will be provided in the form of such certificate(s) of insurance. In addition, if requested by the Lessor or the Commission at any time, the Lessee will forthwith deliver to the Lessor or the Commission, as applicable, a certified copy of each insurance policy requested.

9.6 Payment of Loss Under Insurance Policies

The insurance monies payable under the policies of insurance referred to in this ARTICLE 9, will, notwithstanding the terms of the policy or policies, be paid to the Trustee on behalf of the Lessee, the Lessor, the Commission and the Mortgagee. The Lessee, the Lessor and the Commission agree that the Trustee will, subject to section

10.5, pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies were paid to the Trustee out of such insurance monies in accordance with certificates of the Architect or such other person as the Lessee, the Lessor and the Commission may agree upon and who is in charge of such restoration, reconstruction or replacement, after receiving such other certificates, evidence or opinions as the Trustee will require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. If the Lessee fails to restore, reconstruct or replace the loss or damage in respect of which the insurance monies were paid to the Trustee within a reasonable time, the Lessor and the Commission will be entitled to effect such restoration, reconstruction or replacement and the Trustee will pay such insurance monies to the Lessor or the Commission in the same manner that the Trustee would have done had the Lessee effected such restoration, reconstruction or replacement.

9.7 Workers Compensation Coverage

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on the Improvements or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the “WCA”) and the requirements and regulations of WorkSafeBC in respect of the Improvements and the Lands. Without limiting the generality of the foregoing, the Lessee will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Improvements, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Lessee will immediately notify the Lessor and the Commission of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Lessee will take all reasonable steps to ensure resolution of such dispute forthwith. The Lessee will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Improvements. If the workers compensation insurance coverage required by this section 9.7 is not in place, the Lessor and the Commission will be entitled to have recourse to all remedies specified in this Lease or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Lessor as, the “Prime Contractor” as that term is defined in section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the “OHS Regulation”), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, including without limitation those set

forth in Division 3 of Part 3 of the WCA and in sections 20.2 and 20.3 of the OHS Regulation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Lessor, a contractor hired by the Lessee to perform work on the Lands on its behalf may be designated as the Prime Contractor instead of the Lessee.

9.8 Release of Lessor and Commission from Liability for Insured Loss or Damage

The Lessee hereby releases the Lessor and the Commission and their respective Personnel, whether or not the Lessor, the Commission and their respective Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law, the intent being that the Lessee's policies of insurance will contain a waiver of subrogation in favour of the Lessor and the Commission.

9.9 Insurance Exemption for Corporation and PRHC

Notwithstanding anything contained in this Lease, at any time the Corporation or PRHC is the Lessee, the Corporation or PRHC, as the case may be, will not be under any obligation to take out and keep in force any of the insurance required to be taken out and kept in force under this Article.

ARTICLE 10
DAMAGE OR DESTRUCTION

10.1 No Abatement

Subject to sections 10.3 and 10.4, the damage or destruction of the Improvements will not entitle the Lessee to any abatement or reduction of Rent.

10.2 Notice of Damage or Destruction

If and whenever the Improvements are damaged or destroyed, the Lessee will give the Lessor immediate notice thereof.

10.3 Termination-No Mortgage

In the case where there is no registered Mortgage, and if, in the opinion of a professional engineer or architect appointed by the Lessor, who is at arm's-length from the Lessor, the Improvements are damaged or destroyed in excess of twenty-five percent (25%) of their value during the last five years of the Term, the Lessee may, within thirty (30) days after receipt of the opinion of the professional engineer or architect, deliver written notice to the Lessor that the Lessee elects not to repair or replace the Improvements. If the Lessee delivers such notice, this Lease will be deemed to be terminated on the 60th day after the Date of Damage or Destruction. In such case, and where there is no Mortgage, the

Lessor and Lessee will apply, or permit to be applied, the proceeds of the insurance referred to in section 9.2 as follows:

- (a) first, to pay the cost of demolishing the Improvements and removing from the Lands all debris and waste, and of restoring the Lands to a safe, neat and level condition;
- (b) second, to pay all Rent owing as at the termination date of the Lease; and
- (c) third, the balance, to be apportioned between the Lessor and Lessee and paid as follows:
 - (i) to the Lessor a sum which bears to such balance the same ratio as the expired portion of the Term as at the Date of Damage or Destruction bears to the whole Term; and
 - (ii) to the Lessee a sum which bears to such balance the same ratio as the unexpired portion of the Term from and after the Date of Damage or Destruction bears to the whole Term, which sum the Lessee hereby irrevocably authorizes and instructs the Lessor to pay to the Commission to have for its own use absolutely forever.

10.4 Termination-Mortgage

In the case where there is an outstanding balance owing on a registered Mortgage and if, in the opinion of a professional engineer or architect appointed by the Lessor, who is at arm's-length from the Lessor, the Improvements are damaged or destroyed in excess of twenty-five percent (25%) of their value during the last five years of the Term, the Lessee may, within thirty (30) days after receipt of the opinion of the professional engineer or architect, deliver to the Lessor written notice that the Lessee elects not to repair or replace the Improvements. If the Lessee delivers such notice, this Lease will be deemed to be terminated on the 60th day after the Date of Damage or Destruction. In such case, and where there is a Mortgage, the Lessor and the Lessee will apply, or permit to be applied, and the Lessee will cause the Approved Lender to apply or permit to be applied, the proceeds of the insurance referred to in section 9.2 to:

- (a) first, to pay to the Approved Lender the balance of principal, interest and other charges owing under the Mortgage;
- (b) second, to pay the cost of demolishing the Improvements and removing from the Lands all debris and waste, and of restoring the Lands to a safe, neat and level condition;
- (c) third, to pay all Rent owing as at the termination date; and

- (d) fourth, the balance, to be apportioned between the Lessor and the Lessee and paid as follows:
 - (i) to the Lessor a sum which bears to such balance the same ratio as the expired portion of the Term as at the Date of Damage or Destruction bears to the whole Term; and
 - (ii) to the Lessee a sum which bears to such balance the same ratio as the unexpired portion of the Term from and after the Date of Damage or Destruction bears to the whole Term, which sum the Lessee hereby irrevocably authorizes and instructs the Lessor or the Approved Lender, as the case may be, to pay to the Commission to have for its own use absolutely forever.

10.5 Restoring Land

If the Lessee gives a notice of termination pursuant to section 10.3 or 10.4, the Lessee will, at its sole cost, demolish the Improvements, including the foundations, and promptly restore the Lands, in a good and workmanlike manner, in accordance with the lawful requirements of any Statutory Authority, and to the reasonable satisfaction of the Lessor. In doing so, the Lessee will comply with the requirements of ARTICLE 4 to the extent that they are, or the Lessor considers them to be, reasonably applicable.

10.6 Repairing or Replacing the Improvements

If the Lease is not terminated pursuant to section 10.3 or 10.4, the Lessee will proceed promptly to repair or replace the Improvements:

- (a) in compliance with the requirements of ARTICLE 4 to the extent that it is, or the Lessor considers it to be, reasonably applicable, except that the Lessor will reasonably determine the time for substantial completion; and
- (b) to the similar condition as existed prior to the occurrence of such damage or destruction, having comparable value and character, provided that the new Improvements will yield, on the basis of reasonable calculation and expectation, the most profitable and efficient return from their use and occupation, taking into account the Specific Purpose.

10.7 Payment of Insurance Proceeds

Forthwith after the Date of Damage or Destruction, the Lessee will deliver to the Lessor an irrevocable order, in form and substance reasonably satisfactory to the Lessor, authorizing the insurer(s) to pay all of the insurance proceeds resulting from the damage or destruction to the Lessor, except if any Approved Lender requires that such proceeds be paid to it and delivers to the Lessor an acknowledgment, in form and substance reasonably satisfactory to the Lessor, and which will be binding and enforceable against

the Approved Lender, that the Approved Lender will use and disburse such proceeds only in accordance with this ARTICLE 10.

10.8 Use of Proceeds

The Lessor or the Approved Lender, as the case may be, will pay to the Lessee from time to time out of the insurance proceeds such sums as the Lessee may require to comply with section 10.5 or 10.6, as the case may be, in accordance with such terms and conditions as the Lessor or the Approved Lender, as the case may be, may reasonably require.

ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR

11.1 Inspection by Lessor and Commission

The Lessor and the Lessee agree that it will be lawful for representatives of the Lessor and the Commission to enter the Lands and the Improvements at all reasonable times during the Term and to examine the condition thereof. Without in any way limiting the generality of the foregoing, the Lessor and the Commission or their representatives may enter upon the Lands to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Lessor or the Commission, as applicable, and the reasonable cost of such testing, assessment, investigation or study, as the case may be, shall be payable by the Lessee forthwith and shall be a charge upon the Lands if such investigation finds that the Lessee is in breach of its duties or obligations under this Lease, including (without limitation) ARTICLE 23. If the Lessor or the Commission determines that any of the repairs described in section 7.2 are required, notice of such required repairs will be given by the Commission or the Lessor to the Lessee, and the Lessee will within fourteen (14) days after every such notice, or such longer period as provided in subsection 17.3(b), repair and make good accordingly.

11.2 Exhibition by Lessor

During the final year of the Term, the Lessor will be entitled to display upon the Lands the usual signs advertising the Lands and Improvements as being available for purchase or lease, provided such signs are displayed in such a manner as not to unreasonably interfere with the Lessee's use and enjoyment of the Lands and the Improvements.

ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS

12.1 Compliance

The Lessee covenants to competently and faithfully observe and comply with all laws, and lawful orders which apply to the Lands and the Improvements or the Lessee's occupation of or activities on the Lands or in the Improvements, and to not use or occupy

or permit to be used or occupied the Lands or the Improvements or any part thereof for any illegal or unlawful purpose or in any manner which would result in the cancellation or threatened cancellation of any insurance, or in the refusal of any insurer to issue any insurance as requested. If any law or lawful order is directed at or places a duty or obligation upon the Lessor, then the same will be performed and observed by the Lessee, at its cost, in the place and stead of the Lessor.

ARTICLE 13 EXCLUSION OF LIABILITY AND INDEMNITY

13.1 Limitation of Liability and Release

Neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for, and the Lessee hereby releases the Lessor, the Commission and their respective Personnel and contractors from all Losses, including without limitation, Losses as a result of:

- (a) any bodily injury or death caused, suffered or sustained in or about the Lands or the Improvements; or
- (b) any property damage or other loss or damage to the Lands or the Improvements, or to any property belonging to the Lessee or to any other person in or about the Lands or the Improvements,

unless resulting from the respective negligence or wilful acts of the Lessor, the Commission or their respective Personnel or contractors, as the case may be.

13.2 Exclusion of Liability

Notwithstanding section 13.1, neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for:

- (a) business, economic or indirect loss or damage of any nature whatsoever, however caused, which may be suffered or sustained by the Lessee or any other person who may be in or about the Lands or the Improvements; or
- (b) any loss against which the Lessee is obligated to insure or has insured.

13.3 Indemnification

The Lessee will indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors from and against all Losses which the Lessor, the Commission or their respective Personnel or contractors may suffer or incur arising out of this Lease; provided, however, that such indemnity will not apply to the extent to which such Losses result from the respective negligence and/or wilful acts of the Lessor, the Commission or their respective Personnel or contractors, as the case may be. Subject

to the foregoing proviso, the Lessee will indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors in respect of all Losses:

- (a) as a result of bodily injury or death, property damage or other damage arising from the conduct of any work by or any act or omission of or relating to or arising from the occupation or possession of the Lands and the Improvements by the Lessee or any assignee, subtenant, Personnel, contractor, invitee or licensee of the Lessee; or
- (b) suffered or incurred by the Lessor, the Commission or their respective Personnel and contractors that arise, whether directly or indirectly, from any breach by the Lessee, its Personnel, contractors or any other person for whom the Lessee is responsible in law, of any of its covenants and obligations under this Lease.

13.4 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor, the Commission and their respective Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease.

13.5 Indemnity Exemption for PRHC

None of the provisions of the Lease which require the Lessee to indemnify the Lessor or the Commission will apply if PRHC becomes the lessee under this Lease.

ARTICLE 14 DISPOSITION

14.1 Assigning and Sub-Letting

The Lessee will not assign its Leasehold Interest, in whole or in part, or sublet, transfer or otherwise part with possession of its Leasehold Interest or any part thereof for the whole or part of the Term, except if the Lessor and the Commission consent. Without limiting the generality of the foregoing, the Lessor and the Commission agree that it will not withhold or delay its consent beyond a fourteen (14) day period from the date that the request for consent is made if:

- (a) the assignment is to either:
 - (i) a person whose constating instruments preclude it from operating for profit, and which, in the Lessor's reasonable opinion, has the management skills necessary to operate the Improvements as a prudent owner would; or
 - (ii) His Majesty the King in Right of the Province of British Columbia, the Commission or the PRHC; and

- (b) the Lessor is subletting or otherwise parting with possession of individual units in the Improvements to Eligible Occupants.

Notwithstanding the foregoing, the consent of the Commission is not required for the subletting or otherwise parting with possession by the Lessee of individual units in the Improvements to Eligible Occupants.

Each of the Lessor and the Commission will promptly execute, upon request by any Party, such consents as may be required for the registration of such assignment, subletting or other parting with possession to which all consents have been provided pursuant to this section.

In the event of an assignment, subletting, transfer or other parting with possession other than pursuant to section 14.1(a)(ii), the Lessee will deliver to the Lessor and the Commission, promptly after execution, a true copy of every permitted assignment, sublease, tenancy agreement or other instrument evidencing a right of occupancy in respect of the Improvements, and of every modification thereof.

14.2 Attornment

If the Lessee assigns in whole or in part, sublets, transfers or otherwise parts with possession of its Leasehold Interest, as permitted by section 14.1, then, concurrently therewith, the Lessee will cause the assignee, subtenant or occupant to deliver to the Lessor and the Commission an agreement in form and substance reasonably satisfactory to the Lessor and the Commission, whereby the assignee, subtenant or occupant will agree with the Lessor and the Commission to observe or perform the Lessee's obligations under this Lease from and after the effective date of the assignment, sublease or transfer for the remainder of the Term.

14.3 Mortgage to Commission

The Lessor consents to the grant by the Lessee of a Mortgage of the Leasehold Interest in favour of the Commission, on such terms and conditions as may be agreed to by the Lessee and the Commission, provided that the Mortgage is given to secure a bona fide loan, either repayable or forgivable, from the Commission to the Lessee for the purpose of construction, repair or replacement of Improvements and the principal secured by the Mortgage does not exceed the total costs, including hard and soft costs, related to such construction, repair or replacement ("**Approved Commission Mortgage**"). The Lessor will promptly execute, upon request by the Lessee or the Commission, such consents as may be required for the registration of an Approved Commission Mortgage.

14.4 Other Lessee's Encumbrances

Except for the Permitted Encumbrances and a Mortgage of the Leasehold Interest in favour of the Commission as contemplated in section 14.3, the Lessee will not mortgage, charge, encumber or pledge its Leasehold Interest except that the Lessee may, with the

prior written consent of the Lessor and the Commission, grant a Mortgage and security collateral thereto to an Approved Lender. Without limiting the generality of the foregoing, each of the Lessor and the Commission agrees that it will not withhold or delay its consent beyond a fourteen (14) day from the date that the request for consent is made, if the grant of the Mortgage is to a person who qualifies as an “approved lender” as that term is defined in the *National Housing Act* (Canada), including the Corporation, and secures a bona fide loan from the Approved Lender to the Lessee for the purpose of construction, repair or replacement of Improvements and the principal secured by the Mortgage does not exceed the total costs, including hard and soft costs, related to such construction, repair, or replacement (“**Approved Lender Mortgage**”). Each of the Lessor and Commission will promptly execute, upon request by the Lessee, the Commission or such person, such consents as may be required for the registration of an Approved Lender Mortgage.

14.5 Lessor’s Encumbrances

The Lessor reserves the right to further charge the Lands by way of permit, easement or right-of-way, in favour of any Statutory Authority, provided the charge does not materially adversely affect the Lessee’s permitted uses of the Lands for the Specific Purpose.

14.6 Mortgage Acknowledgment Agreement

If and whenever a Mortgage is granted, the Lessor and the Lessee will execute and deliver to the Lender a Mortgage Acknowledgment Agreement.

14.7 Approved Lender’s Agreement

At the request of any Approved Lender, the Lessor and the Lessee will execute and deliver to the Approved Lender an agreement among the Lessor, the Lessee and the Approved Lender, in form and substance satisfactory to the Approved Lender and the Lessor, each acting reasonably, and which will be binding and enforceable against the Lessor, the Lessee and the Approved Lender, whereby the Lessor and the Lessee will be bound to pay, perform and observe their respective covenants, agreements and conditions contained in the Lease in favour of the Approved Lender.

14.8 Copies of Subleases

If requested by the Lessor or the Commission, a copy of all subleases will be forwarded to the Lessor or the Commission, as the case may be, within fourteen (14) days after the receipt of the request.

14.9 Where Mortgagee is Approved Lender, Commission or Corporation

If a Mortgagee which is an Approved Lender, the Commission or the Corporation takes an assignment of the rents payable to the Lessee by holders of occupation rights granted

by the Lessee pursuant to section 14.1, the Lessee is permitted to enter into such assignment of rents, without the consent of the Lessor or the Commission, as collateral or additional security for an Insured Loan, if such Mortgagee has registered that assignment in the Land Title Office as a charge against the Leasehold Interest or any part thereof.

14.10 Assignment on Termination of Operating Agreement

Subject to this section 14, the Lessee hereby agrees that if the Operating Agreement is terminated by the Commission, the Lessee may be required, pursuant to an agreement with the Commission and the PRHC, to assign the Lease to PRHC, or an entity identified by PRHC and the Commission. The Commission will provide written notice of the termination of the Operating Agreement to the Lessor and any Mortgagee. The Lessee, PRHC, or the assignee identified by PRHC and the Commission, and the Commission will each execute and deliver, or cause to be executed and delivered, to the Lessor, for its consent, an Assignment Consent Agreement as set out in Schedule “X” to this Lease.

ARTICLE 15 MORTGAGE

15.1 Mortgaging by Lessee

The Lessee may mortgage the Leasehold Interest in the Lands and the Improvements only with the prior written consent of the Lessor, which consent may not be unreasonably withheld, and the Commission, which consent may be arbitrarily withheld. Notwithstanding any such Mortgage, the Lessee will be and remain liable for the payment of all Basic Rent and Additional Rent, and the performance of all of its obligations set out in this Lease.

ARTICLE 16 BANKRUPTCY OF LESSEE

16.1 Bankruptcy of Lessee

Subject to the provisions of subsection 17.9(c), if the Lessee’s interest in this Lease is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to the *Winding-up and Restructuring Act* (Canada) or to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies’ Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is appointed or applied for by the Lessee, or if a judgment, decree

or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to ARTICLE 22, this Lease will, at the option of the Lessor, immediately become terminated.

ARTICLE 17 DEFAULTS AND REMEDIES

17.1 Interest and Costs

The Lessee will pay to the Lessor interest on any Rent in arrears from the date such Rent was due until it is paid, at the rate of interest of Prime Rate plus two percent (2%) per annum, in respect of money payable under this Lease that is not paid on the due date until such arrears are fully paid and satisfied.

17.2 Lessor's Right to Perform Covenants

If the Lessee fails to observe or perform any obligation under this Lease, including any obligation to pay Additional Rent, the Lessor may observe or perform such obligation without waiving or releasing the Lessee from its obligation to do so, and without limiting or abrogating any other right or remedy it may have. In order to do so, the Lessor may enter upon the Lands and no entry for the purpose of curing a default will be deemed to be a forfeiture or termination of this Lease. The Lessee will pay to the Lessor all sums paid or costs incurred by the Lessor in so observing or performing, together with interest thereon at the rate referred to in section 17.1 from the date each such payment was made or each such cost was incurred by the Lessor plus an administration fee equal to ten percent (10%) of each such cost. The Lessor will not be liable to the Lessee for any inconvenience, disturbance or other damage resulting from the Lessor's observance or performance of any of the Lessee's obligations.

17.3 Events of Default

If and whenever:

- (a) the Lessee defaults in its obligation to pay any Rent and such default continues for thirty (30) days after the Lessor delivers notice of the default to the Lessee and the Commission;
- (b) the Lessee defaults in observing or performing any other obligation under this Lease, and such default continues for sixty (60) days after the Lessor delivers to the Lessee and the Commission notice of the default, except that if the default, by its nature, requires more than sixty (60) days to cure, the Lessee may have such

further time to rectify the default as the Lessor considers reasonable so long as the Lessee begins to rectify promptly and thereafter proceeds with all due diligence;

- (c) the Lessee defaults in observing or performing any of its obligations under the Operating Agreement, and such default continues for sixty (60) days after the Commission delivers to the Lessee and the Lessor notice of the default, except that if the default, by its nature, requires more than sixty (60) days to cure, the Lessee may have such further time to rectify the default as the Commission considers reasonable so long as the Lessee begins to rectify promptly and thereafter proceeds with all due diligence;
- (d) an event described in section 16.1 occurs;
- (e) the Lands are vacated, are used by a person who is not entitled to use the Lands, or the Lands are not used for the Specific Purpose; or
- (f) the Lessee defaults in observing or performing any obligation contained in any charge or encumbrance registered against the title to the Lands, to which the Tenant has agreed to observe or perform,

then, and in every such case, it will be lawful for the Lessor without notice to the Lessee, but with thirty (30) days' prior notice to the Commission, to immediately re-enter into and upon the Lands, or any part thereof in the name of the whole, whereupon, but subject to the rights of an Approved Lender set out hereunder, this Lease will terminate immediately. Such termination will be wholly without prejudice to the Lessor's right to recover arrears of Rent or damages for any antecedent breach of covenant by the Lessee, and the Lessor may subsequently recover from the Lessee all losses, damages, costs, including legal costs, and expenses the Lessor suffers by reason of the Lease having been prematurely terminated. Notwithstanding any other provision of this Lease, if the Lessor elects to terminate this Lease prior to the expiration of the Term, the Commission or any Approved Lender may require that as a condition of such early termination of the Term that the Lessor pays to the Approved Lender, on the termination date, the amount secured by the Mortgage and upon the payment being made, the Mortgage will be discharged and the Lease will be terminated.

17.4 Re-Letting

If any event of default set out in section 17.3 occurs, the Lessor, in addition to its other rights hereby reserved, may enter the Lands as agent of the Lessee, either by using force or otherwise, without being liable for any prosecution therefor, and without terminating this Lease, and, on notice to the Lessee, may re-let or sublet, as the Lessee's agent, the Lands or any part thereof and may apply the proceeds of that re-letting or subletting on account of Rent due or in satisfaction of the breach of any covenant or agreement herein contained, and the Lessee will remain liable for the deficiency, if any, together with the Lessor's reasonable expenses of retaking and re-letting, including legal fees, and the Lessor will nevertheless be entitled to recover from the Lessee Rent due for the remainder of the Term in the event the Lessor has not so re-let, or, if the Lessor has re-let,

may recover from the Lessee the difference in Rent payable by any new tenant of the Lands for the balance of the Term and that was required to be paid by the Lessee under this Lease for the balance of the Term, and the Lessee agrees to pay promptly on demand any amount as so determined.

17.5 Distress

The Lessor may levy distress upon the personal property of the Lessee for Rent in arrears, and, in case of removal by the Lessee of any personal property from the Lands after any default by the Lessee, may follow such personal property notwithstanding any statute, by-law, regulation or order of any Statutory Authority. The Lessee waives and renounces the benefit of any present or future legislation purporting to limit or qualify the Lessor's right to distrain.

17.6 Remedies Cumulative

The exercise of any specific right or remedy by the Lessor will not prejudice or preclude the Lessor from exercising any other right or remedy in respect thereof, whether allowed at law or in equity or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Lessor may from time to time exercise any one or more of such remedies independently or in combination. All remedies are cumulative. The Lessor may apply to restrain by injunction any breach by the Lessee in observing or performing its obligations under this Lease.

17.7 Waiver Re-Entry

The Lessee hereby waives any present or future requirement that notice of the Lessor's intention to re-enter the Lands be served or that the Lessor commence legal proceedings in order to re-enter the Lands.

17.8 Condoning

Any condoning, excusing or overlooking by the Lessor of any default by the Lessee in observing or performing its obligations under this Lease will not operate as a waiver of, or affect or defeat, the Lessor's rights in respect of any subsequent default.

17.9 Notice to and Remedies of Mortgagee

The following provisions will apply with respect to any Mortgagee:

- (a) no re-entry, termination or forfeiture of this Lease by the Lessor will be valid against the Mortgagee who has filed with the Lessor a notice of the Mortgage and specified an address for notice in accordance with ARTICLE 24, unless the Lessor has first given to the Mortgagee written notice of the default entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that

default, and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:

- (i) to cure the default specified in the notice within a period of ninety (90) days from the date of receipt of that notice by the Mortgagee; or
- (ii) if the default is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease, and if the default cannot reasonably be cured within such ninety (90) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default and such cure period shall be extended as reasonably required;

and the Lessor hereby grants the Mortgagee access to the Lands and the Improvements for that purpose. If the default is cured within the period specified, or in the circumstances referred to in subsection 17.9(a)(ii), if cured within a reasonable period, the Mortgagee will be entitled to continue as tenant for the balance of the Term provided that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease until such Mortgagee as tenant assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its personal representatives, successors and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease. If the Mortgagee consists of more than one mortgagee, each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default specified as aforesaid by that Mortgagee that is willing to cure the default and attorn as tenant as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and attorn as aforesaid, except that in the event that any Mortgagee has commenced a foreclosure action, the provisions of subsection 17.9(b) will apply;

- (b) in the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease, the Lessor will not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
 - (i) has given to the Lessor notice of the foreclosure proceedings;
 - (ii) is actively prosecuting the foreclosure proceedings;

- (iii) except for the bankruptcy or insolvency of the Lessee, which will be governed by subsection 17.9(c), cures the default within a period of ninety (90) days from the date of receipt of notice from the Lessor specifying the nature of the default, or if the default is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default cannot reasonably be cured within such ninety (90) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default; and
- (iv) performs and observes all of the Lessee's covenants and agreements under this Lease, except for any obligation to cure the bankruptcy or insolvency of the Lessee and except for the obligations of the Lessee which the Mortgagee is exempt from fulfilling pursuant to the terms of this Lease, and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee;

provided, however, that if the Mortgagee is an Approved Lender, the Corporation or the Commission, the curing of the default may be delayed until the earlier of the date of the assignment of this Lease to a third party or an Approved Lender, the Corporation or the Commission acquiring the Lessee's interest in this Lease. In the event that the Mortgagee acquires the Lessee's interest in the Lands and Improvements pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease until such Mortgagee as lessee assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its personal representatives, successors and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform the covenants and agreements of this Lease. If the Mortgagee consists of more than two or more mortgagees and two or more of them commence foreclosure proceedings, the right to cure any default granted by this subsection 17.9(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing mortgagees;

- (c) if this Lease is subject to termination or forfeiture pursuant to ARTICLE 16 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor a notice of Mortgage in favour of the Mortgagee and specified an address for notice in accordance with ARTICLE 24, the Lessor will give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure the Lessee's default under

this Lease (except for the bankruptcy or insolvency of the Lessee), and the Lessee's default will be deemed to have been sufficiently cured if the Mortgagee:

- (i) takes possession and control of the Lands and Improvements, or cause a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, which receiver will take possession and control of the Lands and Improvements, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and Improvements for that purpose;
- (ii) cures every default under this Lease (except for the bankruptcy or insolvency of the Lessee) within a period of ninety (90) days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such ninety (90) day period, immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure such default or defaults; provided, however, that if the Mortgagee is an Approved Lender, the Commission or the Corporation, the curing of the default may be delayed until the earlier of the date of the assignment of this Lease to a third party or an Approved Lender or the Commission or the Corporation acquiring the Lessee's interest in this Lease; and
- (iii) subject to the right of an Approved Lender, the Commission or the Corporation to delay the curing of the default as set out in subsection 17.9(c)(ii), attorns as tenant to the Lessor and undertakes to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease until such Mortgagee, as tenant, assigns its leasehold estate as permitted under this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its personal representatives, successors and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges;

- (d) any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease;

- (e) no entry upon the Lands or into the Improvements by the Mortgagee for the purpose of curing any default of the Lessee will release or impair the continuing obligations of the Lessee; and
- (f) in the event of any default by the Lessee under this Lease, the Mortgagee shall have the right (but not the obligation) to cure such default during the cure period provided to the Lessee under the Lease for remedying such default. Where the Lessee has failed to cure a default, the Mortgagee shall have a period of one hundred and twenty (120) days from the date of receipt of notice from the Lessor of the Lessee's default under the Lease, provided that, prior to the expiration of such one hundred and twenty (120) day period, the Mortgagee sends the Lessor written notice that the Mortgagee intends to cure such default. The Lessor shall accept such performance on the part of the Mortgagee (itself or by a receiver and/or receiver and manager appointed by it) as though the same has been performed by the Lessee, and for such purpose the Lessor and the Lessee hereby authorize the Lender to enter upon the Land and to exercise any of the Lessee's rights and powers under the Lease without the need for any further notice(s) to be submitted to the Lessor. None of the foregoing shall in itself constitute a transfer of the Lease or otherwise constitute the Mortgagee a mortgagee in possession. The Lessor shall not terminate the Lease until the expiry of the said period of one hundred and twenty (120) days and then only if (i) the default has not been cured, or (ii) the matter is not being contested in good faith, or (iii) for any default which cannot reasonably be cured within such one hundred and twenty (120) days, is not proceeding to be cured in a diligent manner. The curing of the default by the Mortgagee may be delayed if it is actively pursuing an acceptable assignment or transfer pursuant to the terms of this Lease.

ARTICLE 18 DISPUTE RESOLUTION

18.1 Dispute Resolution Procedure

Any dispute arising under this Lease between the Parties will be resolved as set forth in this ARTICLE 18.

18.2 Dispute Notice

A Party that wishes a dispute to be resolved will give a written dispute notice ("**Dispute Notice**") to the other Party whereupon each Party will promptly designate a senior officer or senior representative and such designated officer and representatives will attempt in good faith to resolve the dispute by negotiation. All reasonable requests for relevant information relating to the dispute made by a Party will be honoured.

18.3 Parties' Appointment of Mediator

If the Parties are unable to resolve the dispute through negotiation within thirty (30) business days of the date that the Dispute Notice was delivered as provided in section 18.2, either Party may give notice to the other Party requesting mediation of the dispute. Following such notice being given, the Parties will appoint a qualified, impartial and experienced mediator to serve as a mediator in connection with the dispute.

18.4 Independent Appointment of Mediator

If the parties are unable to agree on the mediator within thirty (30) business days of the notice referred to in section 18.3, then, upon application by any Party, the mediator will be appointed by the British Columbia International Commercial Arbitration Centre or, if such Centre is unable or does not appoint the mediator, the mediator will be appointed by the Supreme Court of British Columbia upon application by a Party.

18.5 Written Statement

Within ten (10) business days of the appointment of a mediator, each Party will provide the mediator and each other with a written statement of its position in respect of the dispute and summary of the arguments supporting its position.

18.6 Mediation

The mediator will meet with the Parties either together or separately as the mediator in his or her sole discretion determines in an attempt to resolve the dispute through mediation. The mediator will be permitted to request additional information from the Parties, which requests will not be unreasonably denied, and will be permitted to engage experts. The cost of the mediator and any experts retained by the mediator will be borne equally by the Parties unless the mediator determines otherwise.

18.7 Arbitration Process

If a dispute is not resolved within thirty (30) business days after the appointment of the mediator then, upon application by any Party (with copies to be provided to every other Party not already parties to the dispute, and to each Approved Lender), the dispute may be referred to a single arbitrator under the *Arbitration Act*, S.B.C. 2020, c. 2, in the following manner and according to the following rules:

- (a) either Party may deliver notice to the other Party setting out the nature of the dispute, and proposing an arbitrator;
- (b) within ten (10) days after receipt of such notice, the other Party will deliver notice to the first Party accepting or proposing a different arbitrator;

- (c) If a Party not already party to the dispute or an Approved Lender considers that its respective interests may be affected by the dispute then it will promptly provide notice to the parties to the dispute and will be added as a party to the arbitration;
- (d) If the parties are unable to agree on the arbitrator within thirty (30) business days of the notice referred to in section 18.3, then, upon application by any Party, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre or, if such Centre is unable or does not appoint the arbitrator, the arbitrator will be appointed by the Supreme Court of British Columbia upon application by a Party;
- (e) the decision of the arbitrator will be conclusive and binding on the parties to the arbitration; and
- (f) the costs of the arbitration will be shared equally amongst the parties to the arbitration, unless the arbitrator orders otherwise.

ARTICLE 19 SURRENDER OF LEASE

19.1 Surrender of Lease

At the termination or expiration of the Term, whether by forfeiture, default or lapse of time, the Lessee will surrender the Lands and Improvements to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease, including, without restricting the generality of the foregoing, section 10.5, except as herein otherwise expressly provided.

ARTICLE 20 QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF IMPROVEMENTS

20.1 Covenant for Quiet Enjoyment

Subject to the Lessor's and the Commission's rights herein, and subject to the Permitted Encumbrances as extended or modified from time to time, if the Lessee pays the Rent hereby reserved and all other amounts payable hereunder, and observes and performs all of the obligations, covenants and agreements of the Lessee herein contained, the Lessee may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming through, from or under the Lessor, provided however that the enforcement by the Lessor, in its capacity as a government, of its laws and orders that touch and concern the Lands and Improvements will not be a breach of the Lessor's covenant set forth in this Section 20.1.

20.2 Ownership of Tenant's Fixtures

The Lessee may confer upon tenants or occupants of the Improvements the right of property in, or the right to remove, fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Improvements or the Lands. The Lessee will make good, or will cause such tenants to make good, any damage to the Improvements caused by any removal of the tenants' fixtures.

20.3 Ownership of Improvements

The Improvements will become the absolute property of the Lessor, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration or earlier termination of the Term or any permitted period of overholding, except as provided in ARTICLE 10, but will be deemed as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease, provided always that the Lessor's absolute right of property in the Improvements, which will arise at the expiration or earlier termination of the Term or any permitted period of overholding, will take priority over any other interest in the Improvements that may now or hereafter be created by the Lessee without the prior written consent of the Lessor, and provided that all dealings by the Lessee with the Improvements which in any way affect title thereto will be made expressly subject to this right of the Lessor and the Lessee will not assign, encumber or otherwise deal with the Improvements separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person will hold or enjoy any interest in this Lease acquired from the Lessee who does not at the same time hold a like interest in the Improvements.

ARTICLE 21 OVERHOLDING

21.1 Overholding

The Lessee covenants and agrees with the Lessor that if, with the Lessor's consent, the Lessee overholds and the Lessor accepts rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Improvements as determined from time to time in the bona fide opinion of the Lessor, and such monthly Basic Rent will be paid in advance. The Lessee will also pay monthly as Additional Rent one-twelfth of the then current amounts described in section 3.1 or 3.2 hereof, as the case may be. The Lessor may terminate such tenancy at sufferance at any time by delivery of notice to the Lessee. Nothing contained in this

section 21.1 will be construed so as to limit or impair or constitute a waiver of the Lessor's rights and remedies under ARTICLE 17 or at law or in equity.

ARTICLE 22
ADDITIONAL RIGHTS OF THE COMMISSION

22.1 Notice to Commission

Unless otherwise agreed in writing by the Commission and unless failure of the Lessor to act in the circumstances would result in an emergency situation, the Lessor may not exercise any of its rights which arise as a result of a default by the Lessee under this Lease until ninety (90) days (the "**Notice Period**") after receipt by the Commission of written notice describing the Lessee's default.

If at the expiration of the Notice Period:

- (a) the Commission has not cured such default; and
- (b) the Commission has not given the Lessor a notice in writing (the "**Attornment Notice**") advising the Lessor that the Commission or its nominee will attorn as tenant under this Lease; or

then the Lessor will be at liberty to proceed to exercise any of the powers given to it under this Lease. Upon receipt of the Attornment Notice the Lessor will enter into the necessary agreement with the Commission or its nominee allowing them to attorn as tenant under the Lease.

22.2 Rights of Commission Not Limited

The rights given to the Commission pursuant to this ARTICLE 22 are not to be construed in any manner whatsoever so as to limit or otherwise prejudice the rights of the Commission under any other agreement, including the Operating Agreement.

22.3 Commission May Perform Obligations of Lessee

Where the Commission chooses to perform an obligation of the Lessee under this Lease in order to avoid forfeiture, the Lessor will accept that performance as if the same had been performed by the Lessee.

ARTICLE 23
ENVIRONMENTAL MATTERS

23.1 Definitions

For the purposes of this ARTICLE 23:

- (a) “**Contaminants**” mean any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or subject to Environmental Laws; and
- (b) “**Environmental Laws**” means any statute, law, regulation, order, standard, guideline, permit and other lawful requirement of any governmental authority having jurisdiction over the Lands or Improvements, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

23.2 Lessee’s Covenants and Indemnity

The Lessee covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Lands or Improvements for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with Contaminants, without the prior written consent of the Lessor, which consent may be arbitrarily withheld;
- (b) to strictly comply, and cause all persons for whom it is at law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Lands and Improvements;
- (c) to promptly provide to the Lessor a copy of any environmental site investigation, assessment, audit or report relating to the Lands or Improvements and conducted by or for the Lessee at any time before, during or after the Term, or any renewal or extension thereof. The Lessee hereby waives the requirement for the Lessor to provide a site profile for the Lands pursuant to the *Environmental Management Act* (British Columbia), any regulations enacted pursuant thereto, or any similar or successor legislation;
- (d) to promptly provide to the Lessor on request such written authorizations as the Lessor may require from time to time to make inquiries of any governmental authorities regarding the Lessee’s compliance with Environmental Laws;

- (e) to promptly notify the Lessor in writing of the existence or release of any Contaminant on, in or under the Lands or Improvements or of any other occurrence or condition on the Lands or any adjacent property that could contaminate the Lands or the Improvements or result in the non-compliance of the Lands or Improvements with Environmental Laws, or subject the Lessor or Lessee to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (f) on the expiry or earlier termination of this Lease, or at any time if requested by the Lessor or required pursuant to Environmental Laws, to remove from the Lands and Improvements all Contaminants, and to remediate any contamination of the Lands or any adjacent or other affected property resulting from Contaminants, in either case brought onto, used at, created upon or released from the Lands by the Lessee or any person for whom the Lessee is at law responsible. The Lessee will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants will remain the property of the Lessee, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding their degree of affixation to the Lands or Improvements; and
- (g) without limiting the generality of ARTICLE 13, to indemnify the Lessor, the Commission, and their respective Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Improvements and any other affected property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article 24 by the Lessee; or
 - (ii) the release or alleged release of any Contaminants on or from the Lands related to or as a result of the use and occupation of the Lands and Improvements by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 24 will survive the expiry or earlier termination of this Lease, and the obligations of the Lessee under this Article 24 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

ARTICLE 24 NOTICES

24.1 Notices

All notices, demands and request which may or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally, or by courier or transmitted by fax or by email if an email address is provided upon the party for which it is intended:

- (a) in the case of the Lessor, addressed to:

Kitselas First Nation
2225 Gitaus Road
Terrace, British Columbia V8G 0A9
Fax No.: (250) 635-5335
Attention: Chief and Council

- (b) in the case of the Commission addressed to:

British Columbia Housing Management Commission
Suite 1701 - 4555 Kingsway
Burnaby BC V5H 4V8
Fax No.: 604-439-4726
Attention: Manager Real Estate Services

- (c) in the case of the Lessee, addressed to:

Kitselas Housing Society
2225 Gitaus Road
Terrace, British Columbia V8G 0A9
Fax No.: (250) 635-5335
Attention: Chief and Council

or at such other addresses as each of the Parties may from time to time advise by notice in writing. Mortgagees will supply their respective mailing addresses to the Lessor and the Lessee. The date of receipt of any such notice, demand or request will be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered. If transmitted by fax or email before 3:00 p.m. on a business day will be deemed to have been given on that business day, and if transmitted by fax or email after 3:00 p.m. on a business day will be deemed to have been given on the business day after the date of the transmission.

ARTICLE 25
STATUTORY RIGHT OF WAY

25.1 Statutory Right of Way

[NTD: this relates to utilities that may have SRWs registered in advance of the lease; parties to confirm if this is relevant]

During the Term:

- (a) the Lessor will not amend nor discharge the statutory right of way registered against the Lands under **No. [REDACTED]** (the “**Statutory Right of Way**”) without the consent of the Lessee, such consent not to be unreasonably withheld;
- (b) the Lessor will, at its cost, construct, maintain and repair the right of way area described in the Statutory Right of Way (the “**Right of Way Area**”);
- (c) the Lessor will fulfill the obligations of the Transferor contained in the Statutory Right of Way and will indemnify and save harmless the Lessee, the Commission and their respective personnel and contractors from and against all Losses which the Lessee or the Commission or their respective personnel or contractors may suffer or incur arising out of, or in any way connected with, the granting of the Statutory Right of Way, and the use of the Right of Way Area, provided however, that such indemnity will not apply to the extent, if any, to which such losses directly result from the respective negligence of the Lessee, the Commission or their respective personnel or contractors, as the case may be; and
- (d) notwithstanding any rights granted to the Lessor (as defined in the Statutory Right of Way), the Lessor will not exercise such rights in a manner that would unreasonably interfere with the Lessee and its invitees and permittees use and enjoyment of the Right of Way Area, and in particular, the right to pass and repass on, over and along the Right of Way Area, in common with members of the public.

ARTICLE 26
MISCELLANEOUS

26.1 Statements by Either the Lessor or the Lessee

The Lessor and the Lessee will, at any time and from time to time, upon not less than thirty (30) days prior request by the other Party, execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, the nature of such modifications and that the same are in full force and effect as modified;

- (b) the dates to which the rent and any other amounts payable under this Lease have been paid; and
- (c) that to the best of the information and belief of the maker of the statements, the Lessor and the Lessee are not in default under any provision of this Lease, or, if in default, the particulars thereof.

26.2 Time of Essence

Time will be of the essence of this Lease, save as otherwise specified herein.

26.3 Formality of Modifications

This Lease may not be modified or amended except by an instrument in writing executed by the Lessor and the Commission or their successors or assigns, and by the Lessee or its successors or permitted assigns.

26.4 Captions and Headings

The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

26.5 Enurement

It is further agreed and declared by the Lessor and the Lessee that this Lease will extend to, be binding upon and enure to the benefit of the Lessor, the Commission and the Lessee, the successors and assigns of the Lessor and the Commission, and the successors and permitted assigns of the Lessee.

26.6 Covenants or Conditions

All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants, as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

26.7 References

The words “herein”, “hereby”, “hereunder” and words of similar import refer to this Lease as a whole and not to any particular Article, section or subsection in this Lease.

26.8 Execution

By signing the General Instrument, the Parties have agreed to be bound by their respective obligations contained in this Lease.

End of Document

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves
Listed in Appendix G-1**

Note: The Parties will update the Appendices before the Effective Date, as required.

Document 2. Mortgage Repayable



1. Application

Borden Ladner Gervais LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600
Vancouver BC V7X 1T2
604-687-5744

554874/000015 (Repayable)

2. Description of Land

PID/Plan Number Legal Description

3. Borrower(s) (Mortgagor(s))

KITSELAS HOUSING SOCIETY
2225 GITAUS RD
TERRACE BC V8G 0A9

S0073654

4. Lender(s) (Mortgagee(s))

BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION
1701 - 4555 KINGSWAY AVENUE
BURNABY BC V5H 4V8

5. Payment Provisions

Principal Amount	Interest Rate	Interest Adjustment Date
\$	See Schedule	See Schedule
Interest Calculation Period	Payment Dates	First Payment Date
See Schedule	See Schedule	See Schedule
Amount of each periodic payment	Interest Act (Canada) Statement. The equivalent rate of interest calculated half yearly not in advance is	Last Payment Date
See Schedule	See Schedule % per annum	See Schedule
Assignment of Rents which the applicant wants registered?	Place of payment	Balance Due Date
No	Same as Lender Address in #4 Above	See Schedule

6. Mortgage contains floating charge on land?

No

7. Mortgage secures a current or running account?

No

8. Interest Mortgaged

Other: of Lease ____



9. Mortgage Terms

Part 2 of this mortgage consists of:

(b) Filed Standard Mortgage TermsD F Number: **MT900183**

A selection of (a) or (b) includes any additional or modified terms.

10. Additional or Modified Terms**See Schedule**

11. Prior Encumbrances Permitted by Lender**N/A**

12. Execution(s)

This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Witnessing Officer Signature

Execution Date

Borrower / Party Signature(s)

YYYY-MM-DD

KITSELAS HOUSING SOCIETY
By their Authorized Signatory

Print Name:

Print 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.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996, c 250, that you certify this document under section 168.41 (4) of the Act, and that an execution copy, or a true copy of that execution copy, is in your possession.

LAND TITLE ACT
FORM E
SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

5. PAYMENT PROVISIONS

Interest Rate:

The Interest Rate payable under this mortgage both before and after demand, both before and after default and both before and after judgment is the “Variable Rate” (as defined below and also referred to in this mortgage as the “mortgage rate”) during the period from and including the date of the initial mortgage advance of the Principal Amount or any portion thereof to and including the day preceding the initial “Take-Out Date” (as defined below) and the “Fixed Rate” (as defined below) during the period from and including the initial “Take-Out Date” (as defined below) to the day on which the Principal Amount and any other money advanced and/or secured under this mortgage have been repaid in full to the Mortgagee.

The “**Fixed Rate**” means the rate of interest that British Columbia Housing Management Commission (“**BCHMC**”) obtains through a competitive bidding and selection process conducted and approved by BCHMC for a “Take-Out Lender” (as defined below), or in the absence of such selection, such other rate as BCHMC shall advise the Mortgagor from time to time. The Fixed Rate will be compounded semi-annually, not in advance.

The “**Take-Out Date**” means the date to be determined by BCHMC, in its sole discretion, as the date that the Take-Out Lender commences long term financing of the Principal Amount.

The “**Take-Out Lender**” means one or more third party lenders with whom BCHMC will arrange financing on behalf of the Mortgagor for the Principal Amount once construction of the project in respect of the said lands is complete and until the Principal Amount is repaid in full.

The “**Variable Rate**” for each calendar month from and including the calendar month in which the first advance of the Principal Amount or any portion thereof is made until the day before the initial Take Out Date, means an interest rate calculated as a weighted average of the interest charged by the Ministry of Finance of the Government of British Columbia to the Mortgagee plus administration spread of up to 0.5625% and, in any event, not more than the Royal Bank of Canada Prime Rate plus 1.00%. The Variable Rate will be calculated and compounded monthly, not in advance.

Interest Adjustment Date:

The first day of the month following the month in which the final advance of the Principal Amount is made by the Mortgagee, or the date of the final advance if that date is the first day of the month.

Interest Calculation Period:

Monthly, not in advance to and including the day preceding the Interest Adjustment Date and thereafter semi-annually, not in advance.

Payment Dates:

On the day an advance of the Principal Amount is made by the Mortgagee but not less than once every two months up to and including the day preceding the initial Take-Out Date, and thereafter, to be paid in such amounts and manner as directed by the Take-Out Lender.

First Payment Date:

Not later than the first day of the second month following the first advance under this mortgage.

Amount of Each Periodic Payment:

Monthly payments of interest only at the Variable Rate to be paid to and including the day preceding the initial Take-Out Date, and thereafter, instalments of principal and interest at the Fixed Rate to be paid in such amounts and manner as directed by the Take-Out Lender based on a «Amortization» year amortization period.

Interest Act (Canada) Statement:

Non-applicable prior to the Interest Adjustment Date. On and after the Interest Adjustment Date, same as the Fixed Rate.

Last Payment Date:

Without limiting in any way the Mortgagee's right to at any time make demand for payment of any or all of the Principal Amount, the Principal Amount and all amounts outstanding owed to the Mortgagee arising under or in connection with this mortgage will in any event be repaid in full by no later than the initial Take-Out Date following the final advance of the Principal Amount.

Balance Due Date:

Same as Last Payment Date set forth above.

10. ADDITIONAL OR MODIFIED TERMS:

1. “**Loan Commitment Letter**” means the loan commitment letter issued by the Mortgagee to the Mortgagor with respect to the loan secured by this mortgage (including any amendment to that letter).

Amendments to Filed Standard Mortgage Terms

The Standard Mortgage Terms filed under No. MT900183 (the “**Filed Standard Mortgage Terms**”) are hereby modified as follows:

2. Clause 1(b) of the Filed Standard Mortgage Terms is deleted in its entirety and replaced with the following:
 - “(b) The Mortgagor covenants and agrees to pay to the Mortgagee interest on the amounts from time to time advanced at the mortgage rate computed from the respective dates of such advances. On becoming overdue, all interest shall be forthwith treated (as to payment of interest thereon) as principal and shall bear compound interest at the mortgage rate as well after as before maturity of the mortgage and all such interest and compound interest shall be a charge on the land referred to in item 2 of Part 1 of the mortgage (the “said lands”). In the event of non-payment of any of the money hereby secured at the times set for payment in the mortgage, the Mortgagor agrees to pay interest at the mortgage rate on the same so long as any part thereof remains unpaid.”;
3. The following clause shall be added to the Filed Standard Mortgage Terms as a new Clause 1(d):

“(d) In consideration of the Principal Amount of lawful money of Canada now paid or to be paid by the Mortgagee to the Mortgagor, the receipt of which is acknowledged, the Mortgagor grants and mortgages to the Mortgagee, its successors and assigns forever the said lands.”;

4. Clause 3 of the Filed Standard Mortgage Terms is deleted in its entirety and replaced with the following:

“3. PREPAYMENT PRIVILEGE

The Mortgagor is permitted to make full or partial repayment of the loan secured by this mortgage at any time during the term of the loan, provided that on and after the date that a take-out lender commences long term financing of the loan secured by this mortgage, this mortgage may not be prepaid without the prior written approval of the Mortgagee, or where BCHMC is not the Mortgagee at such time, then without the prior written approval of both the Mortgagee and BCHMC.”;

5. Clause 5 of the Filed Standard Mortgage Terms is hereby deleted in its entirety and replaced with the following:

“5. INSURANCE

Without limiting the generality of the foregoing, the Mortgagor shall effect and keep in force insurance in compliance with the Mortgagee's requirements as set out in the Loan Commitment Letter, with such variations, additions and changes in the amounts and types of coverage as the Mortgagee may from time to time notify the Mortgagor in writing, including but not limited to insurance protecting the Mortgagor and the Mortgagee (without any rights of cross claim or subrogation against the Mortgagee) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the said lands or improvements for a minimum of \$10,000,000 (or such other amount that the Mortgagee may require from time to time) inclusive of any one occurrence.”;

6. Clause 6 of the Filed Standard Mortgage Terms is hereby amended by adding the following to the end of the clause:

“If the principal amount advanced and secured under this mortgage is to be used in the course and for the purpose of demolishing, repairing, improving and/or constructing improvements upon the said lands:

- (a) The Mortgagor shall construct all buildings and other improvements on the said lands in accordance with the applicable building and air space parcel plans and to the satisfaction of all governmental and regulatory authorities having jurisdiction and carry on diligently to completion the buildings and other improvements. All buildings and other improvements now or later on the said lands shall form part of the security for the full amount of the money secured by this mortgage.
- (a) All construction on the said lands shall be carried out by reputable contractors having experience which is commensurate to the nature and size of the project, and such contractors must be prior approved by the Mortgagee in writing, such approval not to be unreasonably withheld.
- (b) Provided that should construction on the project cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Mortgagor excepted), for a period of fifteen (15) consecutive business days, then, at the sole option of the Mortgagee, this mortgage shall, immediately become due and payable. In the event that construction does cease,

- then the Mortgagee shall have the right, at its sole option but under no circumstance shall the Mortgagee be obliged, to assume some part or complete control of the construction of the project in such manner and on such terms as it deems available. The cost and expenses of completion of the project by the Mortgagee and all expenses incidental thereto together with a management fee of fifteen percent (15%) of the costs and expenses of the construction completed by the Mortgagee will be secured under this mortgage and bear interest.
- (c) At all times there shall be sufficient funds unadvanced under this mortgage and retained by the Mortgagee to complete the construction.
 - (d) This mortgage will be advanced in stages as construction upon the said lands proceeds or as the conditions as enumerated by the Loan Commitment Letter are complied with.
 - (e) All advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Mortgagee with respect to the project and the progress thereof, whose fees and costs shall be for the account of the Mortgagor regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction to the date of such certificate shall be in accordance with the applicable building plans and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the said lands. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the buildings.
 - (f) The Mortgagor shall pay to the Mortgagee on each occasion when an inspection of the said lands is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Mortgagee may charge from time to time for each such inspection and the Mortgagee's solicitors shall be paid their reasonable fees and disbursements for each subsearch and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Mortgagee shall be entitled to all right and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.
 - (g) The Mortgagee shall be entitled to erect at the Mortgagee's expense, a reasonable number of signs at reasonable locations and of reasonable size, and to otherwise publicize the source of the financing during the construction period.
 - (h) The Mortgagee may at its sole option, withhold from any advances for which the Mortgagor may have qualified, such amounts as the Mortgagee, in its sole discretion, considers advisable to protect its position under the provisions of the *Builders Lien Act* (British Columbia) as amended, so as to secure its priority over all liens, until the Mortgagee is fully satisfied that all lien periods have expired and that there are no liens outstanding. Nothing in this clause shall be construed to make the Mortgagee an "owner" as defined under the *Builders Lien Act* (British Columbia) as amended, nor shall there be, or be deemed to be, any obligation by the Mortgagee to retain any holdback which may be required to be made by the owner which shall remain solely the Mortgagor's obligation. The Mortgagor hereby covenants and agrees to comply in all respects with the provisions of the *Builders Lien Act* (British Columbia) as amended.”;

7. Clause 17 of the Filed Standard Mortgage Terms is deleted in its entirety and replaced with the following:

“17. DUE ON SALE

“The Mortgagor covenants and agrees with the Mortgagee that in the event of the Mortgagor selling, conveying, transferring or entering into an agreement for sale or transfer of title (of either or both of the legal and beneficial estates) of the said lands or any part of them (including, but not limited to, the sale of the issued and outstanding shares in the Mortgagor or other interest resulting in a transfer of an ownership interest in the Mortgagor) to a purchaser or transferee not approved, in writing, by the Mortgagee, all monies hereby secured with accrued interest thereon at the applicable mortgage rate shall at the option of the Mortgagee forthwith become due and payable. Any such conveyance, transfer or entry into an agreement for sale or transfer shall not (even if the Mortgagor receives the Mortgagee’s consent) release the Mortgagor from any of its obligations under this Mortgage.”;

8. Clause 22 of the Filed Standard Mortgage Terms is amended as follows:

- (a) by deleting all reference to the “Condominium Act” and replacing them with the following:

“Strata Property Act, SBC 1998, c.43 as amended from time to time (the “**Strata Property Act**”)”;

- (b) by deleting the words “a certificate in Form B of the Schedule to the Condominium Act” in clause 22 (b) and replacing with the following:

“a Form G certificate of lien, as the same may be amended from time to time, of the Strata Property Regulation, BC Reg. 43/2000 (the “**Strata Property Regulation**”)”;

- (c) by deleting the words “a certificate in Form A of the Schedule to the Condominium Act” in clause 22(c) and replacing with the following:

“a Form F certificate of payment, as the same may be amended from time to time, of the Strata Property Regulation”;

- (d) by deleting the reference to “Section 28(3) of the Condominium Act” in clause 22 (g) and replace with the following:

“Section 36(1)(c) of the Strata Property Act”;

- (e) by adding the following to clause 22(g):

“together with all other records and documents referred to in Section 35 of the Strata Property Act”; and

- (f) by deleting clause 22(h) and replacing with the following:

“Pursuant to Section 59 of the Strata Property Act, the Mortgagor hereby authorizes in writing any officer of the Mortgagee to apply at any time and from time to time to the Strata Corporation for certification to the Mortgagee of the information required by Section 59(3) of the Strata Property Act.”;

9. The following clause shall be added to the Filed Standard Mortgage Terms as a new Clause 23(e):

“(e) The Mortgagor covenants and agrees with the Mortgagee that:

- (i) the covenants of the Mortgagor under the lease have been performed to the date of this mortgage;
- (ii) in consideration of the Mortgagee agreeing to lend the Principal Amount to the Mortgagor, the Mortgagor grants and mortgages by way of sub-lease the said lands (including without limitation the lease) and all of the Mortgagor’s present and future interest in and to the lease and the said lands to the Mortgagee, for the entire residue of the term of the lease and any renewals thereof except the last month thereof, as security for the payment of the Principal Amount, interest and any other money secured under this Mortgage and for the performance of all of the Mortgagor’s covenants and agreements under this mortgage and the Mortgagor releases to the Mortgagee all its claims on the said lands (including without limitation the lease) subject to the proviso in clause 20;
- (iii) for the last month of the lease it is a trustee for the Mortgagee (subject to the right of redemption herein) and grants to the Mortgagee power to remove the Mortgagor as trustee and appoint another trustee in its place and the Mortgagor irrevocably appoints the Mortgagee its attorney to assign to the Mortgagee or a person of the Mortgagee’s choosing the immediate reversion;
- (iv) the Mortgagor will execute such further assurances with respect to the said lands as may be required from time to time by the Mortgagee;
- (v) the Mortgagor will give written notice to the lessor of the granting of this mortgage in favour of the Mortgagee;
- (vi) the Mortgagor will not, without the Mortgagee's prior written consent, surrender its leasehold estate, terminate or cancel the lease, or modify, amend or supplement the lease orally or in writing;
- (vii) no dealing by the Mortgagee with the lessor, or with the owner of the equity of redemption of the said lands, will in any way limit or otherwise prejudice the rights or the Mortgagee against the Mortgagor or any other person liable for the payment of monies hereby secured;
- (viii) the Mortgagor hereby irrevocably appoints the Mortgagee its attorney to enforce the lessor's covenants and agreements contained in the lease in the name of and on behalf of the Mortgagor, provided that such appointment will not be effective unless and until accepted in writing by the Mortgagee, and the Mortgagee shall be under no obligation to accept such appointment or enforce such covenants and agreements; and,
- (ix) any default under the lease will be a default under this mortgage.”

10. Clause 28 of the Filed Standard Mortgage Terms shall be amended by adding the following:

“including, without limiting the generality of the foregoing, concerning the protection of the environment and public health and safety.”; and

11. Clause 30 of the Filed Standard Mortgage Terms shall be amended by adding the following:

“reference to “Canada Mortgage and Housing Corporation” (“CMHC”) in these Standard Mortgage Terms means “CMHC”.”.

12. **Loan Commitment Letter, Contribution Agreement and Incorporating Documents**

The Mortgagor and the Mortgagee acknowledge and agree that a breach of the Loan Commitment Letter issued by the Mortgagee to the Mortgagor with respect to the loan secured by this mortgage, a breach of any any contribution agreement (including any amendment to that agreement) for the said lands entered into or to be entered into between BCHMC and the Mortgagor or amendment of the constitution, by-laws, memorandum or articles of incorporation of the Mortgagor, without the prior written consent of BCHMC, will constitute a breach of this mortgage. In addition, a breach of this mortgage will constitute a breach of the loan commitment letter and any contribution agreement referred to in this paragraph.

The Mortgagor acknowledges and agrees that the execution and delivery of this mortgage and any collateral security shall in no way merge or extinguish the terms and provisions of the Loan Commitment Letter and the terms and conditions contained in the Loan Commitment Letter continue in full force and effect, provided that in the case of any inconsistency or conflict between any provisions of the Loan Commitment Letter, any provisions of this mortgage, and/or any collateral security, the Mortgagee shall determine in its sole discretion which agreement shall prevail.

13. **Security Agreement and Assignment of Rents**

For the better security of the Mortgagee, the Mortgagor agrees that forthwith at the request and in favour of the Mortgagee, the Mortgagor will grant in a form satisfactory to the Mortgagee as security concurrent herewith:

- (a) a security agreement in favour of the Mortgagee covering all goods, chattel paper, documents of title, instruments, investment property, intangibles and money now or hereafter situate on, related to, used in connection with or arising from or out of the premises herein mortgaged, including without limiting the generality of the foregoing, all floor coverings, ranges, refrigerators, dishwashers, appliances, heating, ventilating and air-conditioning equipment, elevators, conveyancing devices and all other mechanical equipment, plumbing and electrical fixtures, bathroom fixtures, lighting fixtures, cupboards, doors, water heaters, window coverings, communications and data systems, awnings and other equipment and fixtures now or hereafter installed in or situated on such premises as the case may be, and will pay on demand to the Mortgagee the legal costs and other expenses, if any, incurred by the Mortgagee to obtain renewal of such security agreement from time to time; and
- (b) an assignment of rents and any money whatsoever to be paid by the occupants of the building situate on the said lands and every guarantee given to the Mortgagor for payment thereof,

and the Mortgagor acknowledges and agrees that any default by the Mortgagor under any other security or securities for payment of the money or performance of the obligations thereby secured shall be deemed to be default under this mortgage and shall entitle the Mortgagee to exercise any

and all remedies available in the event of default hereunder, subject to the notice provisions granted to CMHC or BCHMC herein.

14. **Environmental Matters**

- (a) In this Article, “Hazardous Substance” includes, without limitation, any contaminants, pollutants or other substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal, or plant health or life or the environment, and, in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority of competent jurisdiction.
- (b) The Mortgagor represents and warrants to the Mortgagee that to the best of the Mortgagor's information and belief, after having made due and diligent inquiry:
 - i. the said lands have never been used to manufacture, refine, handle, store or dispose of any Hazardous Substance and no Hazardous Substance has been deposited, added or discharged on the said lands by the Mortgagor or a prior owner, lessee or occupier of the said lands or of any adjoining property; or
 - ii. the Mortgagor has obtained and forwarded to the Mortgagee confirmation from a professional environmental consultant that the said lands do not contain any Hazardous Substance in excess of the standards set by the provincial authority having jurisdiction over environmental standards for residential use of the said lands.
- (c) The Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all liabilities, losses, claims and damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Mortgagee by reason of, or in any way related to, the breach of any of the representations and warranties set forth in this Article and any and all other environmental liabilities relating to any Hazardous Substance on or under the said lands during the term or any renewal of this mortgage. This agreement to indemnify will survive repayment of the monies owing under the mortgage, and will continue in force so long as the possibility of such liability, loss, claim or damage exists.
- (d) The Mortgagee or agent of the Mortgagee or agent of CMHC may, at any time, before and after default, and for any purpose deemed necessary by the Mortgagee or CMHC, enter upon the said lands to inspect the lands and buildings thereon. Without in any way limiting the generality of the foregoing, the Mortgagee or CMHC (or their respective agents) may enter upon the said lands to conduct any environmental testing, site assessment, investigation or study, deemed necessary by the Mortgagee or CMHC, and the reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the mortgage rate, shall be payable by the Mortgagor forthwith and shall be a charge upon the said lands. The exercise of any of the powers enumerated in this clause shall not deem the Mortgagee, CMHC or their respective agents to be in possession, management or control of the said lands and buildings.

15. **Financial Records**

The Mortgagor hereby:

- (a) agrees to keep records of all rents received and of all expenses paid by the Mortgagor in connection with the said lands and, at least annually, have a statement of revenue and expenses

for the said lands prepared by a professional accountant and to give a copy of the statement to the Mortgagee, if requested to do so; and,

- (b) grants to the Mortgagee the right at any time during the term of this mortgage to inspect the Mortgagor's property, books of account and other relevant records relating to the said lands and/or this mortgage and the Mortgagor agrees to advise the Mortgagee of the location of the said books of account and other relevant documents when required to do so by the Mortgagee.

16. **Appointment**

The Mortgagor hereby irrevocably appoints the Mortgagee its attorney to enforce, in the name of and on behalf of the Mortgagor, the Mortgagor's rights contained in the labour and material payment bond and the performance bond that have been or will be obtained by the Mortgagor for construction of the premises on the said lands, if applicable and the construction contract that has been or will be entered into by the Mortgagor to construct the premises on the said lands, provided that such appointment shall not be effective unless and until accepted in writing by the Mortgagee, and the Mortgagee shall be under no obligation to accept such appointment or enforce any covenants and agreements contained in those agreements.

17. **Further Encumbrances**

The Mortgagor will not allow title to the said lands or any present or after-acquired personal property located on the said lands to become further encumbered or charged in any manner whatsoever without the Mortgagee's prior written consent. If the Mortgagor further encumbers the said lands or any present or after-acquired personal property located on the said lands, without the Mortgagee's prior written consent, which consent may be withheld or granted in the Mortgagee's sole discretion, the Principal Amount, interest and all other monies secured under this mortgage shall, at the Mortgagee's sole option, immediately become due and payable. As a term of providing its consent the Mortgagee may require the encumbrancer to grant to it a registrable priority or priority/standstill agreement on terms satisfactory to the Mortgagee at the Mortgagor's expense.

18. **Additional Defaults**

If the Mortgagor makes any default in payment of the Principal Amount, interest or other monies hereby secured, or in the observance or performance of any of the covenants, agreements or provisos herein contained, or becomes bankrupt or insolvent or makes an assignment to or proposal for the benefit of his creditors, or becomes subject to or takes advantage of any provision of any legislation for the benefit of insolvent debtors, or being a corporation is dissolved or wound up, then and in every such case the whole of the monies hereby secured remaining unpaid shall, at the option of the Mortgagee, forthwith become due and payable without notice in like manner and to all intents and purposes as if the due date for payment of such monies had fully come and expired, and all powers and remedies of the Mortgagee hereunder shall be exercisable.

19. **Notice to BCHMC and Its Right to Cure Defaults**

- (a) In the event that BCHMC as Mortgagee assigns its interest in this mortgage and any security which is additional or collateral to this mortgage to a take-out lender as Mortgagee, unless otherwise agreed to in writing by BCHMC, the take-out lender (the “Assignee”) will not exercise any of its rights which arise as a result of a default by the Mortgagor under this mortgage or any security which is additional or collateral security to this mortgage until ninety (90) days after the

Assignee has provided written notice to BCHMC (the “**Notice Period**”) and so long as, within thirty (30) days of BCHMC receiving the notice describing the Mortgagor's default, BCHMC agrees in writing that during the Notice Period, BCHMC will perform all of the covenants of the Mortgagor required in this mortgage and in any security which is additional or collateral security to this mortgage, and at the end of the Notice Period, BCHMC will either pay to the Assignee all monies secured under this mortgage and required to be paid to the Assignee (including without limitation any penalty for prepayment of this mortgage during its term, if applicable) in order to assign the Assignee's interest in the mortgage to BCHMC or its nominee (in which case the Assignee will, if requested to do so by BCHMC, assign its interest in this mortgage and in any security which is additional or collateral security to this mortgage to BCHMC or its nominee), or, if BCHMC chooses not to do so, the Assignee shall then be at liberty to proceed to exercise any of the powers given to it under this mortgage and in any security which is additional or collateral security to this mortgage.

- (b) The provisions contained in Clause 19(a) are not to be construed in any manner whatsoever so as to limit or otherwise prejudice the rights of the Assignee against CMHC under any Undertaking-to-Insure issued by CMHC to the Assignee or any other agreement between CMHC and the Assignee.
- (c) Notwithstanding anything else contained in this mortgage or any security which is additional or collateral security to this mortgage, all of the following are subject to the notice required to be given by the Assignee to BCHMC under Clause 19(a), namely:
 - i. the acceptance by the Assignee of any assignment by the Mortgagor to the Assignee of the Mortgagor's equity of redemption in the said lands; and
 - ii. the exercise by the Assignee of its options under Clause 5 of the Filed Standard Mortgage Terms relating to the application of any insurance monies.

20. **Prior Encumbrances Permitted by Lender**

Lease in favour of the Mortgagor filed in the Land Title Office on the same day preceding this mortgage.

Covenant in favour of BCHMC filed in the Land Title Office on the same day preceding this mortgage.

[NTD: To be confirmed.]

END OF DOCUMENT

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves
Listed in Appendix G-1**

Note: The Parties will update the Appendices before the Effective Date, as required.

Document 3. Mortgage Forgivable



1. Application

Borden Ladner Gervais LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600
Vancouver BC V7X 1T2
604-687-5744

554874/000015 (Forgivable)

2. Description of Land

PID/Plan Number Legal Description

3. Borrower(s) (Mortgagor(s))

KITSELAS HOUSING SOCIETY
2225 GITAUS RD
TERRACE BC V8G 0A9

S0073654

4. Lender(s) (Mortgagee(s))

BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION
1701 - 4555 KINGSWAY AVENUE
BURNABY BC V5H 4V8

5. Payment Provisions

Principal Amount	Interest Rate	Interest Adjustment Date
\$	See Schedule	See Schedule
Interest Calculation Period	Payment Dates	First Payment Date
See Schedule	See Schedule	See Schedule
Amount of each periodic payment	Interest Act (Canada) Statement. The equivalent rate of interest calculated half yearly not in advance is	Last Payment Date
See Schedule	See Schedule % per annum	See Schedule
Assignment of Rents which the applicant wants registered?	Place of payment	Balance Due Date
No	Same as Lender Address in #4 Above	See Schedule

6. Mortgage contains floating charge on land?

No

7. Mortgage secures a current or running account?

No

8. Interest Mortgaged

Other: of Lease ____



9. Mortgage Terms

Part 2 of this mortgage consists of:

(b) Filed Standard Mortgage TermsD F Number: **MT900183**

A selection of (a) or (b) includes any additional or modified terms.

10. Additional or Modified Terms**See Schedule**

11. Prior Encumbrances Permitted by Lender**N/A**

12. Execution(s)

This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Witnessing Officer Signature

Execution Date

Borrower / Party Signature(s)

YYYY-MM-DD

KITSELAS HOUSING SOCIETY
By their Authorized Signatory

Print Name:

Print 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.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996, c 250, that you certify this document under section 168.41 (4) of the Act, and that an execution copy, or a true copy of that execution copy, is in your possession.

LAND TITLE ACT
FORM E
SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

5. PAYMENT PROVISIONS

Interest Rate:

The Interest Rate payable under this mortgage both before and after demand, both before and after default and both before and after judgment is the “Variable Rate” (as defined below and also referred to in this mortgage as the “mortgage rate”) during the period from and including the date of the initial mortgage advance of the Principal Amount or any portion thereof to and including the day preceding the initial “Take-Out Date” (as defined below) and the “Fixed Rate” (as defined below) during the period from and including the initial “Take-Out Date” (as defined below) to the day on which the Principal Amount and any other money advanced and/or secured under this mortgage have been repaid in full to the Mortgagee.

The “**Fixed Rate**” means the rate of interest that British Columbia Housing Management Commission (“**BCHMC**”) obtains through a competitive bidding and selection process conducted and approved by BCHMC for a “Take-Out Lender” (as defined below), or in the absence of such selection, such other rate as BCHMC shall advise the Mortgagor from time to time. The Fixed Rate will be compounded semi-annually, not in advance.

The “**Take-Out Date**” means the date to be determined by BCHMC, in its sole discretion, as the date that the Take-Out Lender commences long term financing of the Principal Amount.

The “**Take-Out Lender**” means one or more third party lenders with whom BCHMC will arrange financing on behalf of the Mortgagor for the Principal Amount once construction of the project in respect of the said lands is complete and until the Principal Amount is repaid in full.

The “**Variable Rate**” for each calendar month from and including the calendar month in which the first advance of the Principal Amount or any portion thereof is made until the day before the initial Take Out Date, means an interest rate calculated as a weighted average of the interest charged by the Ministry of Finance of the Government of British Columbia to the Mortgagee plus administration spread of up to 0.5625% and, in any event, not more than the Royal Bank of Canada Prime Rate plus 1.00%. The Variable Rate will be calculated and compounded monthly, not in advance.

Interest Adjustment Date:

The first day of the month following the month in which the final advance of the Principal Amount is made by the Mortgagee, or the date of the final advance if that date is the first day of the month.

Interest Calculation Period:

Monthly, not in advance to and including the day preceding the Interest Adjustment Date and thereafter semi-annually, not in advance.

Payment Dates:

On the day an advance of the Principal Amount is made by the Mortgagee but not less than once every two months up to and including the day preceding the initial Take-Out Date, and thereafter, to be paid in such amounts and manner as directed by the Take-Out Lender.

First Payment Date:

No later than the first day of the second month following the first advance under this mortgage.

Amount of Each Periodic Payment:

Monthly payments of interest only at the Variable Rate to be paid to and including the day preceding the initial Take-Out Date, and thereafter, instalments of principal and interest at the Fixed Rate to be paid in such amounts and manner as directed by the Take-Out Lender based on a «Amortization» year amortization period.

Interest Act (Canada) Statement:

Non-applicable prior to the Interest Adjustment Date. On and after the Interest Adjustment Date, same as the Fixed Rate.

Last Payment Date:

Without limiting in any way the Mortgagee's right to at any time make demand for payment of any or all of the Principal Amount, the Principal Amount and all amounts outstanding owed to the Mortgagee arising under or in connection with this mortgage will in any event be repaid in full by no later than the initial Take-Out Date following the final advance of the Principal Amount.

Balance Due Date:

Same as Last Payment Date set forth above.

10. ADDITIONAL OR MODIFIED TERMS:

1. “**Loan Commitment Letter**” means the loan commitment letter issued by the Mortgagee to the Mortgagor with respect to the loan secured by this mortgage (including any amendment to that letter).

Amendments to Filed Standard Mortgage Terms

The Standard Mortgage Terms filed under No. MT900183 (the “**Filed Standard Mortgage Terms**”) are hereby modified as follows:

2. Clause 1(b) of the Filed Standard Mortgage Terms is deleted in its entirety and replaced with the following:

“(b) The Mortgagor covenants and agrees to pay to the Mortgagee interest on the amounts from time to time advanced at the mortgage rate computed from the respective dates of such advances. On becoming overdue, all interest shall be forthwith treated (as to payment of interest thereon) as principal and shall bear compound interest at the mortgage rate as well after as before maturity of the mortgage and all such interest and compound interest shall be a charge on the land referred to in item 2 of Part 1 of the mortgage (the “said lands”). In the event of non-payment of any of the money hereby secured at the times set for payment in the mortgage, the Mortgagor agrees to pay interest at the mortgage rate on the same so long as any part thereof remains unpaid.”;
3. The following clause shall be added to the Filed Standard Mortgage Terms as a new Clause 1(d):

“(d) In consideration of the Principal Amount of lawful money of Canada now paid or to be paid by the Mortgagee to the Mortgagor, the receipt of which is acknowledged, the Mortgagor grants and mortgages to the Mortgagee, its successors and assigns forever the said lands.”;

4. Clause 3 of the Filed Standard Mortgage Terms is deleted in its entirety and replaced with the following:

“3. PREPAYMENT PRIVILEGE

The Mortgagor is permitted to make full or partial repayment of the loan secured by this mortgage at any time during the term of the loan, provided that on and after the date that a take-out lender commences long term financing of the loan secured by this mortgage, this mortgage may not be prepaid without the prior written approval of the Mortgagee, or where BCHMC is not the Mortgagee at such time, then without the prior written approval of both the Mortgagee and BCHMC.”;

5. Clause 5 of the Filed Standard Mortgage Terms is hereby deleted in its entirety and replaced with the following:

“5. INSURANCE

Without limiting the generality of the foregoing, the Mortgagor shall effect and keep in force insurance in compliance with the Mortgagee's requirements as set out in the Loan Commitment Letter, with such variations, additions and changes in the amounts and types of coverage as the Mortgagee may from time to time notify the Mortgagor in writing, including but not limited to insurance protecting the Mortgagor and the Mortgagee (without any rights of cross claim or subrogation against the Mortgagee) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the said lands or improvements for a minimum of \$10,000,000 (or such other amount that the Mortgagee may require from time to time) inclusive of any one occurrence.”;

6. Clause 6 of the Filed Standard Mortgage Terms is hereby amended by adding the following to the end of the clause:

“If the principal amount advanced and secured under this mortgage is to be used in the course and for the purpose of demolishing, repairing, improving and/or constructing improvements upon the said lands:

- (a) The Mortgagor shall construct all buildings and other improvements on the said lands in accordance with the applicable building and air space parcel plans and to the satisfaction of all governmental and regulatory authorities having jurisdiction and carry on diligently to completion the buildings and other improvements. All buildings and other improvements now or later on the said lands shall form part of the security for the full amount of the money secured by this mortgage.
- (a) All construction on the said lands shall be carried out by reputable contractors having experience which is commensurate to the nature and size of the project, and such contractors must be prior approved by the Mortgagee in writing, such approval not to be unreasonably withheld.
- (b) Provided that should construction on the project cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Mortgagor excepted), for a period of fifteen (15) consecutive business days, then, at the sole option of the Mortgagee, this mortgage shall, immediately become due and payable. In the event that construction does cease,

- then the Mortgagee shall have the right, at its sole option but under no circumstance shall the Mortgagee be obliged, to assume some part or complete control of the construction of the project in such manner and on such terms as it deems available. The cost and expenses of completion of the project by the Mortgagee and all expenses incidental thereto together with a management fee of fifteen percent (15%) of the costs and expenses of the construction completed by the Mortgagee will be secured under this mortgage and bear interest.
- (c) At all times there shall be sufficient funds unadvanced under this mortgage and retained by the Mortgagee to complete the construction.
 - (d) This mortgage will be advanced in stages as construction upon the said lands proceeds or as the conditions as enumerated by the Loan Commitment Letter are complied with.
 - (e) All advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Mortgagee with respect to the project and the progress thereof, whose fees and costs shall be for the account of the Mortgagor regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction to the date of such certificate shall be in accordance with the applicable building plans and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the said lands. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the buildings.
 - (f) The Mortgagor shall pay to the Mortgagee on each occasion when an inspection of the said lands is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Mortgagee may charge from time to time for each such inspection and the Mortgagee's solicitors shall be paid their reasonable fees and disbursements for each subsearch and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Mortgagee shall be entitled to all right and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.
 - (g) The Mortgagee shall be entitled to erect at the Mortgagee's expense, a reasonable number of signs at reasonable locations and of reasonable size, and to otherwise publicize the source of the financing during the construction period.
 - (h) The Mortgagee may at its sole option, withhold from any advances for which the Mortgagor may have qualified, such amounts as the Mortgagee, in its sole discretion, considers advisable to protect its position under the provisions of the *Builders Lien Act* (British Columbia) as amended, so as to secure its priority over all liens, until the Mortgagee is fully satisfied that all lien periods have expired and that there are no liens outstanding. Nothing in this clause shall be construed to make the Mortgagee an "owner" as defined under the *Builders Lien Act* (British Columbia) as amended, nor shall there be, or be deemed to be, any obligation by the Mortgagee to retain any holdback which may be required to be made by the owner which shall remain solely the Mortgagor's obligation. The Mortgagor hereby covenants and agrees to comply in all respects with the provisions of the *Builders Lien Act* (British Columbia) as amended.”;

7. Clause 17 of the Filed Standard Mortgage Terms is deleted in its entirety and replaced with the following:

“17. DUE ON SALE

“The Mortgagor covenants and agrees with the Mortgagee that in the event of the Mortgagor selling, conveying, transferring or entering into an agreement for sale or transfer of title (of either or both of the legal and beneficial estates) of the said lands or any part of them (including, but not limited to, the sale of the issued and outstanding shares in the Mortgagor or other interest resulting in a transfer of an ownership interest in the Mortgagor) to a purchaser or transferee not approved, in writing, by the Mortgagee, all monies hereby secured with accrued interest thereon at the applicable mortgage rate shall at the option of the Mortgagee forthwith become due and payable. Any such conveyance, transfer or entry into an agreement for sale or transfer shall not (even if the Mortgagor receives the Mortgagee’s consent) release the Mortgagor from any of its obligations under this Mortgage.”;

8. Clause 22 of the Filed Standard Mortgage Terms is amended as follows:

- (a) by deleting all reference to the “Condominium Act” and replacing them with the following:

“Strata Property Act, SBC 1998, c.43 as amended from time to time (the “**Strata Property Act**”)”;

- (b) by deleting the words “a certificate in Form B of the Schedule to the Condominium Act” in clause 22 (b) and replacing with the following:

“a Form G certificate of lien, as the same may be amended from time to time, of the Strata Property Regulation, BC Reg. 43/2000 (the “**Strata Property Regulation**”)”;

- (c) by deleting the words “a certificate in Form A of the Schedule to the Condominium Act” in clause 22(c) and replacing with the following:

“a Form F certificate of payment, as the same may be amended from time to time, of the Strata Property Regulation”;

- (d) by deleting the reference to “Section 28(3) of the Condominium Act” in clause 22 (g) and replace with the following:

“Section 36(1)(c) of the Strata Property Act”;

- (e) by adding the following to clause 22(g):

“together with all other records and documents referred to in Section 35 of the Strata Property Act”; and

- (f) by deleting clause 22(h) and replacing with the following:

“Pursuant to Section 59 of the Strata Property Act, the Mortgagor hereby authorizes in writing any officer of the Mortgagee to apply at any time and from time to time to the Strata Corporation for certification to the Mortgagee of the information required by Section 59(3) of the Strata Property Act.”;

9. The following clause shall be added to the Filed Standard Mortgage Terms as a new Clause 23(e):

“(e) The Mortgagor covenants and agrees with the Mortgagee that:

- (i) the covenants of the Mortgagor under the lease have been performed to the date of this mortgage;
- (ii) in consideration of the Mortgagee agreeing to lend the Principal Amount to the Mortgagor, the Mortgagor grants and mortgages by way of sub-lease the said lands (including without limitation the lease) and all of the Mortgagor’s present and future interest in and to the lease and the said lands to the Mortgagee, for the entire residue of the term of the lease and any renewals thereof except the last month thereof, as security for the payment of the Principal Amount, interest and any other money secured under this Mortgage and for the performance of all of the Mortgagor’s covenants and agreements under this mortgage and the Mortgagor releases to the Mortgagee all its claims on the said lands (including without limitation the lease) subject to the proviso in clause 20;
- (iii) for the last month of the lease it is a trustee for the Mortgagee (subject to the right of redemption herein) and grants to the Mortgagee power to remove the Mortgagor as trustee and appoint another trustee in its place and the Mortgagor irrevocably appoints the Mortgagee its attorney to assign to the Mortgagee or a person of the Mortgagee’s choosing the immediate reversion;
- (iv) the Mortgagor will execute such further assurances with respect to the said lands as may be required from time to time by the Mortgagee;
- (v) the Mortgagor will give written notice to the lessor of the granting of this mortgage in favour of the Mortgagee;
- (vi) the Mortgagor will not, without the Mortgagee's prior written consent, surrender its leasehold estate, terminate or cancel the lease, or modify, amend or supplement the lease orally or in writing;
- (vii) no dealing by the Mortgagee with the lessor, or with the owner of the equity of redemption of the said lands, will in any way limit or otherwise prejudice the rights or the Mortgagee against the Mortgagor or any other person liable for the payment of monies hereby secured;
- (viii) the Mortgagor hereby irrevocably appoints the Mortgagee its attorney to enforce the lessor's covenants and agreements contained in the lease in the name of and on behalf of the Mortgagor, provided that such appointment will not be effective unless and until accepted in writing by the Mortgagee, and the Mortgagee shall be under no obligation to accept such appointment or enforce such covenants and agreements; and,
- (ix) any default under the lease will be a default under this mortgage.”

10. Clause 28 of the Filed Standard Mortgage Terms shall be amended by adding the following:

“including, without limiting the generality of the foregoing, concerning the protection of the environment and public health and safety.”; and

11. Clause 30 of the Filed Standard Mortgage Terms shall be amended by adding the following:

“reference to “Canada Mortgage and Housing Corporation” (“CMHC”) in these Standard Mortgage Terms means “CMHC”.”.

12. **Loan Commitment Letter, Contribution Agreement and Incorporating Documents**

The Mortgagor and the Mortgagee acknowledge and agree that a breach of the Loan Commitment Letter issued by the Mortgagee to the Mortgagor with respect to the loan secured by this mortgage, a breach of any any contribution agreement (including any amendment to that agreement) for the said lands entered into or to be entered into between BCHMC and the Mortgagor or amendment of the constitution, by-laws, memorandum or articles of incorporation of the Mortgagor, without the prior written consent of BCHMC, will constitute a breach of this mortgage. In addition, a breach of this mortgage will constitute a breach of the loan commitment letter and any contribution agreement referred to in this paragraph.

The Mortgagor acknowledges and agrees that the execution and delivery of this mortgage and any collateral security shall in no way merge or extinguish the terms and provisions of the Loan Commitment Letter and the terms and conditions contained in the Loan Commitment Letter continue in full force and effect, provided that in the case of any inconsistency or conflict between any provisions of the Loan Commitment Letter, any provisions of this mortgage, and/or any collateral security, the Mortgagee shall determine in its sole discretion which agreement shall prevail.

13. **Security Agreement and Assignment of Rents**

For the better security of the Mortgagee, the Mortgagor agrees that forthwith at the request and in favour of the Mortgagee, the Mortgagor will grant in a form satisfactory to the Mortgagee as security concurrent herewith:

- (a) a security agreement in favour of the Mortgagee covering all goods, chattel paper, documents of title, instruments, investment property, intangibles and money now or hereafter situate on, related to, used in connection with or arising from or out of the premises herein mortgaged, including without limiting the generality of the foregoing, all floor coverings, ranges, refrigerators, dishwashers, appliances, heating, ventilating and air-conditioning equipment, elevators, conveyancing devices and all other mechanical equipment, plumbing and electrical fixtures, bathroom fixtures, lighting fixtures, cupboards, doors, water heaters, window coverings, communications and data systems, awnings and other equipment and fixtures now or hereafter installed in or situated on such premises as the case may be, and will pay on demand to the Mortgagee the legal costs and other expenses, if any, incurred by the Mortgagee to obtain renewal of such security agreement from time to time; and
- (b) an assignment of rents and any money whatsoever to be paid by the occupants of the building situate on the said lands and every guarantee given to the Mortgagor for payment thereof,

and the Mortgagor acknowledges and agrees that any default by the Mortgagor under any other security or securities for payment of the money or performance of the obligations thereby secured shall be deemed to be default under this mortgage and shall entitle the Mortgagee to exercise any

and all remedies available in the event of default hereunder, subject to the notice provisions granted to CMHC or BCHMC herein.

14. **Environmental Matters**

- (a) In this Article, "Hazardous Substance" includes, without limitation, any contaminants, pollutants or other substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal, or plant health or life or the environment, and, in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority of competent jurisdiction.
- (b) The Mortgagor represents and warrants to the Mortgagee that to the best of the Mortgagor's information and belief, after having made due and diligent inquiry:
 - i. the said lands have never been used to manufacture, refine, handle, store or dispose of any Hazardous Substance and no Hazardous Substance has been deposited, added or discharged on the said lands by the Mortgagor or a prior owner, lessee or occupier of the said lands or of any adjoining property; or
 - ii. the Mortgagor has obtained and forwarded to the Mortgagee confirmation from a professional environmental consultant that the said lands do not contain any Hazardous Substance in excess of the standards set by the provincial authority having jurisdiction over environmental standards for residential use of the said lands.
- (c) The Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all liabilities, losses, claims and damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Mortgagee by reason of, or in any way related to, the breach of any of the representations and warranties set forth in this Article and any and all other environmental liabilities relating to any Hazardous Substance on or under the said lands during the term or any renewal of this mortgage. This agreement to indemnify will survive repayment of the monies owing under the mortgage, and will continue in force so long as the possibility of such liability, loss, claim or damage exists.
- (d) The Mortgagee or agent of the Mortgagee or agent of CMHC may, at any time, before and after default, and for any purpose deemed necessary by the Mortgagee or CMHC, enter upon the said lands to inspect the lands and buildings thereon. Without in any way limiting the generality of the foregoing, the Mortgagee or CMHC (or their respective agents) may enter upon the said lands to conduct any environmental testing, site assessment, investigation or study, deemed necessary by the Mortgagee or CMHC, and the reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the mortgage rate, shall be payable by the Mortgagor forthwith and shall be a charge upon the said lands. The exercise of any of the powers enumerated in this clause shall not deem the Mortgagee, CMHC or their respective agents to be in possession, management or control of the said lands and buildings.

15. **Financial Records**

The Mortgagor hereby:

- (a) agrees to keep records of all rents received and of all expenses paid by the Mortgagor in connection with the said lands and, at least annually, have a statement of revenue and expenses

for the said lands prepared by a professional accountant and to give a copy of the statement to the Mortgagee, if requested to do so; and,

- (b) grants to the Mortgagee the right at any time during the term of this mortgage to inspect the Mortgagor's property, books of account and other relevant records relating to the said lands and/or this mortgage and the Mortgagor agrees to advise the Mortgagee of the location of the said books of account and other relevant documents when required to do so by the Mortgagee.

16. **Appointment**

The Mortgagor hereby irrevocably appoints the Mortgagee its attorney to enforce, in the name of and on behalf of the Mortgagor, the Mortgagor's rights contained in the labour and material payment bond and the performance bond that have been or will be obtained by the Mortgagor for construction of the premises on the said lands, if applicable and the construction contract that has been or will be entered into by the Mortgagor to construct the premises on the said lands, provided that such appointment shall not be effective unless and until accepted in writing by the Mortgagee, and the Mortgagee shall be under no obligation to accept such appointment or enforce any covenants and agreements contained in those agreements.

17. **Further Encumbrances**

The Mortgagor will not allow title to the said lands or any present or after-acquired personal property located on the said lands to become further encumbered or charged in any manner whatsoever without the Mortgagee's prior written consent. If the Mortgagor further encumbers the said lands or any present or after-acquired personal property located on the said lands, without the Mortgagee's prior written consent, which consent may be withheld or granted in the Mortgagee's sole discretion, the Principal Amount, interest and all other monies secured under this mortgage shall, at the Mortgagee's sole option, immediately become due and payable. As a term of providing its consent the Mortgagee may require the encumbrancer to grant to it a registrable priority or priority/standstill agreement on terms satisfactory to the Mortgagee at the Mortgagor's expense.

18. **Additional Defaults**

If the Mortgagor makes any default in payment of the Principal Amount, interest or other monies hereby secured, or in the observance or performance of any of the covenants, agreements or provisos herein contained, or becomes bankrupt or insolvent or makes an assignment to or proposal for the benefit of his creditors, or becomes subject to or takes advantage of any provision of any legislation for the benefit of insolvent debtors, or being a corporation is dissolved or wound up, then and in every such case the whole of the monies hereby secured remaining unpaid shall, at the option of the Mortgagee, forthwith become due and payable without notice in like manner and to all intents and purposes as if the due date for payment of such monies had fully come and expired, and all powers and remedies of the Mortgagee hereunder shall be exercisable.

19. **Notice to BCHMC and Its Right to Cure Defaults**

- (a) In the event that BCHMC as Mortgagee assigns its interest in this mortgage and any security which is additional or collateral to this mortgage to a take-out lender as Mortgagee, unless otherwise agreed to in writing by BCHMC, the take-out lender (the “Assignee”) will not exercise any of its rights which arise as a result of a default by the Mortgagor under this mortgage or any security which is additional or collateral security to this mortgage until ninety (90) days after the

Assignee has provided written notice to BCHMC (the “**Notice Period**”) and so long as, within thirty (30) days of BCHMC receiving the notice describing the Mortgagor's default, BCHMC agrees in writing that during the Notice Period, BCHMC will perform all of the covenants of the Mortgagor required in this mortgage and in any security which is additional or collateral security to this mortgage, and at the end of the Notice Period, BCHMC will either pay to the Assignee all monies secured under this mortgage and required to be paid to the Assignee (including without limitation any penalty for prepayment of this mortgage during its term, if applicable) in order to assign the Assignee's interest in the mortgage to BCHMC or its nominee (in which case the Assignee will, if requested to do so by BCHMC, assign its interest in this mortgage and in any security which is additional or collateral security to this mortgage to BCHMC or its nominee), or, if BCHMC chooses not to do so, the Assignee shall then be at liberty to proceed to exercise any of the powers given to it under this mortgage and in any security which is additional or collateral security to this mortgage.

- (b) The provisions contained in Clause 19(a) are not to be construed in any manner whatsoever so as to limit or otherwise prejudice the rights of the Assignee against CMHC under any Undertaking-to-Insure issued by CMHC to the Assignee or any other agreement between CMHC and the Assignee.
- (c) Notwithstanding anything else contained in this mortgage or any security which is additional or collateral security to this mortgage, all of the following are subject to the notice required to be given by the Assignee to BCHMC under Clause 19(a), namely:
 - i. the acceptance by the Assignee of any assignment by the Mortgagor to the Assignee of the Mortgagor's equity of redemption in the said lands; and
 - ii. the exercise by the Assignee of its options under Clause 5 of the Filed Standard Mortgage Terms relating to the application of any insurance monies.

20. **Prior Encumbrances Permitted by Lender**

Lease in favour of the Mortgagor filed in the Land Title Office on the same day preceding this mortgage.

Covenant in favour of BCHMC filed in the Land Title Office on the same day preceding this mortgage.

[NTD: To be confirmed.]

END OF DOCUMENT

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves
Listed in Appendix G-1**

Note: The Parties will update the Appendices before the Effective Date, as required.

Document 4. Assignments of Rents Repayable



1. Application

Borden Ladner Gervais LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600
Vancouver BC V7X 1T2
604-687-5744

554874/000015 (Repayable)

2. Description of Land

PID/Plan Number	Legal Description

3. Nature of Interest

Type	Number	Additional Information
ASSIGNMENT OF RENTS		of Lease ____

4. Terms

Part 2 of this instrument consists of:

(a) Filed Standard Charge TermsD F Number: **ST921015**

Includes any additional or modified terms.

5. Transferor(s)

KITSELAS HOUSING SOCIETY, NO.S0073654

6. Transferee(s)

BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION
1701 - 4555 KINGSWAY AVENUE
BURNABY BC V5H 4V8

7. Additional or Modified Terms

See Schedule

**8. Execution(s)**

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

KITSELAS HOUSING SOCIETY
By their Authorized Signatory

Print Name:

Print 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.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996, c 250, that you certify this document under section 168.41 (4) of the Act, and that an execution copy, or a true copy of that execution copy, is in your possession.

LAND TITLE ACT
FORM E
SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

7. Additional or Modified Terms

Amendment to the Standard Charge Terms under No. ST921015

The Standard Charge Terms filed under No. ST921015 are amended as follows:

1.1 delete the definition of “Mortgage” and replace it with the following:

“Mortgage” means the mortgage of the Land that the Borrower has executed or will execute in return for the Lender agreeing to lend the Principal Amount (described herein), including any modifications of same.”

END OF DOCUMENT

STANDARD CHARGE TERMS

FILED BY: BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

The following set of standard charge terms are deemed to be included in every assignment of rents in which the set is referred to by its filing number as provided by Section 219.83 of the *Land Title Act*.

Interpretation

1.1 In these charge terms:

"Assignment of Rents" means the combination of the General Instrument (described herein) and these charge terms.

"Borrower" means the person or persons named in the General Instrument as a transferor;

"Borrower Mailing Address" means the postal address of the Borrower set out in the Mortgage (described herein) or the most recent postal address provided in a written notice given by the Borrower to the Lender (described herein) under these charge terms;

"Borrower's Promises and Agreements" means any one or more of the Borrower's obligations, promises, and agreements contained in this Assignment of Rents;

"Default" includes each of the events of default listed in section 5.1;

"General Instrument" means the Form C under the Land Title (Transfer Forms) Regulation, as amended, and all schedules and addenda to the Form C;

"Interest" means interest as defined in the Mortgage;

"Land" means all the Borrower's present and future interest in the land described in the General Instrument including every incidental right, benefit, or privilege attaching to that land or running with it and all building and improvements that are now or will later be constructed on or made to that land;

"Lease" means a lease or tenancy agreement, whether written or oral, of all or any part of the Land, regardless of whether the lease now exists or arises at any time in the future;

"Lender" means the person or persons named in the General Instrument as the transferee and includes any person to whom the Lender transfers this Assignment of Rents;

"Lender Mailing Address" means the postal address shown on the Mortgage or the most recent postal address provided in a written notice given by the Lender to the Borrower under these charge terms;

"Mortgage" means the mortgage of the Land that the Borrower has executed or will execute in return for the Lender agreeing to lend the Principal Amount (described herein);

"Mortgage Money" means the mortgage money as defined in the Mortgage;

"Place of Payment" means the place of payment shown on the Mortgage or any other place specified in a written notice given by the Lender to the Borrower under these charge terms;

"Principal Amount" means the Principal Amount as defined in the Mortgage;

"Rents" means all rents and other moneys that now are, or at any time in the future may be, due or owing to the Borrower under any Lease;

- 1.2 In this Assignment of Rents the singular includes the plural and vice versa.

What this Assignment of Rents Does

- 2.1 In return for the Lender agreeing to lend the Principal Amount to the Borrower, the Borrower assigns and transfers to the Lender, as security for repayment of the Mortgage Money and for performance of all the Borrower's Promises and Agreements and grants a security interest in:
- (a) all Rents; and
 - (b) the benefit of all covenants and agreements included in any Lease.
- 2.2 This Assignment of Rents shall be a charge on the Land.
- 2.3 This Assignment of Rents is given in addition to and not in substitution for any other security for repayment of the Mortgage Money.
- 2.4 This Assignment of Rents does not operate as a merger of the Mortgage or any other security or agreement.
- 2.5 When the Borrower has paid the Mortgage Money and performed all the Borrower's promises and agreements under the Mortgage and the Lender has no obligation to make any further advances or readvances, the Borrower will be entitled, at the Borrower's cost, to receive a discharge of this Assignment of Rents.
- 2.6 Provided that the Borrower is not at the time in Default under this Assignment of Rents, then any Rents received by the Borrower may be used by the Borrower.

Promises and Declaration of the Borrower

3.1 The Borrower promises:

- (a) to accept Rents under any Lease only in the amounts and on the days and times and in the manner provided for in the Lease and not to accept prepayment of any Rents to accrue due or owing under any Lease without the written consent of the Lender, not to do or omit to do anything having the effect of terminating, cancelling or accepting surrender of any Lease before the end of its term or waiving, releasing, reducing or abating any rights or remedies of the Borrower or obligations of any other party thereunder or in connection therewith;
- (b) from time to time, as the Lender requires, to provide to the Lender copies of any Lease;
- (c) to keep records of all Rents received and of all expenses paid by the Borrower in connection with the Land and, at least annually, have a statement of revenue and expenses for the Land prepared by a professional accountant if the Lender requires and to give a copy of the statement to the Lender if the Lender requires the Borrower to do so;
- (d) to pay all of the Lender's costs, including legal fees on a solicitor and client basis, to:
 - (i) prepare and register this Assignment of Rents;
 - (ii) collect the Rents, including the cost of the time and services of the Lender or the Lender's employees for so doing;
 - (iii) enforce the terms of this Assignment of Rents, including efforts to compel the Borrower to perform the Borrower's Promises and Agreements;
 - (iv) do anything that the Borrower has promised to do but has not done; and
 - (v) prepare and give the Borrower a discharge of this Assignment of Rents when the Borrower has paid all money due under the Mortgage;

and these expenses and costs will be added to the Principal Amount, be payable on demand, and bear Interest until they are fully paid;

- (e) if the Lender requires the Borrower to do so, to assign in registerable form to the Lender as additional security for the repayment of the Mortgage Money, any Lease that may be granted by the Borrower and to execute the assignment in the standard form of the Lender or in such other form as the Lender may require in its absolute discretion; and

- (f) to execute and deliver any other deeds, documents, and assurances, and to do any other acts required to carry out the true intent and meaning of this Assignment of Rents.
- 3.2 The Borrower declares to the Lender that the Borrower has the right to assign and transfer the Rents to the Lender.

Agreements Between the Borrower and the Lender

- 4.1 The Lender shall not by virtue of this Assignment of Rents or receipt of the Rents become or be deemed a mortgagee in possession of the Land or be responsible for the collection of the Rents or any part of the Rents or for the observance or performance of any of the covenants or agreements contained in any Lease and need only provide an accounting to the Borrower for any money that the Lender actually receives pursuant to this Assignment of Rents.
- 4.2 If the Borrower gives notice to the Lender, the Borrower must do so by having the notice delivered to the Lender personally or by sending it by registered or certified mail to the Lender Mailing Address.
- 4.3 If the Lender gives notice to the Borrower, the Lender must do so by having the notice delivered to the Borrower personally or by sending it by registered or certified mail to the Borrower Mailing Address.
- 4.4 Any notice sent by mail is considered to have been received five days after it is mailed.
- 4.5 Any notice to be given by the Borrower to the Lender or vice versa during a mail strike or disruption must be delivered.

Default

- 5.1 A Default occurs under this Assignment of Rents if a default occurs under the Mortgage or if the Borrower is in default of any of the Borrower's Promises and Agreements.

Consequences of a Default

- 6.1 If a Default occurs, the Lender may do any one or more of the following without notice to the Borrower:
 - (a) notify the tenant under any Lease to make payment of Rents to the Lender; and
 - (b) either with or without entering into possession of the Land, collect, realize, or otherwise deal with the Rents (or any part of the Rents) and to manage the Land to the same extent as the Borrower could do.

- 6.2 If the Lender does not exercise any of the Lender's rights on the happening of a Default or does not ask the Borrower to cure it, the Lender is not prevented from later compelling the Borrower to cure that or any subsequent Default or exercising any of its rights.

General

- 7.1 This Assignment of Rents binds the Borrower and the Borrower's successors, executors, administrators, and assigns.
- 7.2 This Assignment of Rents is subject to any notice provisions granted by the Borrower under the Mortgage to Canada Mortgage and Housing Corporation or British Columbia Housing Management Commission.
- 7.3 Each person who signs this Assignment of Rents as a Borrower is jointly and severally liable for all of the Borrower's Promises and Agreements as though each such Borrower had been the only Borrower to sign.
- 7.4 If any part of this Assignment of Rents is not enforceable, all other parts will remain in effect and be enforceable against the Borrower.

"END OF SET"

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 1: Applicable Forms of Documents for Interests on Former Kitselas Indian Reserves
Listed in Appendix G-1**

Note: The Parties will update the Appendices before the Effective Date, as required.

Document 5. Assignments of Rents Forgivable



1. Application

Borden Ladner Gervais LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600
Vancouver BC V7X 1T2
604-687-5744

554874/000015 (Forgivable)

2. Description of Land

PID/Plan Number	Legal Description

3. Nature of Interest

Type	Number	Additional Information
ASSIGNMENT OF RENTS		of Lease ____

4. Terms

Part 2 of this instrument consists of:

(a) Filed Standard Charge TermsD F Number: **ST921015**

Includes any additional or modified terms.

5. Transferor(s)

KITSELAS HOUSING SOCIETY, NO.S0073654

6. Transferee(s)

BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION
1701 - 4555 KINGSWAY AVENUE
BURNABY BC V5H 4V8

7. Additional or Modified Terms

See Schedule

**8. Execution(s)**

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

KITSELAS HOUSING SOCIETY
By their Authorized Signatory

Print Name:

Print 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.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996, c 250, that you certify this document under section 168.41 (4) of the Act, and that an execution copy, or a true copy of that execution copy, is in your possession.

LAND TITLE ACT
FORM E
SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

7. Additional or Modified Terms

Amendment to the Standard Charge Terms under No. ST921015

The Standard Charge Terms filed under No. ST921015 are amended as follows:

1.1 delete the definition of “Mortgage” and replace it with the following:

“Mortgage” means the mortgage of the Land that the Borrower has executed or will execute in return for the Lender agreeing to lend the Principal Amount (described herein), including any modifications of same.”

END OF DOCUMENT

STANDARD CHARGE TERMS

FILED BY: BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

The following set of standard charge terms are deemed to be included in every assignment of rents in which the set is referred to by its filing number as provided by Section 219.83 of the *Land Title Act*.

Interpretation

1.1 In these charge terms:

"Assignment of Rents" means the combination of the General Instrument (described herein) and these charge terms.

"Borrower" means the person or persons named in the General Instrument as a transferor;

"Borrower Mailing Address" means the postal address of the Borrower set out in the Mortgage (described herein) or the most recent postal address provided in a written notice given by the Borrower to the Lender (described herein) under these charge terms;

"Borrower's Promises and Agreements" means any one or more of the Borrower's obligations, promises, and agreements contained in this Assignment of Rents;

"Default" includes each of the events of default listed in section 5.1;

"General Instrument" means the Form C under the Land Title (Transfer Forms) Regulation, as amended, and all schedules and addenda to the Form C;

"Interest" means interest as defined in the Mortgage;

"Land" means all the Borrower's present and future interest in the land described in the General Instrument including every incidental right, benefit, or privilege attaching to that land or running with it and all building and improvements that are now or will later be constructed on or made to that land;

"Lease" means a lease or tenancy agreement, whether written or oral, of all or any part of the Land, regardless of whether the lease now exists or arises at any time in the future;

"Lender" means the person or persons named in the General Instrument as the transferee and includes any person to whom the Lender transfers this Assignment of Rents;

"Lender Mailing Address" means the postal address shown on the Mortgage or the most recent postal address provided in a written notice given by the Lender to the Borrower under these charge terms;

"Mortgage" means the mortgage of the Land that the Borrower has executed or will execute in return for the Lender agreeing to lend the Principal Amount (described herein);

"Mortgage Money" means the mortgage money as defined in the Mortgage;

"Place of Payment" means the place of payment shown on the Mortgage or any other place specified in a written notice given by the Lender to the Borrower under these charge terms;

"Principal Amount" means the Principal Amount as defined in the Mortgage;

"Rents" means all rents and other moneys that now are, or at any time in the future may be, due or owing to the Borrower under any Lease;

1.2 In this Assignment of Rents the singular includes the plural and vice versa.

What this Assignment of Rents Does

2.1 In return for the Lender agreeing to lend the Principal Amount to the Borrower, the Borrower assigns and transfers to the Lender, as security for repayment of the Mortgage Money and for performance of all the Borrower's Promises and Agreements and grants a security interest in:

- (a) all Rents; and
- (b) the benefit of all covenants and agreements included in any Lease.

2.2 This Assignment of Rents shall be a charge on the Land.

2.3 This Assignment of Rents is given in addition to and not in substitution for any other security for repayment of the Mortgage Money.

2.4 This Assignment of Rents does not operate as a merger of the Mortgage or any other security or agreement.

2.5 When the Borrower has paid the Mortgage Money and performed all the Borrower's promises and agreements under the Mortgage and the Lender has no obligation to make any further advances or readvances, the Borrower will be entitled, at the Borrower's cost, to receive a discharge of this Assignment of Rents.

2.6 Provided that the Borrower is not at the time in Default under this Assignment of Rents, then any Rents received by the Borrower may be used by the Borrower.

Promises and Declaration of the Borrower

3.1 The Borrower promises:

- (a) to accept Rents under any Lease only in the amounts and on the days and times and in the manner provided for in the Lease and not to accept prepayment of any Rents to accrue due or owing under any Lease without the written consent of the Lender, not to do or omit to do anything having the effect of terminating, cancelling or accepting surrender of any Lease before the end of its term or waiving, releasing, reducing or abating any rights or remedies of the Borrower or obligations of any other party thereunder or in connection therewith;
- (b) from time to time, as the Lender requires, to provide to the Lender copies of any Lease;
- (c) to keep records of all Rents received and of all expenses paid by the Borrower in connection with the Land and, at least annually, have a statement of revenue and expenses for the Land prepared by a professional accountant if the Lender requires and to give a copy of the statement to the Lender if the Lender requires the Borrower to do so;
- (d) to pay all of the Lender's costs, including legal fees on a solicitor and client basis, to:
 - (i) prepare and register this Assignment of Rents;
 - (ii) collect the Rents, including the cost of the time and services of the Lender or the Lender's employees for so doing;
 - (iii) enforce the terms of this Assignment of Rents, including efforts to compel the Borrower to perform the Borrower's Promises and Agreements;
 - (iv) do anything that the Borrower has promised to do but has not done; and
 - (v) prepare and give the Borrower a discharge of this Assignment of Rents when the Borrower has paid all money due under the Mortgage;

and these expenses and costs will be added to the Principal Amount, be payable on demand, and bear Interest until they are fully paid;

- (e) if the Lender requires the Borrower to do so, to assign in registerable form to the Lender as additional security for the repayment of the Mortgage Money, any Lease that may be granted by the Borrower and to execute the assignment in the standard form of the Lender or in such other form as the Lender may require in its absolute discretion; and

- (f) to execute and deliver any other deeds, documents, and assurances, and to do any other acts required to carry out the true intent and meaning of this Assignment of Rents.
- 3.2 The Borrower declares to the Lender that the Borrower has the right to assign and transfer the Rents to the Lender.

Agreements Between the Borrower and the Lender

- 4.1 The Lender shall not by virtue of this Assignment of Rents or receipt of the Rents become or be deemed a mortgagee in possession of the Land or be responsible for the collection of the Rents or any part of the Rents or for the observance or performance of any of the covenants or agreements contained in any Lease and need only provide an accounting to the Borrower for any money that the Lender actually receives pursuant to this Assignment of Rents.
- 4.2 If the Borrower gives notice to the Lender, the Borrower must do so by having the notice delivered to the Lender personally or by sending it by registered or certified mail to the Lender Mailing Address.
- 4.3 If the Lender gives notice to the Borrower, the Lender must do so by having the notice delivered to the Borrower personally or by sending it by registered or certified mail to the Borrower Mailing Address.
- 4.4 Any notice sent by mail is considered to have been received five days after it is mailed.
- 4.5 Any notice to be given by the Borrower to the Lender or vice versa during a mail strike or disruption must be delivered.

Default

- 5.1 A Default occurs under this Assignment of Rents if a default occurs under the Mortgage or if the Borrower is in default of any of the Borrower's Promises and Agreements.

Consequences of a Default

- 6.1 If a Default occurs, the Lender may do any one or more of the following without notice to the Borrower:
 - (a) notify the tenant under any Lease to make payment of Rents to the Lender; and
 - (b) either with or without entering into possession of the Land, collect, realize, or otherwise deal with the Rents (or any part of the Rents) and to manage the Land to the same extent as the Borrower could do.

- 6.2 If the Lender does not exercise any of the Lender's rights on the happening of a Default or does not ask the Borrower to cure it, the Lender is not prevented from later compelling the Borrower to cure that or any subsequent Default or exercising any of its rights.

General

- 7.1 This Assignment of Rents binds the Borrower and the Borrower's successors, executors, administrators, and assigns.
- 7.2 This Assignment of Rents is subject to any notice provisions granted by the Borrower under the Mortgage to Canada Mortgage and Housing Corporation or British Columbia Housing Management Commission.
- 7.3 Each person who signs this Assignment of Rents as a Borrower is jointly and severally liable for all of the Borrower's Promises and Agreements as though each such Borrower had been the only Borrower to sign.
- 7.4 If any part of this Assignment of Rents is not enforceable, all other parts will remain in effect and be enforceable against the Borrower.

"END OF SET"

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G-1, G-2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Note: The Parties will update this Appendix before the Effective Date, as required.

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 1. Licence of Occupation for Telecommunication Sites

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT is dated for reference «DOCUMENT_REFERENCE_DATE».

BETWEEN:

(the “Licensor”)

AND:

(the “Licensee”)

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Applicable Law**” means either the laws of Canada, the laws of the Province of British Columbia or Kitselas Law, as applicable, and includes the Kitselas Treaty;

“**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;

“**Commencement Date**” means the effective date of the Kitselas Treaty;

“**Communications Use**” means a communication user category, as that term is defined or used in the current Province of British Columbia’s *Land Act* related pricing policies; [and such other uses as the Parties may agree;

“**Disposition**” means an act of disposal or an instrument by which the act of disposal is effected or evidenced, or by which an interest in land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in land and includes a licence of occupation;

“**Fees**” means the fees set out in Article 3;

“**Hazardous Substances**” means any substance which is hazardous to persons, property or the environment, including without limitation;

(a) waste, as that term is defined in the *Environmental Management Act*; and

- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Kitselas Law” means a law made pursuant to Kitselas law-making authority set out in the Kitselas Treaty and includes the Kitselas Constitution;

“Kitselas Treaty” means the treaty agreement between Kitselas, Canada and British Columbia, including all Schedules and Appendices to it;

“Land” means that part or those parts of the land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule”;

“Management Plan” means the most recent management plan, development plan or investigative plan, prepared by you in a form specified by us, approved by us, signed and dated by the parties;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Site Inventory” means, at any time during the Term, the most recent inventory of the Communications Uses and users on the Land prepared by you in a form acceptable to us and signed and dated by the parties;

“Site Plan” means, at any time during the Term, the most recent drawing containing both plan and cross-sectional views of all the Improvements on the Land, drawn to scale and indicating their dimensions, distance from one another, and distance from the boundaries of the Land, prepared in a form acceptable to us and signed and dated by the parties;

“Term” means the period of time set out in section 2.2;

“Tower Profile” means, at any time during the Term, the most recent cross-sectional drawing of all towers comprising part of the Improvements and all antennas, dishes and other

communications equipment on the Land, in which drawing the Communications Uses from the Site Inventory must be cross-referenced to the depiction of the towers, antennas, dishes or other communications equipment, which drawing has been prepared by you in a form acceptable to us and signed and dated by the parties;

“we”, “us” or “our” refers to the Licensor alone and never refers to the combination of the Licensor and the Licensee: that combination is referred to as “the parties”; and

“you” or “your” refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to Kitselas Law and the laws of the Province of British Columbia, as applicable.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 The provisions of the Management Plan, as amended from time to time, form part of this Agreement and represent further particulars of the covenants of both parties
- 1.9 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.10 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

- 1.11 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.12 Time is of the essence of this Agreement.
- 1.13 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.14 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with Kitselas Law, regulations, or other enactments or any policy, directive, executive direction or other such guideline of general application.
- 1.15 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.
- 1.16 In the event of any conflict between the Management Plan and the terms and conditions of any other part of this Agreement, the terms and conditions of any other part of this Agreement shall prevail.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for «PURPOSE_SPECIFIC» purposes, as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on «COMMENCEMENT_DATE» and terminates on «TERMINATION_DATE» or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - FEES

3.1

ARTICLE 4 - OBLIGATIONS

4.1 You must

- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction, including Kitselas, in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful, voluntary, or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only as permitted in the Management Plan in accordance with the purposes set out in section 2.1;

- (g) not make, construct, place, anchor, secure or affix any Improvements in, on or to the Land except as permitted in the Management Plan and as necessary for the purposes set out in section 2.1;
- (h) within 3 months of a written request from us, provide us with a decommissioning or reclamation plan, in a form acceptable to us, that meets the requirements set out in this agreement, including the Management Plan if applicable;
- (i) provide to us, within 30 days of receiving a request from us, all reports and records we may request from you concerning your activities under this Agreement and all other matters related to this Agreement;
- (j) not make, construct, place, anchor, or affix any Improvements in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
 - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access; despite the foregoing, you will be deemed to not be in breach of this subsection so long as:

- (iii) you are the owner of an upland property adjacent to the Land and your activities on the Land only interfere with riparian rights of access held by you; or
- (iv) each owner of any upland property adjacent to the Land whose rights of riparian access are infringed by your activities undertaken within the Land remains bound by an agreement in which that owner consents to any such infringement. Any such agreement must be in a form and on terms acceptable to us, including, if we so require that the agreement be in a form appropriate for registration in a Land Title Office against the title of the upland property.

You acknowledge that if any such agreement ceases to be binding on an upland owner or is found to be ineffective or unenforceable for any reason then you remain responsible for complying with this subsection and we may terminate this Agreement in accordance with Article 8 if you fail to satisfy your obligations under this subsection;

- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for

money that you are required to hold back under the *Builders Lien Act* or any similar enactment of Kitselas Law;

- (l) if any claim of lien over the Land is made under the *Builders Lien Act* or any similar enactment of Kitselas Law for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (m) not cut or remove timber on or from the Land without our prior written consent;
- (n) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (o) maintain all Improvements on the Land in good order and condition and in a safe, clean and sanitary state of repair, to our satisfaction;
- (p) not dredge or excavate the Land or deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;
- (q) not alter, repair or add to any Improvement that was, or may be, placed on or made to the Land under another Disposition or in connection with the use of Land apart from this Agreement, unless you obtain our prior written approval;
- (r) at our written request and at your expense, construct fences in the locations on the Land and to the standards required by us within the time specified by us;
- (s) provide the following to us, within 30 days of receiving a request from us for any or all of them,
 - (i) Certificates of Affiliation for any Affiliate using the Land for a Communications Use permitted under section 4.5,
 - (ii) copies of radio licenses (including amendments to them) which relate to a Communications Use of the Land under this Agreement,
 - (iii) photographs of the Land and the Improvements that you took during your most recent visit to the Land, and;
 - (iv) copies of all subtenure agreements entered into by you which permit other persons, including without limitation Affiliates, to use the Land;

- (t) obtain and maintain in good standing during the Term all permits, permissions, licences, approvals and agreements required in order to use and occupy the Land for the purpose described in Article 2.1 and deliver copies of such to us upon request;
- (u) if any soil is disturbed by you as a result of your construction, use or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us in a timely manner;
- (v) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey that shows the location of all Improvements, roads, buildings and other structures owned, placed on, constructed or used by you on the Land within one year of the date of the request;
- (w) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any Artifact or Feature on or under the Land, you must:
 - i. promptly notify Kitselas;
 - ii. immediately cease any further activity that could affect the Artifact or Feature;
 - iii. take reasonable measures to protect the Artifact or Feature; and
 - iv. comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
- (x) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (y) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue the entry upon, use or occupation of the Land by you or by those for whom you are responsible in law,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (z) on, or before the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
 - (ii) remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
 - (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
 - (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under a Disposition to an unrelated third party, and
 - (v) unless otherwise specified in the Management Plan, restore the surface of the Land to the condition that the Land was in on «RESTORE_SURFACE_DATE», but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 Except as permitted under section 4.5 or 4.7, you must not, without our prior written consent

- (a) use or occupy the Land for a purpose other than as set out in this Agreement, including [*specifically described uses*] the Management Plan;
- (b) permit others to use the Land;
- (c) construct, place, add to, affix or make any material changes to the Improvements other than as depicted or authorized in the Management Plan;
- (d) locate any [*list specialized equipment not forming part of Improvements*] on the Land other than as depicted in the Management Plan.

4.3 We may, in addition to imposing other reasonable requirements as conditions which must be

satisfied before we grant our consent under section 4.2 or 7.1, require you to:

- (a) submit to us for approval a proposed Site Plan to replace that which is then part of the Management Plan, which proposed Site Plan must take into account the proposed new use of the Land and the proposed change or addition to the Improvements;
- (b) advertise, in the manner required by us, your proposed new use of the Land or proposed change or addition to the Improvements;
- (c) refer, for comment, your proposed new use of the Land or proposed change or addition to the Improvements to those other government ministries, agencies, departments, local governments and others specified by us, and when such comments are received, provide such comments to us; and
- (d) enter into such amendments to this Agreement, including without limitation to Article 3, as we reasonably determine are necessary.

4.4 We will sign the proposed Site Plan submitted under section 4.3 if and when we grant our consent under section 4.2.

4.5 Despite subsection 4.2, but subject always to section 4.10, you may:

- (a) use or permit others to use the Improvements or the antennas, dishes or other communications equipment on the Land for a Communications Use identified in the Management Plan,
- (b) install and use or permit others to install and use additional antennas, dishes or other communications equipment on the Land, or
- (c) cease using or permit others to cease using the Improvements or the antennas, dishes or other communications equipment on the Land for a Communications Use identified in the Management Plan,

but only if:

- (d) such use or cessation of use does not materially change the Improvements or create additional Improvements, and
- (e) not less than 120 days prior to the next anniversary of the Commencement Date after the use begins or ceases (or if there is less than 120 days between such use beginning or ceasing and the next anniversary of the Commencement Date, not less than 120 days prior to the next anniversary of the Commencement Date in respect of which 120 days notice may be provided), you deliver to us written notice of such use beginning or ceasing, which notice must include
 - (i) a proposed Site Inventory to replace the one which is then part of the

Management Plan, and

- (ii) a proposed Tower Profile to replace the one which is then part of the Management Plan, which proposed Tower Profile cross-references the Communications Uses specified in the proposed Site Inventory referred to in paragraph (i).

[these are subject to change dependent on occupier]

- 4.6 We will sign the proposed Site Inventory and Tower Profile submitted under section 4.5 if you have complied with section 4.5 and are not in default of this Agreement. These documents will not constitute the Site Inventory or Tower Profile under this Agreement unless and until the parties have signed and dated them.
- 4.7 Without affecting the requirements of sections 4.2 and 4.3, we may, at your request, prior to completing the process contemplated by section 4.3, grant our conditional consent to a proposed change to or creation of an addition to the Improvements if the proposed change or addition is, in our opinion, of a minor nature and unlikely to be opposed by the entities referred to in section 4.3(c), provided that in those circumstances, such conditional consent may be withdrawn by us, in our sole discretion, if the referrals and advertising referred to in section 4.3 result in a decision by us to take such action.
- 4.8 If a conditional consent granted by us under section 4.7 is withdrawn, you must, within 120 days of such withdrawal, remove from the Land any Improvements made or antennas, dishes or other communications equipment added under such conditional consent and restore the Land and the Improvements to the condition which existed prior to the granting of such conditional consent, provided that if such removal and restoration reasonably require more than 120 days to complete, you will be deemed to be in compliance with this section if you commence such removal and restoration within such 120 day period and diligently complete them within a reasonable period of time.
- 4.9 If we doubt the consistency of the Management Plan with your actual use of the Land under this Agreement, you must upon our written request made to you not more than once a year, offer to provide transportation for us to the Land, at your expense, at such times during the Term when you are travelling to the Land to maintain any part of the Improvements or antennas, dishes or other communications equipment on the Land. We understand that if such transportation involves air travel, it will be provided from the public airport that is both closest to the Land and accessible by public highway, unless the parties agree to it being provided from another location.
- 4.10 Section 4.5 does not apply to that portion of the Land identified in the attached Legal Description Schedule as the linear corridor for an electrical powerline.
- 4.11 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Agreement.
- 4.12 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.13 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time, if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement; or
- (e) if applicable, as a result of the use of the Land under prior agreements for the same purpose;

unless we have given prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.14 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or

- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.15 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

- 5.1 You agree with us that:

- (a) other persons may hold or acquire rights to use the Land, including rights held, granted or acquired under Applicable Law; such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (b) other persons may hold or acquire interests in or over the Land granted under Applicable Law, and such interests may exist as of the Commencement Date, and following the Commencement Date Kitselas may grant such interests (including fee simple interests, and leases), and make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, provided such grant or disposition does not have a material adverse impact on your use of the Land, as provided in this Agreement;
- (c) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (d) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under Applicable Law;
- (e) you will not commence or maintain proceedings in respect of any interference with your

use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in subsections (a) and (b);

- (f) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;
- (g) except as otherwise authorised in this Agreement, you will not interfere with lawful public access over the Land;
- (h) you will make no claim against us or any person acting under the authority of Kitselas Law, or any other applicable enactment, for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement;
- (i) notwithstanding anything to the contrary in this Agreement, if we, in our sole discretion, determine that the Land is required for flooding purposes in connection with a hydro electric power project, we may cancel this Agreement on 90 days written notice to you, and where we cancel this Agreement under this provision, neither you nor any person claiming under you shall be entitled to any form of compensation;
- (j) you are aware of and, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby acknowledge that there is a potential flood, erosion and debris flow danger to the Land from water hazards, including «WATER_HAZARD_NAME»;
- (k) nothing in this Agreement shall prejudice or affect our rights, powers and remedies in relation to you, including your heirs, executors, administrators, successors and assigns, or the Land, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by us as if this Agreement had not been made by the parties;
- (l) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (m) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(z)(ii) or is required to be removed under (iv), in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land on termination or within the time period provided for in the direction or permission given under paragraph 4.1(z)(iv); and
- (n) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year

to year will not be created by implication of law and you will be deemed to be a monthly occupier only, and you will continue to be subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$ _____ which will:
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other Dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we provide the written notice described in section 6.1(c) we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;
- and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.
- 6.6 You must without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
- (a) Comprehensive Personal Liability and/or other insurance as required in an amount of

not less than \$«INSURANCE_AMOUNT» per occurrence, with an extension insuring against liability for bodily injury, and property damage arising from accidents or occurrences on the Land or the Improvements, including «PERSONAL_LIABILITY_USE»;

- (b) Commercial General Liability and, if applicable Marine General Liability insurance in an amount of not less than \$«INSURANCE_AMOUNT» inclusive per occurrence insuring against liability for personal injury, bodily injury and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured but only with respect to liability arising out of the activities of the named insured;
- (c) Sudden and accidental pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than \$«INSURANCE_AMOUNT»; or if such endorsement is unavailable sudden and accidental pollution insurance insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from your use of the Land as permitted under this Agreement with a limit of liability not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and the policy shall include us as additional insured;
- (d) Environmental Impairment Liability (Pollution Legal Liability) insurance insuring against bodily injury, property damage, and cleanup expenses (including removal and/or transit and disposal of contaminants) arising from gradual or sudden pollution events arising from your use of the Land as permitted under this Agreement in an amount not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured. If this insurance is written on a claims-made basis it must include the option to purchase an extended reporting period of 24 months beyond the date of cancellation or expiry of this Agreement;
- (e) Aviation Liability insurance on all aircraft operated or used in connection with your use of the Land as permitted under this Agreement insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any Canadian Aviation Regulation and in any event not less than a per occurrence combined single limit of:
 - (i) «INSURANCE_AMOUNT» for aircraft carrying pilot only (no passengers), or
 - (ii) «INSURANCE_AMOUNT» for aircraft up to 5 passenger seats, or
 - (iii) «INSURANCE_AMOUNT» plus «INSURANCE_AMOUNT» for each additional passenger seat for aircraft up to 10 passenger seats, or

(iv) «INSURANCE_AMOUNT» for aircraft over 10 passenger seats;

and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation and include us as additional insured. Where applicable, such policy will also include coverage for aerial drift or misapplication of fertilizers or herbicide chemicals in an amount not less than «INSURANCE_AMOUNT» per occurrence;

- (f) Airport Premises and Operations Liability in an amount not less than «INSURANCE_AMOUNT» per accident or occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (g) Watercraft liability insurance on all watercraft operated or used in connection with your use of the Land as permitted under this Agreement (including rented watercraft), in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than «INSURANCE_AMOUNT» and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured and if applicable, include coverage for marine towing operations;

6.7 You must

- (a) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (b) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in a form satisfactory to Kitselas;
- (c) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in a form satisfactory to Kitselas;
- (d) notwithstanding subsection (b) or (c) above, if requested by us, provide to us certified copies of the required insurance policies; and

make your insurer aware of this Agreement within 30 days of signing this Agreement

6.8 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us proof of all insurance then required to be maintained by you under this Agreement in a form satisfactory to Kitselas.

- 6.9 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement.
- 6.10 You waive all rights of recourse against us in relation to damage to your own property arising from any cause whatsoever.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may, in our sole discretion, withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.
- 7.3 We may, in addition to imposing other requirements as conditions which must be satisfied before we grant our consent under section 7.1, require you to:
- (a) submit to us for approval an amended Management Plan, including without limitation a proposed Site Inventory and a proposed Tower Profile to replace those which are then part of the Management Plan;
 - (b) advertise, in the manner we require, the amendments to the Management Plan proposed under subsection (a);
 - (c) refer, for comment, the amendments to the Management Plan proposed under subsection (a) to those government ministries, agencies, departments, local governments, including those of Kitselas, and others specified by us and, when such comments are received, provide such comments to us;
 - (d) enter into such amendments to this Agreement, including without limitation to Article 3 and the Management Plan, as we reasonably determine are necessary; and
 - (e) provide to us copies of all agreements entered into by you which permit other persons to use the Land.
- 7.4 You acknowledge that we will require a reasonable period of time to consider requests for our consent under section 7.1, and in particular, to consider comments received as a result of the referrals and advertising referred to in section 7.3.

- 7.5 We will sign the proposed Site Inventory and the proposed Tower Profile submitted under section 7.3 if we grant our consent under section 7.1. These documents will not constitute the Site Inventory or Tower Profile under this Agreement unless and until the parties have signed and dated them.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that

- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with other provisions of this Agreement, or
 - (iii) in our opinion, fail to make diligent use of the Land for the purposes set out in this Agreement;and you fail to rectify such default or failure within the time period specified in a written notice from Kitselas requesting you to do so,
- (b) if you fail to maintain in good standing any Disposition or other licence, permit, or agreement in any way related to your use and occupation of the Land under this Agreement, including without limitation the «CROSS_CANCELLATION_DETAILS»;
- (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation and,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;

- (e) if you are a society and you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- (b) if you default on any of the covenants or obligations on your part required to be kept or performed and you fail to rectify such default or failure within the time period specified in a written notice from us requesting you to do so, we may perform or cause to be performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the us shall forthwith be paid by you to us; and
- (c) our remedies under this Article are in addition to those available to us under applicable law including Kitselas Law.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, before resorting to litigation the parties will make reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Notwithstanding section 9.1, either party may, at any time, apply to a court of competent jurisdiction for interim, injunctive or conservatory relief.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

«DB_ADDRESS_KITSELAS»;

to you

«DB_ADDRESS_MAILING_TENANT»;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt or deemed receipt, the notice shall be re-sent by courier or other means of actual delivery.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy or other electronic copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy or other electronic copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of

your obligations under this Agreement, the time for the performance of that obligation will be extended by the time reasonably required to perform the obligation provided that:

- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
- (b) you diligently attempt to remove the delay.

11.6 You acknowledge and agree with us that

- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
- (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land;
 - (v) the application of any federal or provincial enactment or law to the Land; and
 - (vi) the existence, availability or quality of access or service to the Land now or in the future;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site disclosure statement” under the *Environmental Management Act*;
- (e) we are under no obligation, express or implied, to provide financial assistance or to

contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and

- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Licensor

Print Name

SIGNED BY
«DB_NAME_TENANT»

SIGNED on behalf of «DB_NAME_CORPORATION»
by a duly authorized signatory

Authorized Signatory

SIGNED on behalf of «DB_NAME_CORPORATION»
By its authorized signatories

Authorized Signatory

Authorized Signatory

SIGNED on behalf of _____
by its general partner _____

BY: _____

BY: _____

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: «DB_LEGAL_DESCRIPTION»

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 2. Permit to Occupy Kitselas Lands

Note: The Parties will update the Appendices before the Effective Date, as required.

Permit to Occupy Kitselas Lands

The holder of Conditional Water Licence [#] (the "Water Licence") granted by the Province of British Columbia and dated for reference [date] whose licence authorizes the diversion of water from [name of creek or river], is hereby authorized to occupy Kitselas Lands by constructing, maintaining and operating on Kitselas Lands the works authorized under the Water Licence and any licences which may be issued in substitution thereof.

- (a) The portion of Kitselas Lands authorized to be occupied under this permit is [description of the lands] the location of which is shown approximately on the plan attached to the Water Licence.
- (b) The approximate dimensions of the Kitselas Lands authorized to be occupied under this permit are [x] feet in length and [x] feet in width having an area of [x] for a pipeline.
- (c) The permittee may damage, cut or cut and remove from Kitselas Lands any timber necessary to permit the construction, maintenance and operation of the works authorized under the Water Licence. Prior to damaging, cutting, or removing any timber on or from Kitselas Lands, the permittee will apply for and obtain a licence authorizing the activity from Kitselas which may include terms and conditions for the disposition of the timber. The amount of compensation payable to the Kitselas in respect of trees, including merchantable or young growth, damaged, cut or removed on or from Kitselas Lands by the permittee, will be the sum or sums fixed by Kitselas, which will not exceed fair market value.
- (d) This permit is issued and accepted on the understanding that the permittee will pay annual fees to Kitselas in the amount that would be payable under the *Water Act and Regulations* with respect to a Permit to Occupy Crown Land located on similar Crown land. Such fees are payable in advance on the date this permit is issued and on each anniversary of the date this permit is issued.
- (e) This permit is appurtenant to the land, mine or undertaking to which the Water Licence is appurtenant.
- (f) This permit will become void if the Water Licence with respect to which this permit is issued should terminate, be abandoned or cancelled, or amended so as to render this permit unnecessary.
- (g) This permit is issued and accepted on the understanding that the permittee will indemnify and save harmless Kitselas for all loss, damage to works, cost or expense suffered by the permittee by reason of the

Kitselas Lands or any portion thereof being submerged or damaged by erosion or otherwise affected by flooding.

- (h) The holder of this permit will not be entitled to compensation if Kitselas grants permits to other persons to occupy the Kitselas Lands affected by this permit.
- (i) In the event of a dispute at any time with respect to the area or boundaries of the Kitselas Lands affected by this permit, the holder will, at its own expense, have the land surveyed by a duly qualified surveyor.

SIGNED on behalf of Kitselas
by a duly authorized representative
on [insert month, day, year]

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 3. Resource Road Permit

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS PERMIT, dated for reference _____ is issued to:

NAME

ADDRESS

Phone:

Fax:

Email:

(the "Permittee")

1.00 GRANT OF RIGHTS

1.01 In consideration of the Permittee's right to access Kitselas **Lands** or **Resources** under the Licence or Licences listed in Schedule "A" and to provide access to those Lands or Resources, subject to any applicable legislation, Kitselas grants to the Permittee

OR: In consideration of the Permittee's right to access Crown lands that requires access on or through Kitselas Lands, subject to any applicable legislation, Kitselas grants to the Permittee

- (a) a non-exclusive right to enter on the **Permit Area** described in paragraph 2.01 and construct within that Permit Area a **road(s)**, including such landings, gravel/sand pits, rock quarries and waste areas as are necessary for construction of the road(s) or for access to the timber and
- (b) the right to use and maintain that road(s), or to use and maintain a road(s), within the Permit Area described in paragraph 2.01, in accordance with the conditions/specifications described in the attached Schedule "A".

1.02 Where it is necessary to harvest Kitselas timber from the clearing area in order to construct or maintain the roads, including landings, gravel/sand pits and rock quarries within the permit area, Kitselas grants to the Permittee the right to harvest that Kitselas timber in the permit area. The Permittee must comply with the timber merchantability specifications described in the attached Schedule "A".

1.03 In accepting this Road Permit, the Permittee acknowledges that it is bound by the provisions of this Road Permit and any applicable legislation.

1.04 The Schedules form an integral part of this Road Permit.

1.05 Any amendment to this Road Permit forms an integral part of the Permit.

1.06 There is reserved to the Kitselas Government:

- (a) the right to grant rights-of-way across, through or over the permit area to other parties, on such terms and conditions as Kitselas determines;

- (b) the right of employees and agents of the Kitselas Government to use and to cross the road and the permit area; and
- (c) the right to grant timber harvesting rights to others with respect to the timber located outside the clearing area, but within the permit area.

The exercise of the Kitselas Government's rights under this paragraph will not unreasonably impede or obstruct the Permittee's reasonable use of the road, other than in instances of emergency.

- 1.07 **Waste assessments** must be conducted in accordance with the requirements of the applicable licences or associated cutting permits.

2.00 PERMIT AREA AND TERM

- 2.01 The permit area is that area of Kitselas land described and shown on the Exhibit "A" map(s) attached to this Road Permit.
- 2.02 The term of this Road Permit begins on **DATE**, and terminates on the date when Kitselas notifies the Permittee in writing that:
- (a) the road has been deactivated to Kitselas's satisfaction; or
 - (b) future use of the road by others will preclude the need for deactivation; or
 - (c) the Road Permit is cancelled in accordance with the *Kitselas Natural Resources Act*.
- 2.03 Upon termination or cancellation of this Road Permit, title to all improvements that are located on Kitselas land under this Road Permit, will vest in the Kitselas Government without compensation to the Permittee, unless otherwise permitted by prior written consent of Kitselas or where other arrangements are described in Schedule "A".

3.00 TIMBER MARKS AND REPORTING

- 3.01 For purposes of the *Kitselas Natural Resources Act* the timber mark(s) for this Road Permit is/are that mark(s) specified in the Schedule "A" and associated roads shown on the Exhibit "A" map(s).

4.00 FINANCIAL

- 4.01 In addition to other money payable by the Permittee under the *Kitselas Natural Resources Act* and in respect of this Permit, the Permittee must pay to the Kitselas Government, immediately on receipt of a notice, statement or invoice issued on behalf of the Kitselas Government:
- (a) stumpage under the *Kitselas Natural Resources Act* in respect of timber harvested under this Permit, at rates determined, re-determined, and varied under that Act; and

- (b) waste assessments for merchantable Kitselas timber not harvested and for timber wasted.

5.00 APPROVALS

- 5.01 Prior to constructing, maintaining and using the road permitted under this Road Permit, the Permittee must, unless Kitselas authorizes otherwise in writing:
 - (a) obtain all necessary permits or authorizations for crossing alienated lands including powerlines, pipelines, railroads, public roads, and agricultural land reserves; and
 - (b) obtain all necessary permits or authorizations from other resource agencies and any authorized third party occupiers or users of the clearing area.
- 5.02 Kitselas authorizes the Permittee to construct a junction, where necessary, with another road on Kitselas Land. The Permittee must ensure that any proposed junction provides for minimum sight distance, has sufficient junction angle and suitable road grade for the expected traffic. A culvert must be installed, as required, to maintain drainage patterns.

6.00 OTHER RIGHTS

- 6.01 The Permittee's rights under this Permit are subject to any other rights of use and occupation over the permit area and the clearing area which the Kitselas Government has granted to third parties and the Permittee covenants not to obstruct or impede a third party in their authorized use or occupation of these areas.
- 6.02 Except where a mineral reserve established under *Kitselas Natural Resources Act* allows otherwise, the Permittee covenants and agrees not to obstruct or impede the use of mineral tenures which have been, or which may be, issued to third parties.
- 6.03 The Permittee agrees to indemnify and save harmless the Kitselas Government from and against all claims for loss or damage, whether caused by the Permittee's acts or omissions, including losses or damages arising out of the Permittee's interference or obstruction of a third Party's authorized use, or occupation of the permit area or clearing area.

7.00 MISCELLANEOUS

- 7.01 Where Kitselas has approved the closing of a road or restricting its use, the Permittee must ensure that any access control structure erected to restrict motor vehicle traffic will not be, or become, a hazard to the users of the road. The structure shall be placed in a conspicuous location, with any gates adequately marked with permanent reflective material to be clearly visible to the operator of a motor vehicle from a safe stopping distance. Warning signs must be located to

give vehicle operator's adequate warning of the obstruction.

- 7.02 This Road Permit enures to the benefit of, and is binding on, the parties and their respective heirs, executors, successors and permitted assigns.
- 7.03 Where a Permittee wishes to communicate with its company vehicles by means of radio, the Permittee must post the radio frequency at the start of the road and will ensure that all of its company vehicles and those of its subcontractors use the posted radio frequency in an appropriate manner.
- 7.04 The Permittee will ensure the road(s) under this Permit is(are) signed with kilometre markers, except where the road(s) is(are) closed or deactivated.

8.00 INTERPRETATION

- 8.01 Definitions of terms not defined in this Road Permit have the same meaning as that given in any applicable legislation. In cases of conflict, the definition in the legislation governs.
- 8.02 In this Road Permit:
 - (a) "clearing area" means that area of Kitselas land bounded by the outer limits of the clearing width as described in legislation that pertains to the permit and activities under the permit, over the length of road shown on attached Exhibit "A" Map(s);
 - (b) "landing" means an area modified by equipment that is designed for accumulating logs before they are transported;
 - (c) "Lands" means Kitselas Lands as defined in the Kitselas Treaty;
 - (d) "Resources" means minerals, water, timber, and other flora and fauna owned or managed by Kitselas on the Lands;
 - (e) "road" means a road, trail, or path, and their associated rights-of-way on or through Kitselas Lands, or providing access to Kitselas Resources;
 - (f) "Schedule" means the Schedule "A" attached to this Road Permit or amendments to this Road Permit;
 - (g) "Waste assessment" means a measurement - conducted in a manner acceptable to Kitselas - of material not removed from the clearing area that meets the specifications described in Schedule "A".

9.00 NOTICE

- 9.01 A notice given under this Road Permit must be in writing.
- 9.02 A notice given under this Road Permit may be:
 - (a) delivered by hand;
 - (b) sent by mail;
 - (c) subject to paragraph 9.05, sent by facsimile transmission, to the address or

facsimile number, as applicable, specified on the first page of this Road Permit, or to such other address or facsimile number as is specified in a notice given in accordance with this part; or

- (d) sent by electronic transmission to the address specified on the first page of this Road Permit or to such other address that is specified in a notice given in accordance with this part.

9.03 If a notice is given under this Road Permit, it is deemed to have been given:

- (a) if it is given in accordance with Subparagraph 9.02(a), on the date it is delivered by hand;
- (b) if it is given in accordance with Subparagraph 9.02(b), subject to paragraph 9.04, on the eighth day after its deposit in a Canada Post Office at any place in Canada;
- (c) if it is given in accordance with Subparagraph 9.02(c), subject to paragraph 9.05, on the date it is sent by facsimile transmission; and
- (d) if it is given in accordance with Subparagraph 9.02(d), is considered to have been received when the sender receives confirmation that the notice has been sent to the address specified under that subparagraph.

9.04 If, between the times a notice is mailed in accordance with Subparagraph 9.02(b) and the time it is actually received, there occurs a postal strike, lockout or slowdown that might reasonably affect delivery of the notice, the notice is not deemed to be given until the party actually receives it.

9.05 If a notice is sent by facsimile transmission, the Party sending the notice must take reasonable steps to ensure that the transmission has been successfully completed.

DATED: _____

Name of Authorized Signatory
Kitselas Government

SCHEDULE “A”

1.00 RIGHTS OF ACCESS

1.01 Tenure: ***PROVIDE timber, mineral, commercial recreation, etc TENURE NUMBER, e.g Forest Licence TKM001***

1.02 Access through Kitselas Land to Crown Land for Commercial or Industrial Purposes: ***PROVIDE CROWN’s TENURE NUMBER, or Letter of Authorization from Canada or BC***

(Note: there will have to be something in Kitselas Legislation that says any use of or access to roads on Kitselas Lands must be Permitted; followed by a statement that Km Citizen and general public access to and use of Kitselas Roads for non-commercial purposes is Permitted (– therefore all other uses will need to be Permitted)

2.00 SPECIAL PROVISIONS

2.01 Timber Merchantability Specifications:

- (a) Timber harvested under authority of this Road Permit shall be cut to the following minimum specification:

PROVIDE TIMBER SPEC’s

OR

“As per specifications associated with Forest Licence TKM001”

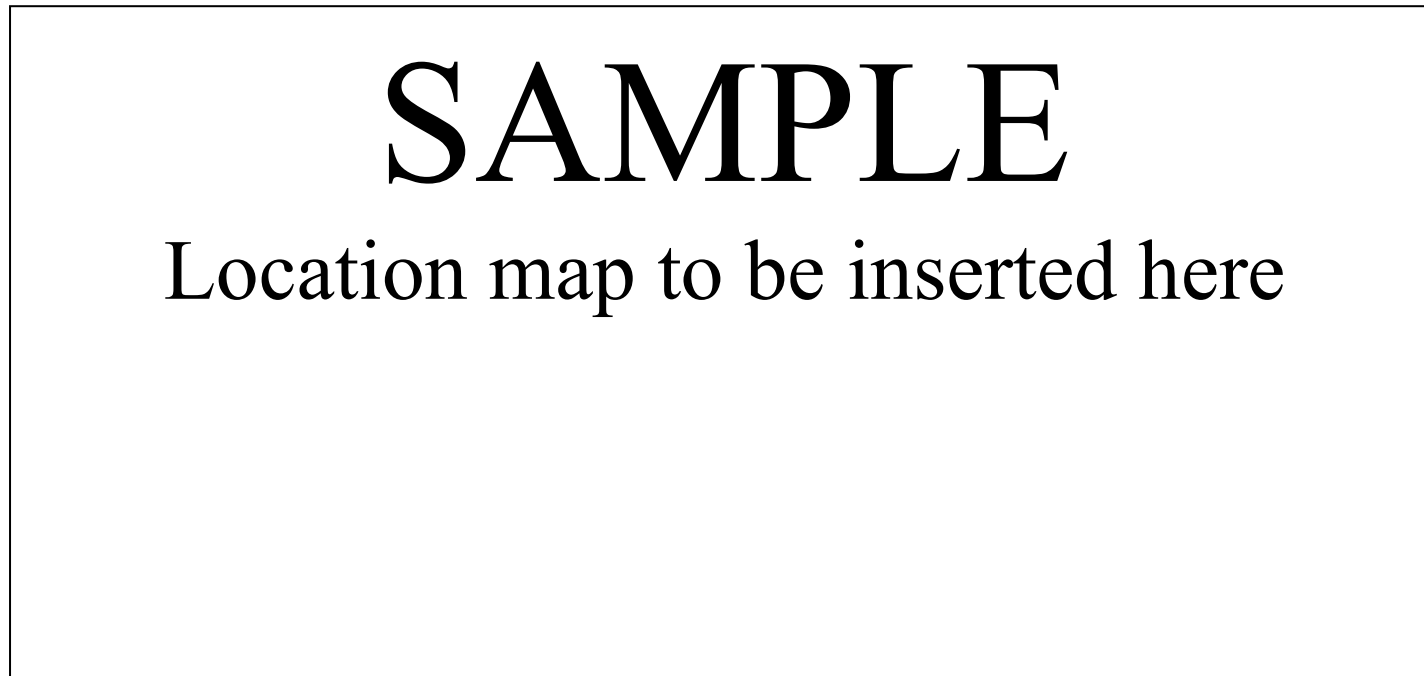
2.02 Timber Mark:

- (a) For those roads shown on the applicable Exhibit “A” map(s) referred to in paragraph 2.01 of the Road Permit, the timber mark shall be;

ROAD PERMIT NUMBER	TIMBER MARK
<i>R001</i>	<i>KKM 001</i>

EXHIBIT A

MAP OF : R21831 (shown in bold black)			
FOREST REGION : RSK FOREST DISTRICT : DKM	TSA : 10 LAND DISTRICT : CASSIAR DISTRICT	PULPWOOD AGREEMENT :	MGT UNIT TYPE : TIMBER SUPPLY AREA MGT UNIT NO : 10
ESF SUBMISSION ID : 1719726 BCGS MAPSHEET NO : 103P.007	SCALE : 1:10000 at ANSI A Size Length (Km): 0.283	UTM : 9 NAD : NAD 83	DRAWN BY : FTA DATE : Nov 22, 2017



Legend	
	Tenure Application
	Tenure Road Application
	Retired Tenure Road
	P of C
	P of T
	Tenure Feature
	Range
	TFL
	Provincial Forest
	Forest Service Road
	Highway
	Municipal Road
	Non Status Road
	Recreation Trails
	Road Permit
	SUP Road
	Right of Way
	Schedule B CP Road
	Mineral Tenure Points
	Cities
	Waterbodies
	River/Stream
	Coastline / Island
A (Length: 0.137 Km, R/W: 75 m) PofC UTM9 518659, 6097539 PofT UTM9 518795, 6097519 B (Length: 0.145 Km, R/W: 75 m) PofC UTM9 516982, 6098267 PofT UTM9 517119, 6098315	

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 4. Airport Beacon Lease

Note: The Parties will update the Appendices before the Effective Date, as required.

TERMS OF INSTRUMENT - Part 2

For valuable consideration, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“Agreement” means this General Instrument;

“Applicable Law” means either the laws of Canada, the laws of the Province of British Columbia or Kitselas Law, as applicable, and includes the Kitselas Treaty;

“Artifact or Feature” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity

“Commencement Date” means the effective date of the Kitselas Treaty _____;

“Disposition” means an act of disposal or an instrument by which the act of disposal is effected or evidenced, or by which an interest in land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in land and includes a licence of occupation;

“Hazardous Substances” means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Kitselas Law” means a law made pursuant to Kitselas law-making authority set out in the Kitselas Treaty and includes the Kitselas Constitution.

“Kitselas Treaty” means the treaty agreement between Kitselas, Canada and British Columbia, including all Schedules and Appendices to it.

“Land” means the land described in item 2 of Part 1 of this General Instrument [consider if not registered: that part or those parts of the following described land shown outlined by bold line on the schedule attached to this Agreement entitled “Legal Description Schedule”:]

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Rent” means the rent set out in Article 3;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Transferor alone and never refers to the combination of the Transferor and the Transferee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Transferee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to Kitselas Law and the laws of the Province of British Columbia, as applicable.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.

- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.10 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.11 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.12 Time is of the essence of this Agreement.
- 1.13 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.14 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with Kitselas Law, regulations, or other enactments or any policy, directive, executive direction or other such guideline of general application.
- 1.17 Where this Agreement contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words will have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained in this Agreement, unless the context requires another construction of those words.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a lease of the Land for operating and maintaining an airport hazard beacon.
- 2.1 The term of this Agreement commences on the Commencement Date and terminates on the _____ anniversary of that date, or such earlier date provided for in this Agreement.

ARTICLE 3 - RENT

3.1 The Rent for the Term is \$1.00, the receipt of which we acknowledge.

ARTICLE 4 - COVENANTS

4.1 You must

- (a) pay, when due,
 - (i) the Rent to us at the address set out in Article 10,
 - (i) the Realty Taxes, and
 - (ii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction, including Kitselas, in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful, voluntary, or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;

- (f) use and occupy the Land only in accordance with the purposes set out in section 2.1;
- (g) not make, construct, place, anchor, secure or affix any Improvements in, on or to the Land except as necessary for the purposes set out in section 2.1;
- (h) within 3 months of a written request from us, provide us with a decommissioning or reclamation plan, in a form acceptable to us, that meets the requirements set out in this agreement;
- (i) provide to us, within 30 days of receiving a request from us, all reports and records we may request from you concerning your activities under this Agreement and all other matters related to this Agreement;
- (j) not make, construct, place, anchor, secure or affix any Improvements in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
 - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access; despite the foregoing, you will be deemed to not be in breach of this subsection so long as:

- (iii) you are the owner of an upland property adjacent to the Land and your activities on the Land only interfere with riparian rights of access held by you; or
- (iv) each owner of any upland property adjacent to the Land whose rights of riparian access are infringed by your activities undertaken within the Land remains bound by an agreement in which that owner consents to any such infringement. Any such agreement must be in a form and on terms acceptable to us, including, if we so require that the agreement be in a form appropriate for registration in a Land Title Office against the title of the upland property.

You acknowledge that if any such agreement ceases to be binding on an upland owner or is found to be ineffective or unenforceable for any reason then you remain responsible for complying with this subsection and we may terminate this Agreement in accordance with Article 8 if you fail to satisfy your obligations under this subsection;

- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act* or any similar enactment of Kitselas Law;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act* or any similar enactment of Kitselas Law for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (n) not cut or remove timber on or from the Land without our prior written consent;
 - (a) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (o) maintain all Improvements on the Land in good order and condition and in a safe, clean and sanitary state of repair, to our satisfaction;
- (p) not dredge or excavate the Land or deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;
- (q) not place on or make to the Land any Improvement that may interfere with the ascent, descent or flight of any aircraft over the Land;
- (r) not fence the perimeter of the Land nor erect fencing on the Land unless you obtain our prior written approval;
- (s) at our written request and at your expense, construct fences in the locations on the Land and to the standards required by us within the time specified by us;
- (t) obtain and maintain in good standing during the Term all permits, permissions, licences, approvals and agreements required in order to use and occupy the Land and Improvements for the purpose described in Article 2.1 and deliver copies of such to us upon request;
- (u) if any soil is disturbed by you as a result of your construction, use or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us in a timely manner;

- (v) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey of the Land within «SURVEY_COMPLETION_DEADLINE»;
- (w) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey that shows the location of all Improvements, roads, buildings and other structures owned, placed on, constructed or used by you on the Land within one year of the date of the request;
- (x) acknowledge that the Land does not comply with current health standards for, inter alia, the conventional on-site disposal of sewage due to an insufficient area of suitable soil or insufficient depth of porous soil above bedrock, hardpan, or water table, or the slope of the Land being too steep;
- (y) take all reasonable precautions to avoid disturbing or damaging any Artifact or Feature found on or under the Land and, upon discovering any Artifact or Feature on or under the Land, you must:
 - i. promptly notify Kitselas;
 - ii. immediately cease any further activity that could affect the Artifact or Feature;
 - iii. take reasonable measures to protect the Artifact or Feature; and
 - iv. comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas cultural heritage policy;
- (z) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (aa) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue the entry upon, use or occupation of the Land by you or by those for whom you are responsible in law,and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (bb) on, or before the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
 - (ii) remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
 - (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
 - (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under a Disposition to an unrelated third party, and
 - (v) restore the surface of the Land to the condition that the Land was in on «RESTORE_SURFACE_DATE», but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Agreement.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other

provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and

- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time, if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you, including under any prior agreement; or
- (d) as a result of the use of the Land under this Agreement; or
- (e) if applicable, as a result of the use of the Land under prior agreements for the same purpose;

unless we have given prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations

under this Agreement with respect to Hazardous Substances.

4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

4.7 We will provide you with quiet enjoyment of the Land.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that:

- (a) other persons may hold or acquire rights to use the Land, including rights held, granted or acquired under Applicable Law; such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (b) other persons may hold or acquire interests in or over the Land granted under Applicable Law, and such interests may exist as of the Commencement Date, and following the Commencement Date Kitselas may grant such interests (including fee simple interests, and leases), and make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, provided such grant or disposition does not have a material adverse impact on your use of the Land, as provided in this Agreement;
- (c) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (d) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under Applicable Law;
- (e) you will not commence or maintain proceedings in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (f) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the

Improvements;

- (g) except as otherwise authorised in this Agreement, you will not interfere with lawful public access over the Land;
- (h) you will make no claim against us or any person acting under the authority of Kitselas Law, or any other applicable enactment, for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement;
- (i) notwithstanding anything to the contrary in this Agreement, if we, in our sole discretion, determine that the Land is required for flooding purposes in connection with a hydro electric power project, we may cancel this Agreement on 90 days written notice to you, and where we cancel this Agreement under this provision, neither you nor any person claiming under you shall be entitled to any form of compensation;
- (j) you are aware of and, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby acknowledge that there is a potential flood, erosion and debris flow danger to the Land from water hazards, including «WATER_HAZARD_NAME»;
- (k) nothing in this Agreement shall prejudice or affect our rights, powers and remedies in relation to you, including your heirs, executors, administrators, successors and assigns, or the Land, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by us as if this Agreement had not been made by the parties;
- (l) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (m) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(bb)(ii) or is required to be removed under (iv), in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land on termination or within the time period provided for in the direction or permission given under paragraph 4.1(bb)(iv); and
- (n) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only, and you will continue to be subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$_____ which will:
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other Dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we provide the written notice described in section 6.1(c) we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;
- and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.
- 6.6 You must without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
- (a) Comprehensive Personal Liability and/or other insurance as required in an amount of not less than \$«INSURANCE_AMOUNT» per occurrence, with an extension insuring against liability for bodily injury, and property damage arising from accidents or occurrences on the Land or the Improvements, including «PERSONAL_LIABILITY_USE»;

- (b) Commercial General Liability and, if applicable Marine General Liability insurance in an amount of not less than \$«INSURANCE_AMOUNT» inclusive per occurrence insuring against liability for personal injury, bodily injury and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured but only with respect to liability arising out of the activities of the named insured;
- (b) Sudden and accidental pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than \$«INSURANCE_AMOUNT»; or if such endorsement is unavailable sudden and accidental pollution insurance insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from your use of the Land as permitted under this Agreement with a limit of liability not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and the policy shall include us as additional insured;
- (c) Environmental Impairment Liability (Pollution Legal Liability) insurance insuring against bodily injury, property damage, and cleanup expenses (including removal and/or transit and disposal of contaminants) arising from gradual or sudden pollution events arising from your use of the Land as permitted under this Agreement in an amount not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured. If this insurance is written on a claims-made basis it must include the option to purchase an extended reporting period of 24 months beyond the date of cancellation or expiry of this Agreement;
- (d) Aviation Liability insurance on all aircraft operated or used in connection with your use of the Land as permitted under this Agreement insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any Canadian Aviation Regulation and in any event not less than a per occurrence combined single limit of:
 - (i) «INSURANCE_AMOUNT» for aircraft carrying pilot only (no passengers), or
 - (ii) «INSURANCE_AMOUNT» for aircraft up to 5 passenger seats, or
 - (iii) «INSURANCE_AMOUNT» plus «INSURANCE_AMOUNT» for each additional passenger seat for aircraft up to 10 passenger seats, or
 - (iv) «INSURANCE_AMOUNT» for aircraft over 10 passenger seats;

and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation and include us as additional insured. Where applicable, such policy will also include coverage for aerial drift or misapplication of

fertilizers or herbicide chemicals in an amount not less than «INSURANCE_AMOUNT» per occurrence;

- (e) Airport Premises and Operations Liability in an amount not less than «INSURANCE_AMOUNT» per accident or occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (f) Watercraft liability insurance on all watercraft operated or used in connection with your use of the Land as permitted under this Agreement (including rented watercraft), in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than «INSURANCE_AMOUNT» and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured and if applicable, include coverage for marine towing operations;

6.7 You must

- (a) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (b) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in a form satisfactory to Kitselas;
- (c) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in a form satisfactory to Kitselas;
- (d) notwithstanding subsection (b) or (c) above, if requested by us, provide to us certified copies of the required insurance policies; and

make your insurer aware of this Agreement within 30 days of signing this Agreement

6.8 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us proof of all insurance then required to be maintained by you under this Agreement in a form satisfactory to Kitselas.

6.9 You shall provide, maintain, and pay for any additional insurance which you are required by

law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement.

- 6.10 You waive all rights of recourse against us in relation to damage to your own property arising from any cause whatsoever.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may, in our sole discretion, withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that

- (a) if you
- (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with other provisions of this Agreement, or
 - (iii) in our opinion, fail to make diligent use of the Land for the purposes set out in this Agreement;
- and you fail to rectify such default or failure within the time period specified in a written notice from Kitselas requesting you to do so,
- (b) if you fail to maintain in good standing any Disposition or other licence, permit, or agreement in any way related to your use and occupation of the Land under this Agreement, including without limitation the «CROSS_CANCELLATION_DETAILS»;
- (c) if you
- (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation and,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society and you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- (b) if you default on any of the covenants or obligations on your part required to be kept or performed and you fail to rectify such default or failure within the time period specified in a written notice from us requesting you to do so, we may perform or cause to be performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the us shall forthwith be paid by you to us.
- (c) our remedies under this Article are in addition to those available to us under applicable law including Kitselas Law.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, before resorting to litigation the parties will make reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Notwithstanding section 9.1, either party may, at any time, apply to a court of competent jurisdiction for interim, injunctive or conservatory relief.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

«DB_ADDRESS_KITSELAS»;

to you

«DB_ADDRESS_MAILING_TENANT»;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt or deemed receipt, the notice shall be re-sent by courier or other means of actual delivery.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy or other electronic copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy or other electronic copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.

- 11.3 The grant of a sublicence, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicence, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by the time reasonably required to perform the obligation provided that:
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
 - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land;
 - (v) the application of any federal or provincial enactment or law to the Land; and

- (vi) the existence, availability or quality of access or service to the Land now or in the future;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site disclosure statement” under the *Environmental Management Act*;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Lessor

Print Name

SIGNED BY
«DB_NAME_TENANT»

SIGNED on behalf of «DB_NAME_CORPORATION»
by a duly authorized signatory

Authorized Signatory

SIGNED on behalf of «DB_NAME_CORPORATION»
By its authorized signatories

Authorized Signatory

Authorized Signatory

SIGNED on behalf of by _____
its general partner _____

BY: _____

BY: _____

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: «DB_LEGAL_DESCRIPTION»

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 5. Licence of Occupation for Monitoring and Testing Wells

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT is dated for reference «DOCUMENT_REFERENCE_DATE».

BETWEEN:

(the “Licensor”)

AND:

(the “Licensee”)

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Applicable Law**” means either the laws of Canada, the laws of the Province of British Columbia or Kitselas Law, as applicable, and includes the Kitselas Treaty;

“**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity

“**Commencement Date**” means the effective date of the Kitselas Treaty _____;

“**Disposition**” means an act of disposal or an instrument by which the act of disposal is effected or evidenced, or by which an interest in land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in land and includes a licence of occupation;

“**Fees**” means the fees set out in Article 3;

“**Hazardous Substances**” means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Kitselas Law” means a law made pursuant to Kitselas law-making authority set out in the Kitselas Treaty and includes the Kitselas Constitution.

“Kitselas Treaty” means the treaty agreement between Kitselas, Canada and British Columbia, including all Schedules and Appendices to it.

“Land” means that part or those parts of the land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule”;

“Management Plan” means the most recent management plan, development plan or investigative plan, prepared by you in a form specified by us, approved by us, signed and dated by the parties;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Licensor alone and never refers to the combination of the Licensor and the Licensee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to Kitselas Law and the laws of the Province of British Columbia, as applicable.

- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with Kitselas Law, regulations, or other enactments or any policy, directive, executive direction or other such guideline of general application.
- 1.14 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is

specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.

- 1.15 In the event of any conflict between the Management Plan and the terms and conditions of any other part of this Agreement, the terms and conditions of any other part of this Agreement shall prevail.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for monitoring groundwater wells, as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.1 The term of this Agreement commences on «COMMENCEMENT_DATE» and terminates on «TERMINATION_DATE» or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - FEES

- 3.1 _____

ARTICLE 4 - OBLIGATIONS

- 4.1 You must
- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
 - (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
 - (c) observe, abide by and comply with

- (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction, including Kitselas, in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful, voluntary, or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only as permitted in the Management Plan in accordance with the purposes set out in section 2.1;
- (g) not make, construct, place, anchor, secure or affix any Improvements in, on or to the Land except as permitted in the Management Plan and as necessary for the purposes set out in section 2.1;
- (h) within 3 months of a written request from us, provide us with a decommissioning or reclamation plan, in a form acceptable to us, that meets the requirements set out in this agreement, including the Management Plan if applicable;
- (i) provide to us, within 30 days of receiving a request from us, all reports and records we may request from you concerning your activities under this Agreement and all other matters related to this Agreement;
- (j) not make, construct, place, anchor, or affix any Improvements in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
 - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access; despite the foregoing, you will be deemed to not be in breach of this subsection so long as:

- (iii) you are the owner of an upland property adjacent to the Land and your activities on the Land only interfere with riparian rights of access held by you; or
- (iv) each owner of any upland property adjacent to the Land whose rights of riparian access are infringed by your activities undertaken within the Land remains bound by an agreement in which that owner consents to any such infringement. Any such agreement must be in a form and on terms acceptable to us, including, if we so require that the agreement be in a form appropriate for registration in a Land Title Office against the title of the upland property.

You acknowledge that if any such agreement ceases to be binding on an upland owner or is found to be ineffective or unenforceable for any reason then you remain responsible for complying with this subsection and we may terminate this Agreement in accordance with Article 8 if you fail to satisfy your obligations under this subsection;

- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act* or any similar enactment of Kitselas Law;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act* or any similar enactment of Kitselas Law for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (n) not cut or remove timber on or from the Land without our prior written consent;
 - (a) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (o) maintain all Improvements on the Land in good order and condition and in a safe, clean and sanitary state of repair, to our satisfaction;
- (p) not dredge or excavate the Land or deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;

-
- (q) not alter, repair or add to any Improvement that was, or may be, placed on or made to the Land under another Disposition or in connection with the use of Land apart from this Agreement, unless you obtain our prior written approval;
 - (r) at our written request and at your expense, construct fences in the locations on the Land and to the standards required by us within the time specified by us;
 - (s) obtain and maintain in good standing during the Term all permits, permissions, licences, approvals and agreements required in order to use and occupy the Land for the purpose described in Article 2.1 and deliver copies of such to us upon request;
 - (t) if any soil is disturbed by you as a result of your construction, use or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us in a timely manner;
 - (u) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey that shows the location of all Improvements, roads, buildings and other structures owned, placed on, constructed or used by you on the Land within one year of the date of the request;
 - (v) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any Artifact or Feature on or under the Land, you must:
 - i. promptly notify Kitselas;
 - ii. immediately cease any further activity that could affect the Artifact or Feature;
 - iii. take reasonable measures to protect the Artifact or Feature; and
 - iv. comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
 - (w) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, provided that we take reasonable steps to minimize any disruption of your operations;
 - (x) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful
-

use of the Land by any other person, and

- (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue the entry upon, use or occupation of the Land by you or by those for whom you are responsible in law,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

(y) on, or before the termination of this Agreement,

- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
- (ii) remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under a Disposition to an unrelated third party, and
- (v) unless otherwise specified in the Management Plan, restore the surface of the Land to the condition that the Land was in on «RESTORE_SURFACE_DATE», but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Agreement.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time, if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement; or
- (e) if applicable, as a result of the use of the Land under prior agreements for the same purpose;

unless we have given prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations

under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

- 5.1 You agree with us that:

- (a) other persons may hold or acquire rights to use the Land, including rights held, granted or acquired under Applicable Law; such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under Applicable Law, and such interests may exist as of the Commencement Date, and following the Commencement Date Kitselas may grant such interests (including fee simple interests, and leases), and make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, provided such grant or disposition does not have a material adverse impact on your use of the Land, as provided in this Agreement;
- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under Applicable Law;
- (f) you will not commence or maintain proceedings in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful

exercise or operation of the interests, rights, privileges and titles described in subsections (a) and (b);

- (d) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;
- (g) except as otherwise authorised in this Agreement, you will not interfere with lawful public access over the Land;
- (h) you will make no claim against us or any person acting under the authority of Kitselas Law, or any other applicable enactment, for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement;
- (i) notwithstanding anything to the contrary in this Agreement, if we, in our sole discretion, determine that the Land is required for flooding purposes in connection with a hydro electric power project, we may cancel this Agreement on 90 days written notice to you, and where we cancel this Agreement under this provision, neither you nor any person claiming under you shall be entitled to any form of compensation;
- (j) you are aware of and, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby acknowledge that there is a potential flood, erosion and debris flow danger to the Land from water hazards, including «WATER_HAZARD_NAME»;
- (k) nothing in this Agreement shall prejudice or affect our rights, powers and remedies in relation to you, including your heirs, executors, administrators, successors and assigns, or the Land, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by us as if this Agreement had not been made by the parties;
- (l) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (n) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(y)(ii) or is required to be removed under (iv), in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land on termination or within the time period provided for in the direction or permission given under paragraph 4.1(y)(iv); and
- (o) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year

to year will not be created by implication of law and you will be deemed to be a monthly occupier only, and you will continue to be subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$ _____ which will:
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other Dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we provide the written notice described in section 6.1(c) we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;
- and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.
- 6.6 You must without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:

- (a) Comprehensive Personal Liability and/or other insurance as required in an amount of not less than \$«INSURANCE_AMOUNT» per occurrence, with an extension insuring against liability for bodily injury, and property damage arising from accidents or occurrences on the Land or the Improvements, including «PERSONAL_LIABILITY_USE»;
- (b) Commercial General Liability and, if applicable Marine General Liability insurance in an amount of not less than \$«INSURANCE_AMOUNT» inclusive per occurrence insuring against liability for personal injury, bodily injury and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured but only with respect to liability arising out of the activities of the named insured;
- (b) Sudden and accidental pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than \$«INSURANCE_AMOUNT»; or if such endorsement is unavailable sudden and accidental pollution insurance insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from your use of the Land as permitted under this Agreement with a limit of liability not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and the policy shall include us as additional insured;
- (c) Environmental Impairment Liability (Pollution Legal Liability) insurance insuring against bodily injury, property damage, and cleanup expenses (including removal and/or transit and disposal of contaminants) arising from gradual or sudden pollution events arising from your use of the Land as permitted under this Agreement in an amount not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured. If this insurance is written on a claims-made basis it must include the option to purchase an extended reporting period of 24 months beyond the date of cancellation or expiry of this Agreement;
- (d) Aviation Liability insurance on all aircraft operated or used in connection with your use of the Land as permitted under this Agreement insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any Canadian Aviation Regulation and in any event not less than a per occurrence combined single limit of:
 - (i) «INSURANCE_AMOUNT» for aircraft carrying pilot only (no passengers), or
 - (ii) «INSURANCE_AMOUNT» for aircraft up to 5 passenger seats, or
 - (iii) «INSURANCE_AMOUNT» plus «INSURANCE_AMOUNT» for each additional passenger seat for aircraft up to 10 passenger seats, or

(iv) «INSURANCE_AMOUNT» for aircraft over 10 passenger seats;

and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation and include us as additional insured. Where applicable, such policy will also include coverage for aerial drift or misapplication of fertilizers or herbicide chemicals in an amount not less than «INSURANCE_AMOUNT» per occurrence;

- (e) Airport Premises and Operations Liability in an amount not less than «INSURANCE_AMOUNT» per accident or occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (f) Watercraft liability insurance on all watercraft operated or used in connection with your use of the Land as permitted under this Agreement (including rented watercraft), in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than «INSURANCE_AMOUNT» and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured and if applicable, include coverage for marine towing operations;

6.7 You must

- (a) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (b) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in a form satisfactory to Kitselas;
- (c) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in a form satisfactory to Kitselas;
- (d) notwithstanding subsection (b) or (c) above, if requested by us, provide to us certified copies of the required insurance policies; and

make your insurer aware of this Agreement within 30 days of signing this Agreement

6.8 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us proof of all insurance then required to be maintained by you under this Agreement in a form satisfactory to Kitselas.

- 6.9 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement.
- 6.10 You waive all rights of recourse against us in relation to damage to your own property arising from any cause whatsoever.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may, in our sole discretion, withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with other provisions of this Agreement, or
 - (iii) in our opinion, fail to make diligent use of the Land for the purposes set out in this Agreement;and you fail to rectify such default or failure within the time period specified in a written notice from Kitselas requesting you to do so,
 - (b) if you fail to maintain in good standing any Disposition or other licence, permit, or agreement in any way related to your use and occupation of the Land under this Agreement, including without limitation the «CROSS_CANCELLATION_DETAILS»;
 - (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,

- (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation and,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society and you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- (b) if you default on any of the covenants or obligations on your part required to be kept or performed and you fail to rectify such default or failure within the time period specified in a written notice from us requesting you to do so, we may perform or cause to be performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the us shall forthwith be paid by you to us.
- (c) our remedies under this Article are in addition to those available to us under applicable law including Kitselas Law.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, before resorting to litigation the parties will make reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such

other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

- 9.2 Notwithstanding section 9.1, either party may, at any time, apply to a court of competent jurisdiction for interim, injunctive or conservatory relief.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

«DB_ADDRESS_KITSELAS»;

to you

«DB_ADDRESS_MAILING_TENANT»;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt or deemed receipt, the notice shall be re-sent by courier or other means of actual delivery.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy or other electronic copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy or other electronic copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.

- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by the time reasonably required to perform the obligation provided that:
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
 - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;

- (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land;
 - (v) the application of any federal or provincial enactment or law to the Land; and
 - (vi) the existence, availability or quality of access or service to the Land now or in the future;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site disclosure statement” under the *Environmental Management Act*;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Licensors

Print Name

SIGNED BY
«DB_NAME_TENANT»

SIGNED on behalf of «DB_NAME_CORPORATION»
by a duly authorized signatory

Authorized Signatory

SIGNED on behalf of «DB_NAME_CORPORATION»
By its authorized signatories

Authorized Signatory

Authorized Signatory

SIGNED on behalf of _____
by its general partner _____

BY: _____

BY: _____

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: «DB_LEGAL_DESCRIPTION»

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 6. Licence of Occupation for Roadway

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT is dated for reference «DOCUMENT_REFERENCE_DATE».

BETWEEN:

(the “Licensor”)

AND:

(the “Licensee”)

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Applicable Law**” means either the laws of Canada, the laws of the Province of British Columbia or Kitselas Law, as applicable, and includes the Kitselas Treaty;

“**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;

“**Commencement Date**” means the effective date of the Kitselas Treaty;

“**Disposition**” means an act of disposal or an instrument by which the act of disposal is effected or evidenced, or by which an interest in land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in land and includes a licence of occupation;

“**Fees**” means the fees set out in Article 3;

“**Hazardous Substances**” means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any road clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Kitselas Law” means a law made pursuant to Kitselas law-making authority set out in the Kitselas Treaty and includes the Kitselas Constitution;

“Kitselas Treaty” means the treaty agreement between Kitselas, Canada and British Columbia, including all Schedules and Appendices to it;

“Land” means that part or those parts of the land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule”;

“Management Plan” means the most recent management plan, development plan or investigative plan, prepared by you in a form specified by us, approved by us, signed and dated by the parties;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Licensor alone and never refers to the combination of the Licensor and the Licensee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to Kitselas Law and the laws of the Province of British Columbia, as applicable.

- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 The provisions of the Management Plan, as amended from time to time, form part of this Agreement and represent further particulars of the covenants of both parties
- 1.9 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.10 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.11 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.12 Time is of the essence of this Agreement.
- 1.13 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.14 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with Kitselas Law, regulations, or other enactments or any policy, directive, executive direction or other such guideline of general application.

- 1.15 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.
- 1.16 In the event of any conflict between the Management Plan and the terms and conditions of any other part of this Agreement, the terms and conditions of any other part of this Agreement shall prevail.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for the purpose of use and maintenance of a road, as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on «COMMENCEMENT_DATE» and terminates on «TERMINATION_DATE» or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - FEES

- 3.1 _____

ARTICLE 4 - OBLIGATIONS

- 4.1 You must
- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
 - (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;

- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction, including Kitselas, in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful, voluntary, or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only as permitted in the Management Plan in accordance with the purposes set out in section 2.1;
- (g) not make, construct, place, anchor, secure or affix any Improvements in, on or to the Land except as permitted in the Management Plan and as necessary for the purposes set out in section 2.1;
- (h) within 3 months of a written request from us, provide us with a decommissioning or reclamation plan, in a form acceptable to us, that meets the requirements set out in this agreement, including the Management Plan if applicable;
- (i) provide to us, within 30 days of receiving a request from us, all reports and records we may request from you concerning your activities under this Agreement and all other matters related to this Agreement;
- (j) not make, construct, place, anchor, or affix any Improvements in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or

- (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access; despite the foregoing, you will be deemed to not be in breach of this subsection so long as:

- (iii) you are the owner of an upland property adjacent to the Land and your activities on the Land only interfere with riparian rights of access held by you; or
- (iv) each owner of any upland property adjacent to the Land whose rights of riparian access are infringed by your activities undertaken within the Land remains bound by an agreement in which that owner consents to any such infringement. Any such agreement must be in a form and on terms acceptable to us, including, if we so require that the agreement be in a form appropriate for registration in a Land Title Office against the title of the upland property.

You acknowledge that if any such agreement ceases to be binding on an upland owner or is found to be ineffective or unenforceable for any reason then you remain responsible for complying with this subsection and we may terminate this Agreement in accordance with Article 8 if you fail to satisfy your obligations under this subsection;

- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act* or any similar enactment of Kitselas Law;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act* or any similar enactment of Kitselas Law for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (m) not cut or remove timber on or from the Land without our prior written consent;
- (n) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (o) maintain all Improvements on the Land in good order and condition and in a safe, clean and sanitary state of repair, to our satisfaction;
- (p) not dredge or excavate the Land or deposit on the Land, or any part of it, any earth, fill or

other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;

- (q) not alter, repair or add to any Improvement that was, or may be, placed on or made to the Land under another Disposition or in connection with the use of Land apart from this Agreement, unless you obtain our prior written approval;
- (r) at our written request and at your expense, construct fences in the locations on the Land and to the standards required by us within the time specified by us;
- (s) obtain and maintain in good standing during the Term all permits, permissions, licences, approvals and agreements required in order to use and occupy the Land for the purpose described in Article 2.1 and deliver copies of such to us upon request;
- (t) if any soil is disturbed by you as a result of your construction, use or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us in a timely manner;
- (u) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey that shows the location of all Improvements, roads, buildings and other structures owned, placed on, constructed or used by you on the Land within one year of the date of the request;
- (v) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any Artifact or Feature on or under the Land, you must:
 - i. promptly notify Kitselas;
 - ii. immediately cease any further activity that could affect the Artifact or Feature;
 - iii. take reasonable measures to protect the Artifact or Feature; and
 - iv. comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
- (w) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (x) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,

- (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
- (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue the entry upon, use or occupation of the Land by you or by those for whom you are responsible in law,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

(y) on, or before the termination of this Agreement,

- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
- (ii) remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under a Disposition to an unrelated third party, and
- (v) unless otherwise specified in the Management Plan, restore the surface of the Land to the condition that the Land was in on «RESTORE_SURFACE_DATE», but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Agreement.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or

- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time, if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement; or
- (e) if applicable, as a result of the use of the Land under prior agreements for the same purpose;

unless we have given prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

- 5.1 You agree with us that:

- (a) other persons may hold or acquire rights to use the Land, including rights held, granted or acquired under Applicable Law; such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under Applicable Law, and such interests may exist as of the Commencement Date, and following the Commencement Date Kitselas may grant such interests (including fee simple interests, and leases), and make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, provided such grant or disposition does not have a material adverse impact on your use of the Land, as provided in this Agreement;
- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under Applicable Law;
- (f) you will not commence or maintain proceedings in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in

subsections (a) and (b);

- (g) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;
- (h) except as otherwise authorised in this Agreement, you will not interfere with lawful public access over the Land;
- (i) you will make no claim against us or any person acting under the authority of Kitselas Law, or any other applicable enactment, for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement;
- (j) notwithstanding anything to the contrary in this Agreement, if we, in our sole discretion, determine that the Land is required for flooding purposes in connection with a hydro electric power project, we may cancel this Agreement on 90 days written notice to you, and where we cancel this Agreement under this provision, neither you nor any person claiming under you shall be entitled to any form of compensation;
- (k) you are aware of and, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby acknowledge that there is a potential flood, erosion and debris flow danger to the Land from water hazards, including «WATER_HAZARD_NAME»;
- (l) nothing in this Agreement shall prejudice or affect our rights, powers and remedies in relation to you, including your heirs, executors, administrators, successors and assigns, or the Land, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by us as if this Agreement had not been made by the parties;
- (m) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (n) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(y)(ii) or is required to be removed under (iv), in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land on termination or within the time period provided for in the direction or permission given under paragraph 4.1(y)(iv); and
- (o) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only, and you will continue to be subject to all of the provisions of

this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$ _____ which will:
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other Dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we provide the written notice described in section 6.1(c) we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;
- and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.
- 6.6 You must without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
- (a) Comprehensive Personal Liability and/or other insurance as required in an amount of not less than \$«INSURANCE_AMOUNT» per occurrence, with an extension insuring against liability for bodily injury, and property damage arising from accidents or

occurrences on the Land or the Improvements, including
«PERSONAL_LIABILITY_USE»;

- (b) Commercial General Liability and, if applicable Marine General Liability insurance in an amount of not less than \$«INSURANCE_AMOUNT» inclusive per occurrence insuring against liability for personal injury, bodily injury and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured but only with respect to liability arising out of the activities of the named insured;
- (c) Sudden and accidental pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than \$«INSURANCE_AMOUNT»; or if such endorsement is unavailable sudden and accidental pollution insurance insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from your use of the Land as permitted under this Agreement with a limit of liability not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and the policy shall include us as additional insured;
- (d) Environmental Impairment Liability (Pollution Legal Liability) insurance insuring against bodily injury, property damage, and cleanup expenses (including removal and/or transit and disposal of contaminants) arising from gradual or sudden pollution events arising from your use of the Land as permitted under this Agreement in an amount not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured. If this insurance is written on a claims-made basis it must include the option to purchase an extended reporting period of 24 months beyond the date of cancellation or expiry of this Agreement;
- (e) Aviation Liability insurance on all aircraft operated or used in connection with your use of the Land as permitted under this Agreement insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any Canadian Aviation Regulation and in any event not less than a per occurrence combined single limit of:
 - (i) «INSURANCE_AMOUNT» for aircraft carrying pilot only (no passengers), or
 - (ii) «INSURANCE_AMOUNT» for aircraft up to 5 passenger seats, or
 - (iii) «INSURANCE_AMOUNT» plus «INSURANCE_AMOUNT» for each additional passenger seat for aircraft up to 10 passenger seats, or
 - (iv) «INSURANCE_AMOUNT» for aircraft over 10 passenger seats;

and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation and include us as additional insured. Where applicable, such policy will also include coverage for aerial drift or misapplication of fertilizers or herbicide chemicals in an amount not less than «INSURANCE_AMOUNT» per occurrence;

- (f) Airport Premises and Operations Liability in an amount not less than «INSURANCE_AMOUNT» per accident or occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (g) Watercraft liability insurance on all watercraft operated or used in connection with your use of the Land as permitted under this Agreement (including rented watercraft), in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than «INSURANCE_AMOUNT» and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured and if applicable, include coverage for marine towing operations;

6.7 You must

- (a) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (b) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in a form satisfactory to Kitselas;
- (c) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in a form satisfactory to Kitselas;
- (d) notwithstanding subsection (b) or (c) above, if requested by us, provide to us certified copies of the required insurance policies; and

make your insurer aware of this Agreement within 30 days of signing this Agreement

6.8 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us proof of all insurance then required to be maintained by you under

this Agreement in a form satisfactory to Kitselas.

- 6.9 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement.
- 6.10 You waive all rights of recourse against us in relation to damage to your own property arising from any cause whatsoever.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may, in our sole discretion, withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with other provisions of this Agreement, or
 - (iii) in our opinion, fail to make diligent use of the Land for the purposes set out in this Agreement;and you fail to rectify such default or failure within the time period specified in a written notice from Kitselas requesting you to do so,
 - (b) if you fail to maintain in good standing any Disposition or other licence, permit, or agreement in any way related to your use and occupation of the Land under this Agreement, including without limitation the «CROSS_CANCELLATION_DETAILS»;
 - (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against

you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation and,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society and you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- (b) if you default on any of the covenants or obligations on your part required to be kept or performed and you fail to rectify such default or failure within the time period specified in a written notice from us requesting you to do so, we may perform or cause to be performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the us shall forthwith be paid by you to us.
- (c) our remedies under this Article are in addition to those available to us under applicable law including Kitselas Law.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, before resorting to litigation the parties will make reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Notwithstanding section 9.1, either party may, at any time, apply to a court of competent

jurisdiction for interim, injunctive or conservatory relief.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

«DB_ADDRESS_KITSELAS»;

to you

«DB_ADDRESS_MAILING_TENANT»;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt or deemed receipt, the notice shall be re-sent by courier or other means of actual delivery.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy or other electronic copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy or other electronic copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.

- 11.3 The grant of a sublicence, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicence, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by the time reasonably required to perform the obligation provided that:
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
 - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land;
 - (v) the application of any federal or provincial enactment or law to the Land; and

- (vi) the existence, availability or quality of access or service to the Land now or in the future;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site disclosure statement” under the *Environmental Management Act*;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Licensor

Print Name

SIGNED BY
«DB_NAME_TENANT»

SIGNED on behalf of «DB_NAME_CORPORATION»
by a duly authorized signatory

Authorized Signatory

SIGNED on behalf of «DB_NAME_CORPORATION»
By its authorized signatories

Authorized Signatory

Authorized Signatory

SIGNED on behalf of _____
by its general partner _____

BY: _____

BY: _____

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: «DB_LEGAL_DESCRIPTION»

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

Document 7. Licence of Occupation for Heli Skiing

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT is dated for reference «DOCUMENT_REFERENCE_DATE».

BETWEEN:

(the “Licensor”)

AND:

(the “Licensee”)

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Applicable Law**” means either the laws of Canada, the laws of the Province of British Columbia or Kitselas Law, as applicable, and includes the Kitselas Treaty;

“**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;

“**Commencement Date**” means the effective date of the Kitselas Treaty;

“**Disposition**” means an act of disposal or an instrument by which the act of disposal is effected or evidenced, or by which an interest in land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in land and includes a licence of occupation;

“**Fees**” means the fees set out in Article 3;

“**Hazardous Substances**” means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*;
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land; and

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Kitselas Law” means a law made pursuant to Kitselas law-making authority set out in the Kitselas Treaty and includes the Kitselas Constitution;

“Kitselas Treaty” means the treaty agreement between Kitselas, Canada and British Columbia, including all Schedules and Appendices to it;

“Land” means that part or those parts of the land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule”;

“Management Plan” means the most recent management plan, development plan or investigative plan, prepared by you in a form specified by us, approved by us, signed and dated by the parties;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Licensor alone and never refers to the combination of the Licensor and the Licensee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to Kitselas Law and the laws of the Province of British Columbia, as applicable.

- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 The provisions of the Management Plan, as amended from time to time, form part of this Agreement and represent further particulars of the covenants of both parties.
- 1.9 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.10 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.11 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.12 Time is of the essence of this Agreement.
- 1.13 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.14 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with Kitselas Law, regulations, or other enactments or any policy, directive, executive direction or other such guideline of general application.

- 1.15 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.
- 1.16 In the event of any conflict between the Management Plan and the terms and conditions of any other part of this Agreement, the terms and conditions of any other part of this Agreement shall prevail.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for «PURPOSE_SPECIFIC» purposes, as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on «COMMENCEMENT_DATE» and terminates on «TERMINATION_DATE» or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.
- 2.3 For greater certainty, “Land” does not include land which is within a:
- (a) protected area, including ecological reserves, parks and conservancies;
 - (b) lease, unless the lease agreement allows for public access;
 - (c) authorized tenure where your activity would interfere with the rights of that tenure-holder, unless you have that tenure-holder’s express consent;
 - (d) areas restricted, reserved or regulated by law, including Kitselas Law, unless public access is permitted; or
 - (e) posted or signed areas, including private roads, which prohibit some or all activities; all of which is your sole responsibility to determine.

ARTICLE 3 - FEES

- 3.1 _____

ARTICLE 4 - OBLIGATIONS**4.1 You must**

- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction, including Kitselas, in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful, voluntary, or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only as permitted in the Management Plan in accordance with the purposes set out in section 2.1;
- (g) not make, construct, place, anchor, secure or affix any Improvements in, on or to the Land except as permitted in the Management Plan and as necessary for the purposes set out in section 2.1;
- (h) within 3 months of a written request from us, provide us with a decommissioning or reclamation plan, in a form acceptable to us, that meets the requirements set out in this

agreement, including the Management Plan if applicable;

- (i) provide to us, within 30 days of receiving a request from us, all reports and records we may request from you concerning your activities under this Agreement and all other matters related to this Agreement;
- (j) not make, construct, place, anchor, or affix any Improvements in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
 - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access; despite the foregoing, you will be deemed to not be in breach of this subsection so long as:

- (iii) you are the owner of an upland property adjacent to the Land and your activities on the Land only interfere with riparian rights of access held by you; or
- (iv) each owner of any upland property adjacent to the Land whose rights of riparian access are infringed by your activities undertaken within the Land remains bound by an agreement in which that owner consents to any such infringement. Any such agreement must be in a form and on terms acceptable to us, including, if we so require that the agreement be in a form appropriate for registration in a Land Title Office against the title of the upland property.

You acknowledge that if any such agreement ceases to be binding on an upland owner or is found to be ineffective or unenforceable for any reason then you remain responsible for complying with this subsection and we may terminate this Agreement in accordance with Article 8 if you fail to satisfy your obligations under this subsection;

- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act* or any similar enactment of Kitselas Law;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act* or any similar enactment of Kitselas Law for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps

necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;

- (m)
- (n) not cut or remove timber on or from the Land without our prior written consent;
- (o) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (p) maintain all Improvements on the Land in good order and condition and in a safe, clean and sanitary state of repair, to our satisfaction;
- (q) not dredge or excavate the Land or deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;
- (r) not alter, repair or add to any Improvement that was, or may be, placed on or made to the Land under another Disposition or in connection with the use of Land apart from this Agreement, unless you obtain our prior written approval;
- (s) at our written request and at your expense, construct fences in the locations on the Land and to the standards required by us within the time specified by us;
- (t) obtain and maintain in good standing during the Term all permits, permissions, licences, approvals and agreements required in order to use and occupy the Land for the purpose described in Article 2.1 and deliver copies of such to us upon request;
- (u) if any soil is disturbed by you as a result of your construction, use or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us in a timely manner;
- (v) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey that shows the location of all Improvements, roads, buildings and other structures owned, placed on, constructed or used by you on the Land within one year of the date of the request;
- (w) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any Artifact or Feature on or under the Land, you must:
 - i. promptly notify Kitselas;
 - ii. immediately cease any further activity that could affect the Artifact or Feature;

- iii. take reasonable measures to protect the Artifact or Feature; and
 - iv. comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
- (x) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (y) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
- (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue the entry upon, use or occupation of the Land by you or by those for whom you are responsible in law,
- and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and
- (z) on, or before the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
 - (ii) remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
 - (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
 - (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under a Disposition to an unrelated third party, and
 - (v) unless otherwise specified in the Management Plan, restore the surface of the

Land to the condition that the Land was in on «RESTORE_SURFACE_DATE», but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Agreement.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time, if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you;
- (d) as a result of the use of the Land under this Agreement; or

- (e) if applicable, as a result of the use of the Land under prior agreements for the same purpose;

unless we have given prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that:

- (a) other persons may hold or acquire rights to use the Land, including rights held, granted or acquired under Applicable Law; such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under Applicable Law, and such interests may exist as of the Commencement Date, and following the Commencement Date Kitselas may grant such interests (including fee simple interests, and leases), and make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, provided such grant or disposition does not have a material adverse impact on your use

of the Land, as provided in this Agreement;

- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under Applicable Law;
- (f) you will not commence or maintain proceedings in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (g) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;
- (h) except as otherwise authorised in this Agreement, you will not interfere with lawful public access over the Land;
- (i) you will make no claim against us or any person acting under the authority of Kitselas Law, or any other applicable enactment, for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement;
- (j) notwithstanding anything to the contrary in this Agreement, if we, in our sole discretion, determine that the Land is required for flooding purposes in connection with a hydro electric power project, we may cancel this Agreement on 90 days written notice to you, and where we cancel this Agreement under this provision, neither you nor any person claiming under you shall be entitled to any form of compensation;
- (k) you are aware of and, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby acknowledge that there is a potential flood, erosion and debris flow danger to the Land from water hazards, including «WATER_HAZARD_NAME»;
- (l) nothing in this Agreement shall prejudice or affect our rights, powers and remedies in relation to you, including your heirs, executors, administrators, successors and assigns, or the Land, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by us as if this Agreement had not been made by the parties;

- (m) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (n) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(z)(ii) or is required to be removed under (iv), in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land on termination or within the time period provided for in the direction or permission given under paragraph 4.1(z)(iv); and
- (o) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only, and you will continue to be subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$_____ which will:
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other Dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we provide the written notice described in section 6.1(c) we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and

- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

- 6.6 You must without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
- (a) Comprehensive Personal Liability and/or other insurance as required in an amount of not less than \$«INSURANCE_AMOUNT» per occurrence, with an extension insuring against liability for bodily injury, and property damage arising from accidents or occurrences on the Land or the Improvements, including «PERSONAL LIABILITY_USE»;
 - (b) Commercial General Liability and, if applicable Marine General Liability insurance in an amount of not less than \$«INSURANCE_AMOUNT» inclusive per occurrence insuring against liability for personal injury, bodily injury and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured but only with respect to liability arising out of the activities of the named insured;
 - (b) Sudden and accidental pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than \$«INSURANCE_AMOUNT»; or if such endorsement is unavailable sudden and accidental pollution insurance insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from your use of the Land as permitted under this Agreement with a limit of liability not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and the policy shall include us as additional insured;
 - (c) Environmental Impairment Liability (Pollution Legal Liability) insurance insuring against bodily injury, property damage, and cleanup expenses (including removal and/or transit and disposal of contaminants) arising from gradual or sudden pollution events arising from your use of the Land as permitted under this Agreement in an amount not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured. If this insurance is written on a claims-made basis it must include the option to purchase an extended reporting period of 24 months beyond the date of cancellation or expiry of this Agreement;

- (d) Aviation Liability insurance on all aircraft operated or used in connection with your use of the Land as permitted under this Agreement insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any Canadian Aviation Regulation and in any event not less than a per occurrence combined single limit of:
- (i) «INSURANCE_AMOUNT» for aircraft carrying pilot only (no passengers), or
 - (ii) «INSURANCE_AMOUNT» for aircraft up to 5 passenger seats, or
 - (iii) «INSURANCE_AMOUNT» plus «INSURANCE_AMOUNT» for each additional passenger seat for aircraft up to 10 passenger seats, or
 - (iv) «INSURANCE_AMOUNT» for aircraft over 10 passenger seats;
- and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation and include us as additional insured. Where applicable, such policy will also include coverage for aerial drift or misapplication of fertilizers or herbicide chemicals in an amount not less than «INSURANCE_AMOUNT» per occurrence;
- (e) Airport Premises and Operations Liability in an amount not less than «INSURANCE_AMOUNT» per accident or occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (f) Watercraft liability insurance on all watercraft operated or used in connection with your use of the Land as permitted under this Agreement (including rented watercraft), in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than «INSURANCE_AMOUNT» and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured and if applicable, include coverage for marine towing operations;

6.7 You must

- (a) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (b) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in a form satisfactory to Kitselas;
- (c) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in a form satisfactory to Kitselas;

- (d) notwithstanding subsection (b) or (c) above, if requested by us, provide to us certified copies of the required insurance policies; and

make your insurer aware of this Agreement within 30 days of signing this Agreement

6.8 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us proof of all insurance then required to be maintained by you under this Agreement in a form satisfactory to Kitselas.

6.9 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement.

6.10 You waive all rights of recourse against us in relation to damage to your own property arising from any cause whatsoever.

ARTICLE 7 - ASSIGNMENT

7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may, in our sole discretion, withhold.

7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

8.1 You agree with us that

- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with other provisions of this Agreement, or
 - (iii) in our opinion, fail to make diligent use of the Land for the purposes set out in this Agreement;

and you fail to rectify such default or failure within the time period specified in a written notice from Kitselas requesting you to do so,

- (b) if you fail to maintain in good standing any Disposition or other licence, permit, or agreement in any way related to your use and occupation of the Land under this Agreement, including without limitation the «CROSS_CANCELLATION_DETAILS»;
- (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation and,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society and you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- (b) if you default on any of the covenants or obligations on your part required to be kept or performed and you fail to rectify such default or failure within the time period specified in a written notice from us requesting you to do so, we may perform or cause to be

performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the us shall forthwith be paid by you to us; and

- (c) our remedies under this Article are in addition to those available to us under applicable law including Kitselas Law.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, before resorting to litigation the parties will make reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Notwithstanding section 9.1, either party may, at any time, apply to a court of competent jurisdiction for interim, injunctive or conservatory relief.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

«DB_ADDRESS_KITSELAS»;

to you

«DB_ADDRESS_MAILING_TENANT»;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt or deemed receipt, the notice shall be re-sent by courier or other means of actual delivery.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy or other electronic copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy or other electronic copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure

agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicence, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicence, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by the time reasonably required to perform the obligation provided that:
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
 - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by

this Agreement;

- (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land;
 - (v) the application of any federal or provincial enactment or law to the Land; and
 - (vi) the existence, availability or quality of access or service to the Land now or in the future;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site disclosure statement” under the *Environmental Management Act*;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Licensor

Print Name

SIGNED BY
«DB_NAME_TENANT»

SIGNED on behalf of «DB_NAME_CORPORATION»
by a duly authorized signatory

Authorized Signatory

SIGNED on behalf of «DB_NAME_CORPORATION»
By its authorized signatories

Authorized Signatory

Authorized Signatory

SIGNED on behalf of _____
by its general partner _____

BY: _____

BY: _____

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: «DB_LEGAL_DESCRIPTION»

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 2: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-2**

**Document 8. Licence of Occupation for Electric Distribution Power Line, Roadway, and
Telecommunications**

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT is dated for reference «DOCUMENT_REFERENCE_DATE».

BETWEEN:

(the “Licensor”)

AND:

(the “Licensee”)

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Applicable Law**” means either the laws of Canada, the laws of the Province of British Columbia or Kitselas Law, as applicable, and includes the Kitselas Treaty;

“**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;

“**Commencement Date**” means the effective date of the Kitselas Treaty;

“**Disposition**” means an act of disposal or an instrument by which the act of disposal is effected or evidenced, or by which an interest in land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in land and includes a licence of occupation;

“**Fees**” means the fees set out in Article 3;

“**Hazardous Substances**” means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority,

applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Kitselas Law” means a law made pursuant to Kitselas law-making authority set out in the Kitselas Treaty and includes the Kitselas Constitution;

“Kitselas Treaty” means the treaty agreement between Kitselas, Canada and British Columbia, including all Schedules and Appendices to it;

“Land” means that part or those parts of the land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule”;

“Management Plan” means the most recent management plan, development plan or investigative plan, prepared by you in a form specified by us, approved by us, signed and dated by the parties;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Licensor alone and never refers to the combination of the Licensor and the Licensee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to Kitselas Law and the laws of the Province of

British Columbia, as applicable.

- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 The provisions of the Management Plan, as amended from time to time, form part of this Agreement and represent further particulars of the covenants of both parties
- 1.9 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.10 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.11 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.12 Time is of the essence of this Agreement.
- 1.13 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.14 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with Kitselas Law, regulations, or other enactments or any policy, directive, executive direction or other such guideline of general application.

- 1.15 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.
- 1.16 In the event of any conflict between the Management Plan and the terms and conditions of any other part of this Agreement, the terms and conditions of any other part of this Agreement shall prevail.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for **PURPOSE**, as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on «COMMENCEMENT_DATE» and terminates on «TERMINATION_DATE» or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - FEES

- 3.1 _____

ARTICLE 4 - OBLIGATIONS

- 4.1 You must
- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
 - (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;

- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction, including Kitselas, in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful, voluntary, or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only as permitted in the Management Plan in accordance with the purposes set out in section 2.1;
- (g) not make, construct, place, anchor, secure or affix any Improvements in, on or to the Land except as permitted in the Management Plan and as necessary for the purposes set out in section 2.1;
- (h) within 3 months of a written request from us, provide us with a decommissioning or reclamation plan, in a form acceptable to us, that meets the requirements set out in this agreement, including the Management Plan if applicable;
- (i) provide to us, within 30 days of receiving a request from us, all reports and records we may request from you concerning your activities under this Agreement and all other matters related to this Agreement;
- (j) not make, construct, place, anchor, or affix any Improvements in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or

- (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access; despite the foregoing, you will be deemed to not be in breach of this subsection so long as:

- (iii) you are the owner of an upland property adjacent to the Land and your activities on the Land only interfere with riparian rights of access held by you; or
- (iv) each owner of any upland property adjacent to the Land whose rights of riparian access are infringed by your activities undertaken within the Land remains bound by an agreement in which that owner consents to any such infringement. Any such agreement must be in a form and on terms acceptable to us, including, if we so require that the agreement be in a form appropriate for registration in a Land Title Office against the title of the upland property.

You acknowledge that if any such agreement ceases to be binding on an upland owner or is found to be ineffective or unenforceable for any reason then you remain responsible for complying with this subsection and we may terminate this Agreement in accordance with Article 8 if you fail to satisfy your obligations under this subsection;

- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act* or any similar enactment of Kitselas Law;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act* or any similar enactment of Kitselas Law for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (m) not cut or remove timber on or from the Land without our prior written consent;
- (n) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (o) maintain all Improvements on the Land in good order and condition and in a safe, clean and sanitary state of repair, to our satisfaction;
- (p) not dredge or excavate the Land or deposit on the Land, or any part of it, any earth, fill or

other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;

- (q) not alter, repair or add to any Improvement that was, or may be, placed on or made to the Land under another Disposition or in connection with the use of Land apart from this Agreement, unless you obtain our prior written approval;
- (r) at our written request and at your expense, construct fences in the locations on the Land and to the standards required by us within the time specified by us;
- (s) obtain and maintain in good standing during the Term all permits, permissions, licences, approvals and agreements required in order to use and occupy the Land for the purpose described in Article 2.1 and deliver copies of such to us upon request;
- (t) if any soil is disturbed by you as a result of your construction, use or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us in a timely manner;
- (u) at our request and at your expense, have a British Columbia Land Surveyor conduct a survey that shows the location of all Improvements, roads, buildings and other structures owned, placed on, constructed or used by you on the Land within one year of the date of the request;
- (v) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any Artifact or Feature on or under the Land, you must:
 - i. promptly notify Kitselas;
 - ii. immediately cease any further activity that could affect the Artifact or Feature;
 - iii. take reasonable measures to protect the Artifact or Feature; and
 - iv. comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
- (w) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (x) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,

- (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
- (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue the entry upon, use or occupation of the Land by you or by those for whom you are responsible in law,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

(y) on, or before the termination of this Agreement,

- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
- (ii) remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under a Disposition to an unrelated third party, and
- (v) unless otherwise specified in the Management Plan, restore the surface of the Land to the condition that the Land was in on «RESTORE_SURFACE_DATE», but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Agreement.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or

- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time, if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement; or
- (e) if applicable, as a result of the use of the Land under prior agreements for the same purpose;

unless we have given prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

- 5.1 You agree with us that:

- (a) other persons may hold or acquire rights to use the Land, including rights held, granted or acquired under Applicable Law; such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under Applicable Law, and such interests may exist as of the Commencement Date, and following the Commencement Date Kitselas may grant such interests (including fee simple interests, and leases), and make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, provided such grant or disposition does not have a material adverse impact on your use of the Land, as provided in this Agreement;
- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a) and (b);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under Applicable Law;
- (f) you will not commence or maintain proceedings in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in

subsections (a) and (b);

- (g) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;
- (h) except as otherwise authorised in this Agreement, you will not interfere with lawful public access over the Land;
- (i) you will make no claim against us or any person acting under the authority of Kitselas Law, or any other applicable enactment, for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement;
- (j) notwithstanding anything to the contrary in this Agreement, if we, in our sole discretion, determine that the Land is required for flooding purposes in connection with a hydro electric power project, we may cancel this Agreement on 90 days written notice to you, and where we cancel this Agreement under this provision, neither you nor any person claiming under you shall be entitled to any form of compensation;
- (k) you are aware of and, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby acknowledge that there is a potential flood, erosion and debris flow danger to the Land from water hazards, including «WATER_HAZARD_NAME»;
- (l) nothing in this Agreement shall prejudice or affect our rights, powers and remedies in relation to you, including your heirs, executors, administrators, successors and assigns, or the Land, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by us as if this Agreement had not been made by the parties;
- (m) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (n) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(y)(ii) or is required to be removed under (iv), in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land on termination or within the time period provided for in the direction or permission given under paragraph 4.1(y)(iv); and
- (o) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only, and you will continue to be subject to all of the provisions of

this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$ _____ which will:
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other Dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we provide the written notice described in section 6.1(c) we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;
- and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.
- 6.6 You must without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
- (a) Comprehensive Personal Liability and/or other insurance as required in an amount of not less than \$«INSURANCE_AMOUNT» per occurrence, with an extension insuring against liability for bodily injury, and property damage arising from accidents or

occurrences on the Land or the Improvements, including
«PERSONAL_LIABILITY_USE»;

- (b) Commercial General Liability and, if applicable Marine General Liability insurance in an amount of not less than \$«INSURANCE_AMOUNT» inclusive per occurrence insuring against liability for personal injury, bodily injury and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured but only with respect to liability arising out of the activities of the named insured;
- (c) Sudden and accidental pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than \$«INSURANCE_AMOUNT»; or if such endorsement is unavailable sudden and accidental pollution insurance insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from your use of the Land as permitted under this Agreement with a limit of liability not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and the policy shall include us as additional insured;
- (d) Environmental Impairment Liability (Pollution Legal Liability) insurance insuring against bodily injury, property damage, and cleanup expenses (including removal and/or transit and disposal of contaminants) arising from gradual or sudden pollution events arising from your use of the Land as permitted under this Agreement in an amount not less than «INSURANCE_AMOUNT» per occurrence, including provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured. If this insurance is written on a claims-made basis it must include the option to purchase an extended reporting period of 24 months beyond the date of cancellation or expiry of this Agreement;
- (e) Aviation Liability insurance on all aircraft operated or used in connection with your use of the Land as permitted under this Agreement insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any Canadian Aviation Regulation and in any event not less than a per occurrence combined single limit of:
 - (i) «INSURANCE_AMOUNT» for aircraft carrying pilot only (no passengers), or
 - (ii) «INSURANCE_AMOUNT» for aircraft up to 5 passenger seats, or
 - (iii) «INSURANCE_AMOUNT» plus «INSURANCE_AMOUNT» for each additional passenger seat for aircraft up to 10 passenger seats, or
 - (iv) «INSURANCE_AMOUNT» for aircraft over 10 passenger seats;

and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation and include us as additional insured. Where applicable, such policy will also include coverage for aerial drift or misapplication of fertilizers or herbicide chemicals in an amount not less than «INSURANCE_AMOUNT» per occurrence;

- (f) Airport Premises and Operations Liability in an amount not less than «INSURANCE_AMOUNT» per accident or occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (g) Watercraft liability insurance on all watercraft operated or used in connection with your use of the Land as permitted under this Agreement (including rented watercraft), in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than «INSURANCE_AMOUNT» and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured and if applicable, include coverage for marine towing operations;

6.7 You must

- (a) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (b) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in a form satisfactory to Kitselas;
- (c) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in a form satisfactory to Kitselas;
- (d) notwithstanding subsection (b) or (c) above, if requested by us, provide to us certified copies of the required insurance policies; and

make your insurer aware of this Agreement within 30 days of signing this Agreement

6.8 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us proof of all insurance then required to be maintained by you under

this Agreement in a form satisfactory to Kitselas.

- 6.9 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement.
- 6.10 You waive all rights of recourse against us in relation to damage to your own property arising from any cause whatsoever.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may, in our sole discretion, withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with other provisions of this Agreement, or
 - (iii) in our opinion, fail to make diligent use of the Land for the purposes set out in this Agreement;and you fail to rectify such default or failure within the time period specified in a written notice from Kitselas requesting you to do so,
 - (b) if you fail to maintain in good standing any Disposition or other licence, permit, or agreement in any way related to your use and occupation of the Land under this Agreement, including without limitation the «CROSS_CANCELLATION_DETAILS»;
 - (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against

you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation and,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society and you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- (b) if you default on any of the covenants or obligations on your part required to be kept or performed and you fail to rectify such default or failure within the time period specified in a written notice from us requesting you to do so, we may perform or cause to be performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the us shall forthwith be paid by you to us.
- (c) our remedies under this Article are in addition to those available to us under applicable law including Kitselas Law.

ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, before resorting to litigation the parties will make reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

9.2 Notwithstanding section 9.1, either party may, at any time, apply to a court of competent

jurisdiction for interim, injunctive or conservatory relief.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

«DB_ADDRESS_KITSELAS»;

to you

«DB_ADDRESS_MAILING_TENANT»;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing. In the event of any disruption, strike or interruption in the Canadian postal service after mailing and prior to receipt or deemed receipt, the notice shall be re-sent by courier or other means of actual delivery.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy or other electronic copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy or other electronic copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.

- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by the time reasonably required to perform the obligation provided that:
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
 - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land;
 - (v) the application of any federal or provincial enactment or law to the Land; and

- (vi) the existence, availability or quality of access or service to the Land now or in the future;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site disclosure statement” under the *Environmental Management Act*;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Licensor

Print Name

SIGNED BY
«DB_NAME_TENANT»

SIGNED on behalf of «DB_NAME_CORPORATION»
by a duly authorized signatory

Authorized Signatory

SIGNED on behalf of «DB_NAME_CORPORATION»
By its authorized signatories

Authorized Signatory

Authorized Signatory

SIGNED on behalf of _____
by its general partner _____

BY: _____

BY: _____

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: «DB_LEGAL_DESCRIPTION»

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 3: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-3**

Note: The Parties will update the Appendices before the Effective Date, as required.

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 3: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-3**

Document 1. Statutory Right of Way for Recreational Trails

Note: The Parties will update the Appendices before the Effective Date, as required.

TERMS OF INSTRUMENT – Part 2

WHEREAS:

- A. The Grantor, Canada and the Province have entered into the _____ Final Agreement dated _____ (the “Final Agreement”).
- B. In accordance with the Final Agreement, the Grantor wishes to provide the Province with a statutory right of way over the Land in order that the Province can maintain and ensure continuing public access to and use of the existing and planned Cross Country Skiing Trails (as defined below).
- C. The grant of the statutory right of way under this Agreement is made pursuant section 218 of the *Land Title Act* and is necessary for the operation and maintenance of the Province’s undertaking.

NOW THEREFORE in consideration of the payment of the amount of \$10.00 Canadian dollars by the Province to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and other good and valuable consideration as described herein, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"Agreement" means this Part 2 Terms of Instrument for a statutory right of way along with the Form C, Part 1 of this Instrument;

"Commencement Date" means date of registration of this Agreement in the Land Title Office;

"Cross Country Skiing Trails" means the existing and planned cross country ski trails as set out and shown in the diagram attached as Schedule “A” to this agreement;

"Improvements" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;

"Land" means the land described in Item 2 of Part 1 of this General Instrument:

- 1.2 In this Agreement, "person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to the applicable laws of Kitselas or of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.9 Time is of the essence of this Agreement.
- 1.10 No ambiguity in any of the terms of this Agreement will be interpreted in favour of any party.

ARTICLE 2 - GRANT

- 2.1 On the terms and conditions set out in this Agreement, the Grantor grants to the Province, its employees, servants, licensees, invitees, contractors and agents, and for the purposes of subsection 2.1 (b), a statutory right of way over the Land to
 - (a) enter, go, return, pass and repass over the Land for the purpose of constructing, using, developing, repairing, maintaining and managing the Cross Country Skiing Trails, including access to the Land by machinery, equipment and motorized vehicles and to do

all acts which in the opinion of the Province are necessary or incidental to the to the use of the Lands for that purpose; and

- (b) enter, go, return, pass and repass over the Land for the purpose of using the Cross Country Skiing Trails for recreational purposes.
- 2.2 Nothing in this Agreement will be interpreted or construed to create or impose on the Province an obligation to construct cross country ski trails.
- 2.3 The Grantor covenants that the Province will and may peaceably enjoy and hold its rights under this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any person lawfully claiming from or under the Grantor.
- 2.4 This Agreement runs with and binds the Land to the extent necessary to give full force and effect to this Agreement.
- 2.5 The Grantor acknowledges and agrees that the Cross Country Ski Trails have been established and will be managed as recreational trails under Division 3 of the *Forest and Range Practices Act* and will be considered to be Crown lands for that purpose.
- 2.6 Notwithstanding section 2.1, the Grantor and the Province agree that the Province's rights under section 2.1 will be exercised exclusively by the Snow Valley Nordic Ski Club and its permitted successors.

ARTICLE 3 - COVENANTS

- 3.1 The Province covenants and agree to:
 - (a) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting the Province's use or occupation of the Land, and
 - (ii) the provisions of this Agreement;
 - (b) take reasonable care to avoid causing damage to the Land, and will promptly repair any such damage and restore the Land to the condition existing immediately prior to the damage occurring, but will not be responsible for repairing damage caused by anyone except those listed in section 2.1 or damage from reasonable wear and tear;
 - (c) not commit any willful, voluntary or permissive waste, spoliation or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
 - (d) use and occupy the Land only in accordance with and for the purposes set out in this

Agreement;

- (e) indemnify and save the Grantor and the Grantor's servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of
 - (i) the Province's breach, violation or non-performance of a provision of this Agreement, and
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on the Land by virtue of the entry upon, use or occupation of the Land by the Province its employees, servants, licensees, invitees, contractors, agents, assigns, and anyone for whom the Province is responsible,

unless caused by the Grantor's negligence or willful misconduct; and

- (f) on the termination of this Agreement, peaceably quit and deliver to the Grantor possession of the Land in the condition as is reasonably required by the Grantor but any trails constructed, maintained and used in accordance with this Agreement will not be required to be removed.

ARTICLE 4 – DEFAULT

4.1 The Province agrees with the Grantor that

- (a) if the Province
 - (i) defaults in the payment of any money payable by the Province under this Agreement, or
 - (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by the Province under this Agreement),

and the default or failure continues for 60 days after the Grantor gives written notice of the default or failure to the Province; or

- (b) if, in the Grantor's opinion, the Province fails to make diligent use of the Land for the purposes set out in this Agreement for a continuous period of at least 5 years, and the Province's failure continues for 60 days after the Grantor gives written notice of the failure to the Province;

this Agreement will, at the Grantor's option and with or without entry, terminate, and all of the Province's right, interest and estate in the Land will be absolutely forfeited to the Grantor.

4.2 If the condition complained of (other than the payment of any money payable by the Province under this Agreement) reasonably requires more time to cure than 60 days, the Province will be deemed to have complied with the remedying of it if the Province commences remedying or curing the condition within 60 days and diligently completes the same.

4.3 The Province agrees with the Grantor that:

- a) the Province will make no claim against the Grantor for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1;
- b) if the Province defaults on any of the covenants or obligations on the Province's part required to be kept or performed and the Province fails to rectify such default or failure within the time period specified in a written notice from the Grantor requesting the Province to do so, the Grantor may perform or cause to be performed any of such covenants or obligations or any part thereof and all expenses incurred and expenditures made by or on behalf of the Grantor shall forthwith be paid by the Province to the Grantor; and
- c) the Grantor's remedies under this Article are in addition to those available to the Grantor under applicable law.

ARTICLE 5 - NOTICE

5.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada, sent electronically, or delivered to the address of the other as follows:

to the Province:

to Grantor:

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

ARTICLE 6 - MISCELLANEOUS

6.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or

similar act.

- 6.2 This Agreement extends to, is binding upon and enures to the benefit of the Grantor, its heirs, executors, administrators, successors and assigns for so long as it holds title to the Land, and extends to, is binding upon and enures to the benefit of the Province, its administrators, successors and assigns.
- 6.3 The parties agree that nothing in this Agreement constitutes one party as the other's agent, joint venturer or partner or gives one party any authority or power to bind the other party in any way.
- 6.4 No modifications of this Agreement are effective unless in writing and signed in the same manner as this Agreement.
- 6.5 The parties agree that this Agreement may be executed in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

The parties have executed this Agreement by way of execution of the Form C Part 1 of this Instrument which forms part of this Agreement.

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 3: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-3**

Document 2. Licence of Occupation for Cycling Trails

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT MADE THIS ____ day of _____, 20XX

BETWEEN:

(the "**Licensor**")

AND:

(the "**Licensee**")

WHEREAS:

- A. The Licensor is the owner in fee simple of all and singular in that certain parcel or tract of land and premises in the _____, in the Province of British Columbia, more particularly known and described as:

(the "**Lands**");

- B. The Licensor has agreed to grant to the Licensee a licence of occupation along, over, upon and under the Lands for the purposes hereinafter set forth; and
- C. The Licensee requires and the Licensor wishes to grant to the Licensee a licence of occupation to ensure continuing public access to the existing and planned off road cycling trail network as set out in the Management Plan attached as Schedule "A" to this agreement (the "Trails").

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of Ten Dollars (\$10.00) of lawful money of Canada and other good and valuable consideration now paid by the Licensee to the Licensor (the receipt and adequacy of which hereby acknowledged by the Licensor) the parties agree as follows:

1. The Licensor grants to the Licensee and its servants, employees, invitees, agents and contractors a licence of occupation of the Land for the following purposes:
 - (a) for the Licensee, its servants, employees, invitees, agents and contractors together with machinery, vehicles and equipment and materials from time to time and at all times to enter, go, return, pass and repass along over and upon the Lands for the purpose of managing, developing, repairing and maintaining the Trails and related improvements and infrastructure as set out in the Management Plan;
 - (b) for members of the public specifically authorized by the Licensee to pass and repass, without motor vehicles, over the Trails for recreational purposes including cycling; and

Without limiting the generality of any other understandings between the Parties with respect to the initialed version of this Agreement, this document will be subject to continuing legal and technical review that may result in substantive changes. This document will be replaced by a version incorporating any such changes in the Ratification Version of the Treaty.

- (c) to do all acts which in the opinion of the Licensee are necessary and incidental to the use of the Lands, and Trails for the purposes for which this licence of occupation is hereby granted.
2. The term of this agreement commences on the date set out above and will run for ____ years.
3. The Licensor hereby covenants and agrees with the Licensee that:
- (a) it will not make, place, erect or maintain on the Lands any building, structure, foundation or obstruction which will interfere with or injure the Trails and the use Lands in the manner set out herein; and
 - (b) it will not do, or permit to be done, any act or thing which in the reasonable opinion of the Licensee might interfere with or injure the Trails and the use of the Lands in the manner set out herein.
4. The Licensee hereby covenants and agrees with the Licensor:
- (a) that the Licensee will use and occupy the Lands only in accordance with and for the purposes set out herein and in the Management Plan;
 - (b) that the Licensee will do all works and things hereby authorized to be done by the Licensee over, through, under, and upon the Lands in a good and workmanlike manner, and so as to cause no unnecessary damage or disturbance to the Lands or to any improvements thereon;
 - (c) that the Licensee will, at all times, keep and maintain the Trails and improvements in a proper state of repair in accordance with the Management Plan;
 - (d) that the Licensee will repair all damage to the Lands caused by any work done by it, its servants, agents or contractors on the Lands at the conclusion of any such work;
 - (e) that the Licensee will install visible signage at all trail heads to recognize that the Trails are within Kitselas Lands; to identify the risks related to the usage of the Trails; and to make users aware that they are assuming all risks associated with using the Trails;
 - (f) to obtain and keep in force insurance covering the Licensor and the Licensee (without any rights of cross-claim or subrogation against the Licensor) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Lands to an amount not less than \$ _____.00;
 - (g) notwithstanding subparagraph (f), the Licensor may from time to time, acting reasonably, considering the amount of insurance and type a prudent owner would

- carry, require the Licensee to obtain additional insurance or increase the amount of insurance and the Licensee will, within 30 days of receiving the request, obtain the required additional insurance and deliver to the Licensor written confirmation of the change;
- (h) to provide a certificate or evidence of insurance satisfactory to Licensor upon request by the Licensor; and
 - (i) on the expiration or at the earlier cancellation of this Agreement, if requested by the Licensor, to remove the improvements from the Lands and restore the surface of the Lands where the improvements were located to the satisfaction of the Licensor acting reasonably.
5. It is mutually understood, agreed, and declared by and between the parties hereto that:
- (a) wherever the singular or masculine is used in this agreement, it shall be construed as meaning the plural or feminine or body corporate or politic where the context or the parties hereto so require;
 - (b) should any provision or provisions of this Agreement be illegal or not enforceable, it or they shall be considered separate and severable from this Agreement and its remaining provisions shall remain in force and be binding on the parties; and
 - (c) any annual and day-use fees charged by the Licensee for the use of the Trails shall be applied to the maintenance of the Lands.
6. No provision of this agreement shall be deemed to have been waived by either party unless written waiver signed by the party waiving a provision has first been obtained by the party asserting a waiver and, without limiting the generality of the foregoing, no condoning, excusing or overlooking by a party of a breach of the provisions hereof nor any earlier written waiver shall be taken to operate as a waiver or constitute acquiescence to subsequent default or breach of this Agreement by either party.
8. 7 This agreement shall ensure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
9. This Agreement shall be governed and construed in accordance with Kitselas Laws and the applicable laws of the Province of British Columbia.
10. The Licensee covenants to and does hereby indemnify and save harmless the Licensor at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fees and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the Licensor is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or

indirectly from a breach or non-performance by the Licensee of its covenants or obligations in this Agreement or by the use of the Trails by members of the public for their intended recreational use, arising directly or indirectly from any wrongful act, omission or negligence of the Licensee in, on, around and about the Lands and the Trails.

List of Schedules to be drafted and attached:

1. Management Plan
2. Map of tenure area

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 3: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-3**

Document 3. Licence of Occupation for Forest Research Plots

Note: The Parties will update the Appendices before the Effective Date, as required.

THIS AGREEMENT made this _____ day of _____, 20__

BETWEEN:

(the “Owner”)

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Forests

(the “Licensee”)

Whereas the Owner has agreed to grant to the Licensee a licence to enter on and use that parcel of land (the “Land”) located generally in the vicinity of _____ and described in the Schedule attached, and entitled “Legal Description”;

Now therefore in consideration of the fee to be paid by, and the covenants of, the Licensee, the parties agree as follows:

ARTICLE 1 - GRANT OF LICENCE

- 1.1 The Owner, on the terms set forth herein, hereby grants to the Licensee a licence to enter on and use the Land for the purpose of conducting forestry related studies, monitoring, tests and experiments.

ARTICLE 2 - DURATION

- 2.1 The duration of the licence and the rights herein granted shall be for a term of __ years commencing on _____, 20__ (the “Commencement Date”) unless cancelled in accordance with Article 6.
- 2.2 Notwithstanding anything to the contrary in this licence, so long as:
- (a) the Licensee is not in default of any of the material terms or conditions of this licence; and
 - (b) the Licensee has given the Owner, not more than __ days prior to the expiration of the term herein granted, notice in writing of the Licensee’s wish to re-apply for a new licence to enter on and use the Land

the Owner may agree to offer a new licence to the Licensee by notice to the Licensee, in writing, on the terms and conditions determined by the Owner and contained in the notice. The Licensee shall have a period of 60 days from the date of receipt of the notice from the Owner to accept a

Without limiting the generality of any other understandings between the Parties with respect to the initialed version of this Agreement, this document will be subject to continuing legal and technical review that may result in substantive changes. This document will be replaced by a version incorporating any such changes in the Ratification Version of the Treaty.

new licence to enter on and use the Land by executing the new licence contained in the notice and delivering it to the Owner.

ARTICLE 3 - LICENCE FEE

3.1 The Licensee shall pay to the Owner a licence fee of \$1.00 for the entire term.

ARTICLE 4 - COVENANTS OF THE LICENSEE

4.1 The Licensee covenants with the Owner:

- (a) to pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged that relate to the Land or any of the Licensee's improvements thereon (the "Realty Taxes") that the Licensee is liable to pay;
- (b) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of Kitselas and any other competent government authority in any way affecting the Land and improvements situate thereon, or their use and occupation;
- (c) not to commit or suffer any willful, permissive or voluntary waste, spoliation or destruction on the Land or do or suffer to be done thereon by its employees, contractors, agents, invitees or anyone for whom the Licensee is responsible at law anything that may be or become a nuisance to the Owner or to the occupiers of adjoining land;
- (d) to deliver to the Owner from time to time, upon demand, proof of insurance provided for in subsection (j), receipts or other evidence of payment of Realty Taxes, insurance premiums and other monetary obligations of the Licensee required to be observed by the Licensee pursuant to this licence;
- (e) to indemnify and save harmless the Owner against all losses, damages, costs and liabilities, including fees of solicitors and other professional advisors arising out of:
 - (i) any breach, violation or non-performance of any covenant, condition or agreement in this licence by the Licensee, or
 - (ii) any personal injury, death or property damage arising out of the Licensee's use and occupation of the Land

and the amount of such losses, damages, costs and liabilities shall be payable to the Owner immediately;

- (f) to keep the Land in a safe, clean and sanitary condition satisfactory to the Owner acting reasonably, and to make safe, clean and sanitary any portion of the Land or

any improvement thereon that the Owner, acting reasonably, may direct by notice in writing to the Licensee;

- (g) to permit the Owner or its authorized representative to enter upon the Land at any time to examine its condition;
- (h) to use and occupy the Land in accordance with the provisions of this licence including those set forth in the schedule attached and entitled “Special Provisos”;
- (i) on the expiration or at the earlier cancellation of this licence:
 - (i) to quit peaceably and deliver possession of the Land to the Owner,
 - (ii) to remove from the Land all above-ground buildings, machinery, plant, equipment and apparatus and all other improvements to or things on the Land erected or placed on the Land by the Licensee, and
 - (iii) to restore the surface of the Land to the satisfaction of the Owner acting reasonably

and to the extent necessary, this covenant shall survive the expiration or cancellation of this licence;

- (j) to effect, and keep in force during the term, insurance protecting the Owner and the Licensee (without any rights of cross-claim or subrogation against the Owner) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Land to an amount not less than \$XX; except that so long as the Licensee is His Majesty the King in right of the Province of British Columbia or a British Columbia crown corporation, the Owner will waive the requirements of this subsection on the delivery to the Owner of confirmation that the Licensee is self insured;
- (k) notwithstanding subsection (j), the Owner may from time to time notify the Licensee that the amount of insurance posted by the Licensee pursuant to that subsection be changed and the Licensee shall, within 30 days of receiving such notice, cause the amount of insurance posted, pursuant to subsection (j), to be changed to the amount specified by the Owner, acting reasonably, in the notice and deliver to the Owner written confirmation of the change, except that when the Licensee is self-insuring this section shall not apply; and
- (l) not to interfere with the activities, works or other improvements of any other person who enters on or uses or occupies the Land under a subsequent right or interest granted by the Owner, or who is otherwise authorized by the Owner to enter on or use or occupy the Land, in accordance with Section 9.3.

ARTICLE 5 - ASSIGNMENT

- 5.1 The Licensee shall not assign this licence or grant a sublicense of any part of the Land without the prior written consent of the Owner, which consent shall not be unreasonably withheld.
- 5.2 Notwithstanding section 5.1, the Licensee may, without the prior written consent of the Owner, assign its interest in all or a part of the Land to a British Columbia crown corporation provided that the Licensee gives written notice of any such change at least 120 days prior to the next anniversary date of the term of this licence.
- 5.3 No assignment or sublicensing pursuant to sections 5.1 or 5.2, nor the Owner's consent thereto, will relieve the Licensee from the observance and performance of the Licensee's obligations contained in this licence.

ARTICLE 6 - CANCELLATION

- 6.1 If the Licensee fails to observe or perform any term contained herein, and such failure continues after the giving of the written notice by the Owner to the Licensee of the nature of the failure for a period of:
 - (a) 30 days; or
 - (b) 150 days, if the failure because of its nature would reasonably require more than 30 days to cure, and provided that the Licensee is proceeding diligently and continuously to cure the failure throughout;then the Owner may cancel this licence and, notwithstanding subsection (i) of section 4.1, any fixtures to the Land shall become, at the discretion of the Owner, the property of the Owner.
- 6.2 If this licence is taken in execution or attachment by any person, or the Licensee commits an act of bankruptcy, becomes insolvent, is petitioned into bankruptcy or voluntarily enters into an arrangement with his creditors, the Owner may, on 90 days written notice to the Licensee, cancel this licence and the rights herein granted.
- 6.3 If the Licensee ceases to use the Land for the purposes permitted herein and the Licensee does not recommence its use of the Land within 180 days of receipt of written notice from the Owner, the Owner may immediately cancel this licence and the rights herein granted.
- 6.4 The Licensee may deliver a written notice to the Owner cancelling this licence and thereafter the licence and the rights herein granted will terminate 180 days after the date of receipt by the Owner of such written notice.
- 6.5 Notwithstanding subsection 4.1(i), any building, machinery, plant, equipment and apparatus, or other improvements to the Land (collectively, the "Improvements") that remain unremoved from the Land:

- (a) upon the cancellation of this licence pursuant to section 6.1, or section 6.4; or
- (b) thirty days after the expiration or cancellation of this licence pursuant to section 6.2 or section 6.3 (provided that if further time is reasonably required because of the nature of the Improvements or because of other constraints beyond the control of the Licensee, including weather, and provided that the Licensee is proceeding diligently and continuously to remove such Improvements, the 30 day time for removal will be extended to 150 days after the expiration or cancellation of this licence)

shall, at the discretion of the Owner, be forfeited to and become the property of the Owner.

- 6.6 If the Owner elects to assume ownership of any above-ground Improvements pursuant to section 6.5, the Owner may remove them from the Land and the Licensee shall, on demand, compensate the Owner for all costs incurred by the Owner respecting their removal.
- 6.7 The rights of the Owner under section 6.5 and section 6.6 shall be deemed to survive the expiration or earlier cancellation of this licence.

ARTICLE 7 - SECURITY

- 7.1 The security in the sum of \$1.00 and all rights, privileges, benefits and interests accruing thereto delivered by the Licensee to the Owner (herein called the "Security") to guarantee the performance of the Licensee's obligations under this licence shall be maintained in effect until such time as the Owner certifies in writing that such obligations have been fully performed. So long as the Licensee is His Majesty the King in right of the Province of British Columbia or a British Columbia crown corporation, the Owner will waive the requirements of this section.
- 7.2 If the Licensee defaults in the performance of any of its obligations hereunder, the Owner may, in its sole discretion, sell, call in and convert the Security, or any part of it, and such Security shall be deemed to have been absolutely forfeited to the Owner.
- 7.3 The rights of the Owner under this Article shall be deemed to continue in full force and effect notwithstanding the expiration or earlier cancellation of this licence.
- 7.4 Notwithstanding any amount of Security stated to be required under section 7.1 the Owner may, acting reasonably, from time to time by notice to the Licensee, demand the amount to be changed to that specified in a notice and the Licensee shall, within 60 days of such notice, change the Security to that specified and provide the Owner with evidence of the change, except that while Security is waived under section 7.1, this section shall not apply.

ARTICLE 8 - NOTICE

- 8.1 Whenever service of a notice or a document is required under this licence, the notice or documents shall be in writing and shall be deemed to have been served if delivered to, or if sent by prepaid registered mail addressed to, the Owner or the Licensee, as the case may be, at the addresses specified for each on the first page of this licence, and where service is by registered mail the notice or document shall be conclusively deemed to have been served on the eighth day after its deposit in a Canada Post office at any place in Canada. If there is a disruption in mail service caused by labour dispute, civil unrest or other events beyond the control of the parties, between mailing and actual receipt of such notice, the party sending such notice will re-send by courier, fax or other electronic means and such notice will only be effective if actually received.
- 8.2 Either party may, by notice in writing to the other, specify another address for service of notices under this licence and after another address has been specified under this section, notices shall be mailed to that address in accordance with this Article.

ARTICLE 9 - MISCELLANEOUS

- 9.1 No term, condition, covenant or other provision herein shall be considered to have been waived by the Owner unless such waiver is expressed in writing by the Owner. Any such waiver of any term, condition, covenant or other provision herein shall not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant, or other provision and the consent or approval of the Owner to any act by the Licensee requiring the consent or approval of the Owner shall not be considered to waive or render unnecessary such consents or approvals to any subsequent similar act by the Licensee.
- 9.2 No remedy conferred upon or reserved to the Owner is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
- 9.3 This licence shall not entitle the Licensee to exclusive possession of the Land and the Owner may, for any purpose, grant to others interests in the Land or rights to enter on or use or occupy the Land, or may otherwise authorize other persons to enter on or use or occupy the Land, so long as the grant or authorization does not materially affect the exercise of the Licensee's rights hereunder. The question of whether a grant materially affects the exercise of the Licensee's rights hereunder shall be determined by the Owner acting reasonably. If the Owner, by written instrument, grants a licence, right or interest to others to use or occupy the Land, such grant will contain a provision identical to subsection 4.1(f) of this licence obligating the new grantee to keep the Land in a safe, clean and sanitary condition satisfactory to the Owner.
- 9.4 The terms and provisions of this licence shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.
- 9.5 Time is of the essence in this agreement.

ARTICLE 10 - DISPUTE RESOLUTION

- 10.1 In this Article, “dispute” means any dispute arising out of or in connection with this licence or in respect of any defined legal relationship associated with it or derived from it.
- 10.2 The parties agree to attempt to resolve all disputes by negotiations conducted in good faith and to provide timely disclosure of all relevant facts, information and documents to further those negotiations.
- 10.3 If a dispute is not settled through direct negotiations either party may request the British Columbia International Commercial Arbitration Centre (BCICAC) to appoint a mediator to conduct a mediation under its mediation rules of procedure.
- 10.4 If a dispute is not settled within 15 days of the appointment of the mediator or any further period of time agreed to by the parties, the dispute shall be referred to and finally resolved by arbitration before a single arbitrator under the arbitration rules of procedure of the BCICAC.
- 10.5 If the BCICAC is unavailable or unable to administer the mediation or arbitration of a dispute under its rules of procedure, the parties will select the rules of another institution.

ARTICLE 11 - INTERPRETATION

- 11.1 In this licence, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 11.2 The captions and headings contained in this licence are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the provisions herein.
- 11.3 If any section of this licence or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts and sections of this licence shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this licence as of the day and year first above written.

SIGNED by a duly authorized signatory of)
in the presence of:)
_____)
Name)
_____)
Address)

_____)
 _____)
 _____) Authorized Signatory
 _____)
 _____)
 SIGNED by a duly authorized signatory of _____)
 in the presence of: _____)
 _____)
 Name _____)
 _____)
 Address _____)
 _____)
 _____)
 _____) Authorized Signatory
 _____)
 _____)

LEGAL DESCRIPTION SCHEDULE

1. Legal Description
2. Sketch Plan

SPECIAL PROVISOS SCHEDULE

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 3: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-3**

Document 4. Gravel Pits Statutory Right of Way and Profit à Prendre

Note: The Parties will update the Appendices before the Effective Date, as required.

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FOR DISCUSSION PURPOSES ONLY; SUBJECT TO FURTHER PROVINCIAL
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Treaty Provision in Crown Corridor or Lands Chapter - Gravel Reservations

On the Effective Date, Kitselas will grant to the Province, as represented by the Minister of Transportation and Transit, an interest in those Kitselas Lands identified in Part 1 of Appendix X [i.e. existing s. 16/17 *Land Act* gravel reservation areas] substantially in the form set out in Part 2 of Appendix X.

**Appendix X – Part 1
Maps of existing MOTI *Land Act* gravel reservation areas**

**Appendix X - Part 2
Terms of Instrument**

STATUTORY RIGHT OF WAY AND PROFIT A PRENDRE

This agreement is dated for reference this ____ day of _____, 20__

BETWEEN:

KITSELAS FIRST NATION

("Kitselas")

AND:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as
represented by The Minister of Transportation and Infrastructure**

(the "Province")

WHEREAS:

- A.** Kitselas is the registered owner of the Lands;
- B.** There exists on the Lands deposits of gravel, rock, random borrow materials and sand of value to the Province for road construction and maintenance purposes; and
- C.** Kitselas has agreed to provide to the Province, on the terms and conditions set out in this agreement, the right to access the Right of Way Area and to produce and extract Gravel;

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KITSELAS AND THE PROVINCE AGREE AS FOLLOWS:

Definitions

In this agreement, including the recitals:

"Access Roads" means those roads providing access to the Gravel Pits and Gravel Reserves as shown on Appendix A;

"Applicable Law" means either Provincial law or Kitselas law, as applicable;

"Artifact or Feature" means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;

"Closed Gravel Removal Area" is a portion of the Gravel Removal Area, a Gravel Pit or a Gravel Reserve that is no longer required by the Province for Gravel Removal Activity;

"Environment" means the components of air and earth and includes, without limitation:

- (i) air, lands and water;
- (ii) all layers of the atmosphere;
- (iii) all organic and inorganic matter and living organisms; and
- (iv) the interacting natural systems that include the components listed in paragraphs (i), (ii) and (iii) above;

"Gravel" means deposits of gravel, rock, random borrow materials and sand located in the Gravel Pits and Gravel Reserves;

"Gravel Pits" means those operational gravel pits, stockpile sites, staging/aggregate processing areas and quarries described in Appendix "A" and **"Gravel Pit"** means any one of them;

"Gravel Removal Activity" means the activities set out in section 1.02;

"Gravel Removal Area" means the portion of the Right of Way Area identified as the "Gravel Removal Area" as described in Appendix "A";

"Gravel Reserves" means non-operational deposits of gravel described in Appendix "A" and **"Gravel Reserve"** means any one of them;

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"Kitselas Treaty" means the treaty among Kitselas, Canada, and British Columbia;

"Land" means [means the land described in Item 2 of the General Instrument – Part 1]

"Management Plan" means a written description, as amended from time to time, with respect to Gravel Removal Activity, including the development and use ("Pit Development Plan") and closure ("Pit Reclamation Plan") of a Gravel Pit or Gravel Reserve, prepared by the Province in accordance with Applicable Law and that contains information related to the location, size and extent, access roads, soil and Gravel descriptions, topographical and geotechnical mapping, developmental plans, anticipated volumes of Gravel extracted per time period, and reporting and reclamation, approved by Kitselas, signed and dated by the parties;

"Pit Development Plan" has the meaning ascribed to it in the definition of Management Plan;

"Pit Reclamation Plan" has the meaning ascribed to it in the definition of Management Plan;

"Right of Way" means the rights granted to the Province in this Agreement;

"Right of Way Area" means the area shown in bold on the Plan prepared by _____ B.C.L.S. and deposited in the Land Title Office under number _____, a reduced copy of which is attached hereto; and

"Risk or Hazard" means something existing or threatened, including an emergency, that the Province, acting reasonably, determines could be or could cause an interference or threat or a hazard to persons or property in relation to the Right of Way Area;

"Realty Taxes and Fees" means means all taxes, fees, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to land, including improvements thereon;

"Term" means the period of time set out in section 1.06;

"Works" means anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Access Area, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Access Area for the purpose of carrying out Gravel Removal Activity;

Part 1 Grant of SRW and Profit a Prendre

1.01 **Access:** Kitselas hereby grants to the Province for the Term hereof, the right over the Right of Way Area:

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- a) to pass and repass along and over the Access Roads for the purpose of accessing the Gravel Pits and the Gravel Reserves;
- b) maintain, repair, rebuild, and replace any Access Roads, to such extent as may reasonably be required by the Province for the purposes of this Agreement, provided the Province gives Kitselas written notice before effecting any material change to an Access Road under this paragraph, except in the event of an imminent Risk or Hazard, in which case the Province will give notice as soon as possible; and
- c) to carry out all such other acts or things as may be reasonably necessary or incidental to the development, operation, maintenance, security and remediation of the Access Roads.

1.02 **Gravel Removal Activity:** Kitselas hereby grants to the Province for the Term hereof, the right over the Gravel Removal Area to develop, maintain, operate and remediate the Gravel Pits and the Gravel Reserves in accordance with this Agreement and the Management Plan, including the right to:

- a) remove Gravel from the Gravel Pits and the Gravel Reserves, without further payment to Kitselas;
- b) excavate for, construct, install, erect, replace, extend, upgrade, operate, inspect, alter, maintain, remove and repair Works on, over, under, or in the Gravel Removal Area to such extent as may reasonably be required for the purposes of this Agreement, provided the Province gives Kitselas written notice before effecting any material change to the Gravel Removal Area under this paragraph, except in the event of an imminent Risk or Hazard, in which case the Province will give notice as soon as possible;
- c) clear a Gravel Pit and keep it cleared (including removal or pruning) of any vegetation, including trees, provided that the application of herbicides be undertaken only with the prior written consent of Kitselas;
- d) install, maintain and use gates in any fences that are necessary for access, provided that both the Province and Kitselas have keys for any lock, or locks are installed in a series to allow for access by both the Province and Kitselas;
- e) mine and process Gravel;
- f) use and store machinery necessary to mine and process Gravel;
- g) set up and operate asphalt plants for production of asphalt mix aggregates;

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- h) stockpile and store Gravel products;
 - i) temporarily store related road construction and maintenance materials, including temporary bridges, culverts and highway dividers;
 - j) generally, do all such other acts or things as may reasonably be necessary or incidental to the development, operation, maintenance, security and remediation of a Gravel Pit or Gravel Reserve in relation to the rights in this Agreement.
- 1.03 **Non-Exclusive Use:** This Agreement will not entitle the Province to exclusive possession of the Right of Way Area, and Kitselas reserves the right to grant other dispositions of any part of the Right of Way Area affected by this Agreement, so long as the grant does not affect or interfere with the exercise of the Province's rights under this Agreement.
- 1.04 **Restriction of Access:** Notwithstanding section 1.03, the Province may refuse access to specific areas of the Gravel Removal Area to any person if, in the reasonable opinion of the Province, such access would not be safe and, as part of controlling access to the Gravel Removal Area, the Province may post notices and erect such fencing, gates, and barriers as it considers appropriate to ensure reasonable safety and security of the site, provided that both the Province and Kitselas have keys for any lock in relation thereto.
- 1.05 **Restriction of Gravel Removal Activities:** For greater certainty, the Province agrees that it will undertake Gravel Removal Activities only within the Gravel Removal Area.
- 1.06 **Access Permitted by Province:** The Province may authorize its employees, contractors, agents, licensees and invitees to carry out the Gravel Removal Activity on its behalf, provided that, if and when the Province does so, the Province will not permit any person who enters upon or uses the Land on its behalf to do anything the Province is restricted from doing under this Agreement and the Province will be responsible to Kitselas for any breaches by such authorized persons of covenants made by or conditions imposed on the Province in this Agreement.
- 1.07 **Term:** The term of this Agreement commences on the effective date of Kitselas Treaty and terminates on the date agreed to by the parties under section 1.08 or such earlier date as the parties agree.
- 1.08 **Termination:** At the request of either party the parties shall consult with each other and consider whether the Right of Way is still required by the Province. If, at any time, it is determined that the Right of Way or a portion thereof is no longer required, the Province will discharge the Right of Way or portion thereof. Notwithstanding that no request for review has been made by a party, the Province shall advise Kitselas not less than every 10

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years during the Term as to whether the Right of Way is still required by the Province.

- 1.09 **Registration:** The parties intend that this agreement will constitute a charge running with the Lands and will be registered in the Land Title Office pursuant to Sections 218 and 219 of the *Land Title Act*, or in Kitselas Land Title Office as applicable.

Part 2 Covenants

- 2.01 **Covenants of Kitselas:** Kitselas will not, without the prior written consent of the Province, which will not be unreasonably withheld:

- a) construct, erect or permit the building, construction, erection or placing of any permanent fixture, building, structure or improvement within the Right of Way Area;
- b) use or remove Gravel, or permit the use or removal of Gravel from within the Gravel Removal Area;
- c) subdivide, sell, lease or transfer, grant an easement, right of way or other charge the Gravel Removal Area;
- d) authorize the use of the Right of Way Area for any other purpose by any other person in a manner that materially affects or interferes in the exercise of the Province's rights under this agreement; or
- e) do or knowingly permit to be done any act or thing which will interfere with any Gravel Removal Activity being carried out by the Province.

- 2.02 **Covenants of the Province:** Province will:

- a) use, and permit the use of Gravel only for the purposes of public infrastructure, and for no other purpose, without the express written consent of Kitselas, which consent shall not be unreasonably withheld;
- b) undertake activities permitted under this Agreement having regard to the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment;
- c) make commercially reasonable efforts to limit interference with any road being used by Kitselas in Right of Way Area;
- d) use its best efforts to prevent, control and extinguish any fire on the Lands, or any

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fires on any lands adjacent to the Gravel Removal Area which are caused by the Gravel Removal Activities or access road maintenance, and will conform to and observe the provisions of the *Wildfire Act* (as amended or replaced from time to time) and any other statutes and regulations that are in force or may in the future be enacted or made regarding the prevention of fires;

- e) reimburse Kitselas for any costs or expenses Kitselas incurs to fight fires caused by the activities of the Province permitted under this Agreement;
- f) carry out Gravel Removal Activities in a safe manner having regard to all the circumstances and, in particular, having regard to others who may be using, or otherwise occupying the Right of Way;
- g) comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the use of the Right of Way;
- h) ensure that the Right of Way Area, including the Gravel Removal Area, the Gravel Pits, the Gravel Reserves and the Access Roads, are maintained in an environmentally sound, clean, safe and orderly condition, and free from all waste, including, without limitation, wood waste relating to the use of the Right of Way Area by the Province;
- i) provide drainage control measures at the Gravel Pits as required by the Management Plan and Applicable Law;
- j) carry out the Gravel Removal Activities only in accordance with the provisions of the Management Plan and and Applicable Law;
- k) pay and discharge when due all taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Gravel Pits or any Works on the Gravel Pits;
- l) pay and discharge when due all Realty Taxes and Fees now or hereafter assessed, levied or charged which relate to the Gravel Removal Area;
- m) permit the authorized representatives of Kitselas to enter any of the Gravel Pits at any time for any purpose;
- n) provide notice to Kitselas of any Risk or Hazard;
- o) not commit or suffer any willful or voluntary waste, spoliation or destruction of the

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Gravel Pits or do or cause or permit to be done on the Right of Way Area anything that may be or become a nuisance;

- p) subject to the provisions of the Management Plan, when the Province discontinues operations in any Gravel Pit or depletes the Gravel Pit or sections thereof, trim the sides of any excavations, waste piles and stockpiles in the Gravel Pit to a 1.5 to 1 slope, open up such drains or ditches as may be required to prevent water standing therein and drain such water, place topsoil on slopes of depleted sections of the Gravel Pit, and leave the Gravel Pit in a neat condition, all to the satisfaction of Kitselas and to the conditions shown on the Pit Reclamation Plan, the Pit Development Plan and the Ministry of Transportation Reclamation and Environmental Project Handbook for Sand, Gravel and Quarry Operations in British Columbia (as updated from time to time, or replaced by a similar document agreeable to Kitselas);
- q) on the expiration or termination of this Agreement:
 - (i) promptly cease occupation of the Gravel Pits;
 - (ii) unless exempted by Kitselas, ensure Gravel Pits and Access Roads meet the requirements of section 2.06; and
 - (iii) at the request of Kitselas, remove all Works, buildings, machinery, plant equipment and apparatus owned or leased by the Province located at the Gravel Pits; and
- r) if the Province unearths or discovers any Artifact or Feature on the Lands or the Right of Way Area, and there is no previously agreed upon mitigation or management plan with Kitselas:
 - (i) promptly notify Kitselas;
 - (ii) immediately cease any further activity that could affect the Artifact or Feature;
 - (iii) take reasonable measures to protect the Artifact or Feature; and
 - (iv) comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy.

2.03 Removal of Timber: The Province may cut or remove merchantable timber in accordance

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with the Management Plan, provided:

- a) Kitselas has been notified not less than 30 days in advance of such cutting or removal; and
- b) if requested by Kitselas, has consulted with Kitselas regarding Kitselas' interest in harvesting and removing the timber.

Prior to removal of timber from the Right of Way, the Province will ensure that all appropriate permissions and log transportation requirements are in place.

2.04 **Compensation for Damage:** If, in exercising its rights under the Right of Way, the Province, its employees, contractors, agents, licensees or invitees damage any structures, buildings, fixtures, improvements, chattels, crops, merchantable timber, livestock, drains, ditches, culverts, or fences, and such damage or contamination is not caused as a result of Kitselas's breach of the terms of this Agreement or the negligence of Kitselas or those for whom it is responsible in law, then the Province will compensate Kitselas, or if appropriate, a person who suffers any loss as a result of the damage, to the extent that such damage was caused by the Province.

2.05 **Indemnity:** The Province will indemnify and save harmless Kitselas from and against all claims, demands, actions, suits or other legal proceedings brought against Kitselas by any third party by reason of or arising out of:

- a) any breach, violation or non-performance by the Province of its covenants, conditions or obligations under this Agreement; or
- b) any negligent act or omission on the part of the Province in relation to the Right of Way or the Lands, but only to the extent such matter is found to be the responsibility of the Province or those for whom the Province is responsible in law and not the result of negligence of Kitselas.

2.06 **Closed Gravel Removal Areas:** When a Gravel Removal Area, Gravel Pit or Gravel Reserve is no longer required by the Province, the Province will give notice to Kitselas that it is a Closed Gravel Removal Area, and unless otherwise directed by Kitselas, promptly:

- a) remove any Works and improvements it has installed on or within the Closed Gravel Removal Area; and
- b) remediate and reclaim the Closed Gravel Removal Area to a condition that meets the standard required under the Applicable Law related to the remediation and

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reclamation of comparable land located on provincial Crown lands and the Management Plan.

- 2.07 **Completion of Remediation:** Upon completion of the requirements set out in section 2.06, the Province will give written notice to Kitselas confirming that the requirements set out in section 2.06 a) and b) have been satisfied and the parties shall consult with each other and determine whether the requirements have been satisfied. If the parties are unable to agree, a determination will be made under the dispute resolutions provisions of Part 5.
- 2.08 **Remediated Gravel Removal Area:** Upon reaching a determination that the requirements set out in section 2.06 a) and b) have been completed satisfactorily, the Closed Gravel Removal Area will be designated as a Remediated Gravel Removal Area and the Province:
- a) will have no further obligation to maintain the Remediated Gravel Removal Site;
 - b) will have no liability for breach of any of the Province's covenants in relation to the Remediated Gravel Removal Site; and
 - c) the rights granted to the Province and the and restrictions imposed on Kitselas in this Agreement shall no longer apply to the Remediated Gravel Removal Area.

Part 3 Management Plan

- 3.01 **Initial Management Plan.** Prior to the effective date of the Kitselas Treaty, the Province, in consultation with Kitselas, will prepare and deliver to Kitselas a Management Plan for consideration and approval. If the parties are unable to agree on the terms of the Management Plan, a determination with respect to the matters of disagreement will be made under the dispute resolutions provisions of Part 5.
- 3.02 **Revisions to Management Plan.** Either party may request a revision to the Management Plan in accordance with the following procedure:
- a) giving written notice ("Notice") of the proposed revision which sets out in reasonable detail;
 - (i) the reason for the revision;
 - (ii) the particulars of the revision;
 - (iii) the effective date of the revision; and

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- (iv) specifying a reasonable time period for consultation, during which the recipient may inform the requestor of any comments or concerns regarding the proposed revision; and
 - b) if, following the time period specified in the Notice, the parties are unable to agree on the revisions to the Management Plan, a determination with respect to the matters of disagreement will be made under the dispute resolutions provisions of Part 5.
- 3.03 **Revisions by Agreement.** The procedure set out in section 3.02 does not preclude the parties from entering into any written agreement to vary the Management Plan from time to time, but any such agreement will not limit the application of section 3.02 to the Management Plan as so amended, unless the other agreement expressly so provides.
- 3.04 **Management Plan Forms Part of Agreement.** The provisions of the Management Plan, as amended from time to time, form part of this Agreement and represent further particulars of the covenants of both parties.

Part 4 Default

- 4.01 **Opportunity to Cure:** If the Province fails to perform any of its obligations under this Agreement, Kitselas may deliver a default notice to the Province. If the default is capable of being cured within 90 days of delivery of the default notice, the Province will promptly commence to cure the default with all due diligence to completion.
- 4.02 **Additional Time:** If the default is not reasonably capable of being cured within 90 days of delivery of the default notice, then the Province will still promptly commence to cure the default with all due diligence to completion, but will be entitled a further period reasonable period beyond the 90 days to cure the default.
- 4.03 **Failure to Cure:** If the Province fails to commence and continue with all due diligence to cure the default, then without relieving the Province of its obligations under this Agreement and without limiting any other right of Kitselas hereunder, Kitselas, after notice to the Province, may undertake the performance of any necessary work in order to cure the default of the Province, and the cost of any such work undertaken by Kitselas shall be borne by the Province. Having commenced such work, Kitselas has no obligation to complete such work.
- 4.04 **Remedies:** All remedies of a party, whether existing under this Agreement or at law, may be exercised at the same time. Any action taken for one default does not prevent any action being taken for any other default.
- 4.05 **No Waiver:** Any failure by Kitselas to exercise its rights with respect to any particular

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default of the Province will not operate as a waiver of its rights with respect to any subsequent default.

Part 5 Dispute Resolution

5.01 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 and agreed upon by the parties;
- c) if the dispute is not resolved within 60 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then any party may refer the dispute to a single arbitrator, knowledgeable about the matters in dispute and agreed upon by the parties, for final resolution in accordance with the *Arbitration Act* of British Columbia; and
- d) if the parties do not commence arbitration within 60 days of the notice to mediate under subsection (b), then any party may refer the matter to a court of competent jurisdiction.

5.02 It is not incompatible with this Article 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.

Part 6 Notice

6.01 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 address for that party as set out below:

To the Province:

Ministry of Transportation and Infrastructure
ADDRESS

To Kitselas:

Kitselas First Nation
ADDRESS

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or at such other addresses as the parties may specify in accordance with this provision.

6.02 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:

- a) if it was delivered personally, by courier, or by email, on the next business day; or
- b) 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.

Part 7 General

- 7.01 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, the Management Plan and in the Kitselas Treaty, which together supersede all prior understandings, communications and agreements between the parties with respect to the subject matter hereof and constitute the entire agreement between the Kitselas and the Province regarding the Right of Way.
- 7.02 Nothing in this Agreement will be interpreted or construed to limit or restrict any rights that Kitselas may have as set out under the Kitselas Treaty.
- 7.03 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.
- 7.04 This agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia and on Kitselas Lands.

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Witness to the signature of an authorized
signatory of HIS MAJESTY THE KING in right
of the Province of British Columbia as
represented by the Minister of

Witness

Authorized signatory of HIS MAJESTY THE
KING in right of the Province of British
Columbia, as represented by the Minister
of

Date of Signature

Witness to the signature of an authorized
signatory of KITSELAS FIRST NATION

Witness

Authorized signatory of KITSELAS FIRST
NATION

Date of Signature

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APPENDIX A: Map of Access Right of Way

Map(s) to be provided.

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APPENDIX B: Map of Gravel Removal Activity Right of Way

Map(s) to be provided.

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 3: Applicable Forms of Documents for Interests on Former Provincial Crown Land
Listed in Appendix G-3**

Document 5. Kitselas Wagon Road Statutory Right of Way

Note: The Parties will update the Appendices before the Effective Date, as required.

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 4: Applicable Forms of Documents for Interests that Cross Both Former Kitselas
Indian Reserves and Former Provincial Crown Land**

Document 1. Transmission Statutory Right of Way Agreement

Note: The Parties will update the Appendices before the Effective Date, as required.

TERMS OF INSTRUMENT – PART 2

TRANSMISSION STATUTORY RIGHT OF WAY AGREEMENT

WHEREAS:

- A. Kitselas, Canada and British Columbia have entered into the Kitselas Treaty;
- B. In accordance with the Kitselas Treaty, the Grantor wishes to provide the grants to Hydro with respect to the Right of Way Area as herein provided; and
- C. The statutory rights of way herein granted are necessary for the operation and maintenance of Hydro's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises 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 capitalized terms will have the following meanings, respectively, in this Agreement:

- (a) **“Access Areas”** means roads, lanes, trails, bridges and helicopter landing pads on the Right of Way Area from time to time, including:
 - (i) any roads, lanes, trails, bridges and helicopter pads constructed pursuant to paragraph 2.1(i); and
 - (ii) any related surface, ditching, drainage and road bed;
- (b) **“Agreement”** means the General Instrument – Part 1, the Terms of Instrument – Part 2, and all schedules attached to either of them;
- (c) **“Artifact or Feature”** means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;
- (d) **“Environment”** means the components of air and earth and includes, without limitation:
 - (i) air, lands and water;
 - (ii) all layers of the atmosphere;
 - (iii) all organic and inorganic matter and living organisms; and
 - (iv) the interacting natural systems that include the components listed in paragraphs (i), (ii) and (iii) above;

- (e) **“Fish Bearing Stream”** means a body of fresh water, either flowing or still, that is wetted at some or all points of the year that contains or supports fish through some or all parts of their life cycle;
 - (f) **“Grantor”** means the transferor in Item 5 of the General Instrument – Part 1;
 - (g) **“Hydro”** means the person named as the transferee in Item 6 of the General Instrument – Part 1;
 - (h) **“Lands”** means the land described in Item 2 of the General Instrument – Part 1;
 - (i) **“Kitselas Treaty”** means the treaty among the Grantor, Canada, and British Columbia;
 - (j) **“Right of Way Area”** means the area shown in bold on the Plan prepared by [REDACTED] B.C.L.S. and deposited in the Land Title Office under number [REDACTED], a reduced copy of which is attached hereto;
 - (k) **“Risk or Hazard”** means something existing or threatened, including an emergency, that Hydro, acting reasonably, determines could be or could cause:
 - (i) an interference, disturbance or threat to the Works, including the safety and security of the Works;
 - (ii) a disruption of service from the Works to any customer of Hydro; or
 - (iii) a hazard to persons or property in relation to the Works; and
 - (l) **“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 right or obligation on the part of Hydro under this Agreement, any reference to Hydro includes, to the extent reasonably applicable, its employees, representatives, agents, contractors, sub-contractors, invitees, licensees, and those for whom it is responsible in law. For greater certainty, Hydro remains fully liable for all of its obligations in this Agreement despite the exercise of any such right by such other persons.

2.0 RIGHTS RELATED TO RIGHT OF WAY AREA

2.1 The Grantor grants to Hydro, for so long as required, the right over the Right of Way Area to:

- (a) excavate for, construct, install, erect, bury, string, abandon, replace, extend, upgrade, operate, inspect, alter, maintain, remove and repair the Works on, over, under, or in the Right of Way Area;
- (b) clear and keep it cleared (including removal or pruning) of any vegetation, including trees;
- (c) conduct vegetation management, which may include the application of herbicides provided Hydro:
 - (i) obtains the written consent of the Grantor, such consent not to be unreasonably withheld; and
 - (ii) does not conduct any aerial application of herbicides;
- (d) clear and keep it cleared of all or any part of any obstruction, improvement or thing;
- (e) ground any structure, installation or thing, by whomsoever owned;
- (f) enter, work, inspect, pass and re-pass for the purposes of this Agreement, with or without vehicles, equipment, machinery and materials;
- (g) maintain, repair, rebuild, and replace any Access Areas, to such extent as may reasonably be required by Hydro for the purposes of this Agreement, provided Hydro gives the Grantor written notice before effecting any material change to an Access Area under this paragraph, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible;
- (h) install, maintain and use gates in any fences that are necessary for access, provided that both the Grantor and Hydro have keys for any lock, or locks are installed in a series to allow for access by both Hydro and the Grantor;
- (i) construct a new Access Area if there are no suitable or available Access Areas, provided Hydro has proceeded in accordance with the requirements of Article 6.0;
- (j) undertake works or other appropriate measures to protect the Works from a Risk or Hazard, subject to first providing written notice to the Grantor except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible; and,
- (k) generally, do all such other acts or things as may reasonably be necessary or incidental to the exercise of Hydro's rights under this Agreement in connection

with any of the foregoing, including investigative studies and related work to ensure compliance with applicable government or regulatory requirements in relation to the rights in this Agreement.

3.0 NON-EXCLUSIVE USE

- 3.1 This Agreement will not entitle Hydro to exclusive possession of the Right of Way Area, and the Grantor reserves the right to grant other dispositions of any part of the Right of Way Area affected by this Agreement, so long as the grant does not affect or interfere with the exercise of Hydro's rights under this Agreement.

4.0 COVENANTS OF HYDRO

4.1 Hydro will:

- (a) undertake activities permitted under this Agreement having regard to the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment;
- (b) 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) keep the portions of the Right of Way Area 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 Right of Way Area by Hydro, and on written notice from the Grantor, make safe, clean, and sanitary any portion of the Right of Way Area that contravenes the provisions of this covenant, provided that Hydro has no obligation to keep any portion of the Right of Way Area suitable for use by anyone except Hydro;
- (d) bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Right of Way Area;
- (e) not bury debris or rubbish of any kind on the Right of Way Area in excavations or backfill, and will remove shoring and similar temporary structures as backfilling proceeds;
- (f) if Hydro unearths or discovers any Artifact or Feature on the Lands, and there is no previously agreed upon mitigation or management plan with Kitselas:
 - (i) promptly notify Kitselas;
 - (ii) immediately cease any further activity that could affect the Artifact or Feature;
 - (iii) take reasonable measures to protect the Artifact or Feature; and

- (iv) comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
 - (g) not commit any voluntary or permissive waste, spoil or destruction on the Right of Way Area, or do anything thereon 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;
 - (h) provide written notice to the Grantor, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible, prior to:
 - (i) constructing drainage works;
 - (ii) undertaking works to maintain slope stability; or
 - (iii) undertaking work within a Fish Bearing Stream,within the Right of Way Area, and, subject to its regulatory obligations, will give reasonable consideration to any concerns raised by the Grantor with respect to the proposed work; and
- 4.2 If Hydro contemplates a project that includes a physical reconfiguration of the existing Works within the Right of Way Area for the purpose of an increase to the transmission line capacity and that may result in new potential adverse impacts on Kitselas Exercisable Section 35 Rights (as defined in the Kitselas Treaty), Hydro will:
- (a) provide written notice of any proposed reconfiguration and any potential alternatives;
 - (b) provide all information that Kitselas, acting reasonably, considers necessary and reasonable time and resources to permit Kitselas to prepare its views regarding any potential adverse impacts on Kitselas Exercisable Section 35 Rights;
 - (c) provide opportunities for Kitselas to present its views for discussion with Hydro;
 - (d) seriously consider the views expressed by Kitselas, including but not limited to any alternatives proposed by Kitselas and any relevant Indigenous knowledge;
 - (e) discuss and provide feedback to Kitselas during the planning and decision-making processes regarding options to avoid impacts on Kitselas Exercisable Section 35 Rights that may be caused by the proposed reconfiguration and alternatives; and
 - (f) if there may be new adverse impacts to Kitselas Exercisable Section 35 Rights arising from the proposed reconfiguration:
 - (i) ensure that reasonable design and construction measures are identified, proposed and implemented to avoid or mitigate such impacts; and

- (ii) if such impacts cannot be avoided, identify, propose and implement other accommodation measures,

taking into account the severity of the potential impacts, and

BC Hydro and Kitselas further agree that:

- (g) the Hydro commitments in subsections (a) to (f) do not arise in respect to:
 - (i) regular maintenance and sustainment of the Works, including replacement of the parts or equipment required to sustain the condition of the Works and meet changing industry standards over time; or
 - (ii) work that is reasonably required in order to protect the Works or persons or property that may be at risk in the event of an emergency or imminent Risk or Hazard;
- (h) Hydro will carry out the process set out in subsections (a) to (f) with a view to trying to obtain Kitselas's free, prior and informed consent for the proposed reconfiguration; and
- (i) either Hydro or Kitselas may notify British Columbia of any disputes in relation to any proposed physical reconfiguration of existing works or the implementation thereof, with a view to engaging in collaborative dispute resolution.

4.3 The Grantor may, at its expense, at all reasonable times, visually inspect the Right of Way Area and the Works, or carry out tests, surveys and inspections that do not interfere with the Works. If the Grantor requires access to any part of the Right of Way Area that has been fenced off or enclosed by Hydro, the Grantor will notify Hydro, which will provide such safe access as may be reasonably required by the Grantor.

5.0 RELOCATION OF WORKS DUE TO CHANGE

5.1 If a change occurs to the Right of Way Area, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area unsuitable for any of the Works, and such portion of the Right of Way Area cannot practicably be repaired or rebuilt, then Hydro will have the right to relocate those Works to a new location on the Lands, provided:

- (a) Hydro delivers a work plan to the Grantor identifying the area it is proposing to use for the relocation of the Works and proceeds in accordance with the requirements of Article 6.0;
- (b) the work plan will take into account any likely material effect of the relocated Works on the Right of Way Area;
- (c) the relocated Works will be subject to the terms and conditions of this Agreement;

- (d) the cost of such relocation will be borne by Hydro; and
 - (e) the Grantor gives its approval of the new location after taking into account the cost efficiencies of the location selected by Hydro for the relocated Works, relative to alternative locations.
- 5.2 After any relocation in accordance with Section 5.1, Hydro will obtain an appropriate plan or survey of the relocated Works by a British Columbia Land Surveyor to identify the new Right of Way Area for the purposes of Section 2.1, and will deliver such plan or survey to the Grantor for its review and approval. The parties will execute and deliver a modification of this Agreement in order to duly incorporate the amended plan or survey.
- 6.0 WORK PLANS**
- 6.1 Except in the case of an emergency or imminent Risk or Hazard, Hydro will provide to the Grantor a written work plan before:
 - (a) constructing a new Access Area pursuant to 2.1(i); or
 - (b) undertaking any relocation of any Works pursuant to Article 5.
- 6.2 The Grantor will provide comments in writing to Hydro no more than 60 days after the delivery of a work plan to the Grantor pursuant to Section 6.1. Hydro will make reasonable efforts to accommodate any suggestions or requests made by the Grantor, taking into account potential impacts to fish bearing streams and archaeological or cultural resources, with the goal of reaching agreement on a work plan within 90 days of delivery of a work plan to the Grantor. If no comments are received, Hydro may proceed with the work.
- 6.3 The Grantor will act reasonably in providing comments on a work plan, including taking into consideration the effects and benefits of the proposed work, the cost of the proposed work compared to the cost of alternate solutions, and any risks that may be associated with not undertaking the work. Hydro will act reasonably in responding to the comments.
- 6.4 If the parties are not able to reach agreement on a work plan within 90 days of delivery of a work plan to the Grantor, either party may refer the matter to dispute resolution under Article 14.
- 6.5 In the event of an emergency or imminent Risk or Hazard, Hydro may immediately undertake work and take such steps on the Right of Way Area as are reasonably required in order to protect the Works or persons or property that may be at risk, and in that event Hydro will as soon as reasonably possible notify the Grantor.
- 6.6 Hydro will, upon request, pay compensation to the Grantor for any loss or damage to the affected property resulting from any error, negligence or omission in the implementation of the work plan, on the same basis as Hydro would compensate other parties suffering comparable loss or damage. If Hydro disputes that it has an obligation to pay

compensation or disputes the amount claimed, the dispute may be referred to dispute resolution under Article 14 by any of the parties.

7.0 RELOCATION OF WORKS AT THE REQUEST OF THE GRANTOR

7.1 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 Kitselas Treaty lands, provided:

- (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, safety, and cost factors;
- (b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;
- (c) before relocation, the Grantor has paid the reasonable costs and expenses of the relocation, including costs of design, supervision and construction as estimated by Hydro, with appropriate adjustments based on actuals, after the relocation is complete; and
- (d) the relocated Works will be subject to the terms and conditions of this Agreement.

7.2 After any relocation in accordance with Section 7.1, Hydro will obtain an appropriate plan or survey of the relocated Works by a British Columbia Land Surveyor to identify the new Right of Way Area for the purposes of Section 2.1, and will deliver such plan or survey to the Grantor for its review and approval. Following approval by the Grantor, the parties will execute and deliver a modification of this Agreement in order to duly incorporate the amended plan or survey.

8.0 REMOVAL OF WORKS

8.1 If Hydro determines that it no longer requires all or a portion of the Right of Way Area, then Hydro will, in respect of such Right of Way Area or portion thereof:

- (a) provide notice to the Grantor;
- (b) remove all above ground Works, unless otherwise agreed between the Parties and such other Works as the Parties may agree;
- (c) fix all damage to the Right of Way Area caused by the removal of the Works within a reasonable period of time, including revegetation with suitable grass seed where reasonably appropriate;
- (d) leave the Right of Way Area, or portion thereof that is no longer required, as the case may be:

- (i) in a safe, clean and sanitary condition (as it would be maintained by a prudent owner in occupation), to the extent the condition relates to the use or occupation of the Right of Way Area by Hydro; and
 - (ii) free from all waste, debris, and things owned or left on the Right of Way Area by Hydro (including trade fixtures, inventory, and other personal property), except as otherwise provided in this section; and
 - (e) quit peaceably the Right of Way Area, or portion thereof that is no longer required, as the case may be and, where applicable, amend this Agreement to remove the portion no longer required from the Right of Way Area.
- 8.2 Any Works permitted to remain under subsection 8.1(b) will be absolutely forfeited to and become the property and responsibility of the Grantor. Hydro will remain liable for any environmental damage to the Right of Way Area arising from any other Works that remain on or in the Right of Way Area or portion thereof, except that, if the Grantor uses or authorizes the use of any of such remaining Works for any purpose, Hydro will not be liable for any environmental damage to the Right of Way Area to the extent caused by the Grantor's use or authorized use of the remaining Works.
- 8.3 This Article will survive the termination of this Agreement.

9.0 COVENANTS OF THE GRANTOR

9.1 The Grantor covenants that:

- (a) Hydro will and may peaceably enjoy and hold its rights under this Agreement without any interruption, disturbance, molestation or hindrance from the Grantor or any other person for whom the Grantor is responsible at law, provided that nothing in this subsection 9.1(a) will limit the Grantor's right of inspection in Section 4.2;
- (b) if the Grantor attempts to enforce against Hydro any by-law, law, regulation, standard or requirement in relation to the Works, or in relation to their respective rights or obligations under this Agreement, that frustrates, or creates an unreasonable delay, condition, limit or impairment of Hydro's authorized use of the Right of Way Area, then the Grantor will indemnify and hold harmless Hydro or TELUS, as the case may be, from and against any resulting additional costs. This indemnity is personal to the original Grantor and not binding on any subsequent owner of the Lands or part thereof, so that the Grantor will be bound by this indemnity notwithstanding any transfer of the Lands or part thereof.
- (c) 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 Right of Way Area, 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 create or increase any Risk or Hazard;
- (d) 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;
- (e) the Grantor will not carry out blasting or aerial logging operations on or near the Right of Way Area without prior written permission from Hydro, not to be unreasonably withheld;
- (f) 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, not to be unreasonably withheld, provided that nothing in this subsection is intended to prevent safe temporary parking of vehicles;
- (g) 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;
- (h) the Grantor will not use, or authorize the use of the Right of Way Area for fuelling any vehicle or equipment;
- (i) the Grantor will not do or authorize any act or thing that injures or endangers the Works;
- (j) the Grantor will not use or authorize the use of the Right of Way Area for any purpose that would create a Risk or Hazard or would interfere with Hydro's exercise of rights under this Agreement;
- (k) the Grantor will not close an Access Area, or portion thereof, without the consent of Hydro, not to be unreasonably withheld; and
- (l) subject to Section 4.1(b) and except as specifically provided for in this Agreement, the Grantor will not assess any fee, charge, toll, levy or expense on or in connection with the rights herein granted.

10.0 COMPENSATION FOR DAMAGE

- 10.1 If, contrary to the terms of this Agreement, Hydro or its contractors, damage any structures, buildings, fixtures, improvements, chattels, crops, merchantable timber, livestock, drains, ditches, culverts, fences, or Access Areas, 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 or those for whom it is responsible in law, then Hydro will, within a reasonable period of time:
- (a) 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 but will otherwise have no liability or responsibility for any maintenance or repair of Access Areas;
 - (b) remediate any other kind of damage or contamination; or
 - (c) where it is not practical to repair or remediate, compensate the Grantor, or if appropriate, a person in the affected area who suffers any loss as a result of the damage or contamination, to the extent that such damage or contamination was caused by Hydro.
- 10.2 Compensation paid to the Grantor for merchantable timber pursuant to section 10.1 will be calculated in accordance with generally accepted principles of timber valuation and on payment, ownership of any timber cut on the Lands under this Agreement will vest in Hydro. At the Grantor's request, the Grantor may retain ownership of any merchantable timber cut on the Lands instead of receiving compensation for the timber.

11.0 OBLIGATION RESPECTING THIRD PARTY CLAIMS

- 11.1 On written notice and unless prohibited by provincial legislation or its tariff, Hydro will indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings brought against the Grantor by any third party by reason of or arising out of:
- (a) any breach, violation or non-performance by Hydro of its covenants, conditions or obligations under this Agreement; or
 - (b) any negligent act or omission on the part of Hydro in relation to its Works,
- but only to the extent such matter is found to be the responsibility of Hydro and was not contributed to by:
- (i) the negligence of; or
 - (ii) the breach, violation, or non-performance of this Agreement
- by, the Grantor or 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.

12.0 DEFAULTS AND END OF AGREEMENT

- 12.1 The rights granted under this Agreement are for so long as required and will terminate, without compensation to Hydro, when Hydro no longer requires the Right of Way Area for its undertaking and Hydro gives 90 days written notice of termination to the Grantor.
- 12.2 If Hydro fails to perform any of its obligations under this Agreement, the Grantor may deliver a default notice to Hydro. If the default is capable of being cured within 90 days of delivery of the default notice, Hydro will promptly commence to cure the default with all due diligence to completion.
- 12.3 If the default is not reasonably capable of being cured within 90 days of delivery of the default notice, then Hydro will still promptly commence to cure the default with all due diligence to completion. Hydro will, in this case, request the Grantor to approve a further period beyond the 90 days to cure the default.
- 12.4 If Hydro fails to commence and continue with all due diligence to cure the default, then without relieving Hydro of its obligations under this Agreement and without limiting any other right of the Grantor hereunder, the Grantor, after notice to Hydro, may undertake the performance of any necessary work in order to cure the default of Hydro, and the cost of any such work undertaken by the Grantor shall be borne by Hydro. Having commenced such work, the Grantor has no obligation to complete such work.
- 12.5 All remedies of a party, whether existing under this Agreement or at law, may be exercised at the same time. Any action taken for one default does not prevent any action being taken for any other default.
- 12.6 The Grantor has no right to terminate this Agreement for default.

13.0 ACCESS TO THE RIGHT OF WAY AREA AFTER AGREEMENT ENDS

- 13.1 Hydro is entitled to access the Right of Way Area after this Agreement ends at reasonable times and on such reasonable conditions as may be specified by the Grantor, and only to perform any of its obligations that survive the ending of this Agreement.
- 13.2 This Article survives the ending of this Agreement.

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 and agreed upon by the parties;

- (c) if the dispute is not resolved within 60 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then any party may refer the dispute to a single arbitrator, knowledgeable about the matters in dispute and agreed upon by the parties, for final resolution in accordance with the *Arbitration Act* of British Columbia; and
 - (d) if the parties do not commence arbitration within 60 days of the notice to mediate under subsection (b), then any party may refer the matter to a court of competent jurisdiction.
- 14.2 It is not incompatible with this Article 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 Subject to Section 15.2, this Agreement runs with and binds the Right of Way Area to the extent necessary to give full force and effect to this Agreement.
- 15.2 The parties acknowledge that the covenant in subsection 9.1(b) relates to the powers of Kitselas as a government. If Kitselas transfers all or any portion of the Right of Way Area:
- (a) it will continue to be bound directly to Hydro in respect of those covenants that involve its governmental powers, notwithstanding the transfer; and
 - (b) the transferee will have no liability in respect of those covenants that can only be exercised by Kitselas as a government.
- 15.3 Hydro will be entitled to enforce the covenant described in Section 15.2 directly against Kitselas without additional consideration and without an amendment 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 address for that party in the General Instrument – Part 1, or to a current email or other electronic address used for such purposes and notified by that party to the other party.
- 16.2 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:
- (a) if it was delivered personally, by courier, or by email, on the next business day; or
 - (b) 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.

- 16.3 A party may change their address, and specify an email address by which they may be notified, by giving notice to the other parties 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. Wherever consent or permission is required under this Agreement, such consent or permission will not be unreasonably delayed, conditioned or withheld.
- 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 From and after the date of this Agreement, Hydro will not licence or authorize a third party to attach its works to the Works on the Right of Way Area unless the third party has first obtained consent from the Grantor for such attachment and provided a copy of such consent to Hydro.
- 17.5 For greater certainty, a licence granted by Hydro pursuant to section 17.4 will not grant the licensee the right to use or occupy the Right of Way Area, and the third party will be solely responsible for obtaining its own tenure to the Right of Way Area. Hydro will make reasonable efforts to work with the Grantor to address any third party whose works are attached to the Works without the Grantor's permission, but Hydro will have no obligation to remove the works of any third party who has attached its works to the Works, either before or after the date of this Agreement:
- (a) without the required consent from the Grantor; or
 - (b) whose consent has expired or been revoked.
- 17.6 The Grantor may appoint a delegate to provide Hydro with all commentary, authorizations and approvals required pursuant to this Agreement.
- 17.7 Except where this Agreement expressly provides otherwise, nothing in this Agreement will be interpreted or construed to limit or restrict any rights or obligations that Hydro may have under applicable laws.
- 17.8 Nothing in this Agreement will be interpreted or construed to limit or restrict any rights that Hydro, as a Public Utility, may have as set out under the Kitselas Treaty.
- 17.9 Except as hereinafter specifically provided Hydro retains ownership for all existing Works and Works that it constructs, places or installs on the Right of Way Area, including any underground Works. The Works shall not form part of the freehold

regardless of the degree to which they are affixed or attached to the Right of Way Area, and regardless of any damage that may be caused by their removal. Notwithstanding the foregoing, title will pass to the Grantor for Works that:

- (a) Hydro has abandoned with the consent of the Grantor pursuant to section 8.1; or
- (b) Hydro has forfeited to the Grantor pursuant to section 8.2.

17.10 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 and in the Kitselas Treaty, which together supersede all prior understandings, communications and agreements between the parties with respect to the subject matter hereof.

17.11 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.

17.12 The parties agree that Hydro will only pay compensation for interference with or damage to the Lands pursuant to this Agreement as provided under section 6.6 and Article 10.0.

18.0 INTERPRETATION

18.1 In this Agreement:

- (a) capitalized terms in this Agreement have the meanings given in Article 1 (Definitions);
- (b) all attached schedules form an integral part of this Agreement, including any schedule attached to the General Instrument – Part 1;
- (c) 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;
- (d) a reference to “party” or “parties” in this Agreement is a reference to the Grantor or Hydro, or both, as the context requires;
- (e) the words “include”, “includes”, and “including”, are to be read as if they are followed by the phrase “without limitation”;
- (f) 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;
- (g) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;

- (h) any reference to a statute means that statute and any regulations made under it, all as amended or replaced from time to time; and
- (i) 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.

[ATTACH PLAN]

End of Set

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 4: Applicable Forms of Documents for Interests that Cross Both Former Kitselas
Indian Reserves and Former Provincial Crown Land**

Document 2. Ancillary Rights Statutory Right of Way Agreement

Note: The Parties will update the Appendices before the Effective Date, as required.

TERMS OF INSTRUMENT - PART 2**ANCILLARY RIGHTS STATUTORY RIGHT OF WAY AGREEMENT****WHEREAS:**

- A. Kitselas, Canada and British Columbia have entered into the Kitselas Treaty;
- B. In accordance with the Kitselas Treaty, the Grantor wishes to provide the grants to Hydro with respect to the Lands as herein provided; and
- C. The statutory rights of way herein granted are necessary for the operation and maintenance of Hydro's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the promises 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 capitalized terms will have the following meanings, respectively, in this Agreement:

- (a) **"Access Areas"** means roads, lanes, trails, bridges and helicopter landing pads on the Lands from time to time, including:
 - (i) any roads, lanes, trails, bridges and helicopter pads constructed pursuant to paragraph 2.1(e); and
 - (ii) any related surface, ditching, drainage and road bed;
- (b) **"Agreement"** means the General Instrument – Part 1, the Terms of Instrument – Part 2, and all schedules attached to either of them;
- (c) **"Artifact or Feature"** means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;
- (d) **"Effective Date"** has the meaning set out in the Kitselas Treaty;
- (e) **"Environment"** means the components of air and earth and includes: without limitation
 - (i) air, lands and water;
 - (ii) all layers of the atmosphere;
 - (iii) all organic and inorganic matter and living organisms; and

- (iv) the interacting natural systems that include the components listed in paragraphs (i), (ii) and (iii) above;
- (f) **“Fish Bearing Stream”** means a body of fresh water, either flowing or still, that is wetted at some or all points of the year that contains or supports fish through some or all parts of their life cycle;
- (g) **“Grantor”** means the transferor in Item 5 of the General Instrument – Part 1;
- (h) **“Hydro”** means the person named as the transferee in Item 6 of the General Instrument – Part 1;
- (i) **“Lands”** means the land described in Item 2 of the General Instrument – Part 1; **[NTD: Once the parcel boundaries of the treaty lands have been confirmed, Hydro will confirm whether this Agreement is required for each individual parcel, and where the ancillary rights are only required over a portion of the parcel, Hydro will agree to limit the application of these rights to an area shown on a sketch to be attached, which will be agreed upon by Hydro and Kitselas]**
- (j) **“Kitselas Treaty”** means the treaty among the Grantor, Canada, and British Columbia;
- (k) **“Risk or Hazard”** means something existing or threatened, including an emergency, that Hydro, acting reasonably, determines could be or could cause:
 - (i) an interference, disturbance or threat to the Works, including the safety and security of the Works;
 - (ii) a disruption of service from the Works to any customer of Hydro; or
 - (iii) a hazard to persons or property in relation to the Works; and
- (l) **“Works”** means all things and components, whether located on the Lands or not, 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 right or obligation on the part of Hydro under this Agreement, any reference to Hydro includes, to the extent reasonably applicable, its employees, representatives, agents, contractors, sub-contractors, invitees, licensees, and those for

whom it is responsible in law. For greater certainty, Hydro remains fully liable for all of its obligations in this Agreement despite the exercise of any such right by such other persons.

2.0 GRANT OF RIGHT OF WAY

2.1 The Grantor grants to Hydro, for so long as required, the right over the Lands to:

- (a) enter, inspect, pass and repass, with or without vehicles, machinery, material or equipment, of any kind or description, as reasonably required by Hydro;
- (b) maintain, repair, rebuild, and replace any Access Areas, to such extent as may reasonably be required by Hydro for the purposes of this Agreement, provided Hydro gives the Grantor written notice before effecting any material change to an Access Area under this paragraph, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible;
- (c) install, maintain and use gates in any fences that are necessary for access, provided that both the Grantor and Hydro have keys for any lock, or locks are installed in a series to allow for access by both Hydro and the Grantor;
- (d) with prior notice to the Grantor, cut trees and vegetation that poses a Risk or Hazard, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible;
- (e) if there are no suitable and available Access Areas, construct a new Access Area, provided Hydro has proceeded in accordance with the requirements of Article 5.0, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as reasonably possible and then, if requested by the Grantor, Hydro will make reasonable efforts to restore the affected area to its previous condition and compensate for any remaining damage;
- (f) undertake works or other appropriate measures, including the removal of any obstruction or structure, to protect the Works from a Risk or Hazard, provided Hydro has proceeded in accordance with the requirements of Article 5.0, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible; and
- (g) do all things necessary or incidental to the undertakings of Hydro in connection with the above, including investigative studies and related work to ensure compliance with applicable government or regulatory requirements in relation to the rights in this Agreement.

2.2 The rights granted under this Agreement are for so long as required and will terminate, without compensation to Hydro, when Hydro no longer requires the rights under this Agreement for its undertaking and Hydro gives 90 days written notice of termination to the Grantor.

3.0 GRANTOR'S COVENANTS

3.1 The Grantor covenants with Hydro that:

- (a) it will not close an Access Area, or portion thereof, unless the Grantor has given Hydro notice of the Grantor's intention to close the Access Area, and
 - (i) Hydro has given notice that it has reasonably satisfactory alternate access to the Works; or
 - (ii) the Grantor has completed construction of another Access Area, at its sole cost and expense, that will provide alternate access to Hydro's Works that is reasonably satisfactory to BC Hydro;
- (b) if the Grantor attempts to enforce against Hydro any by-law, law, regulation, standard or requirement in relation to the Works, or in relation to their respective rights or obligations under this Agreement, that frustrates, or creates an unreasonable delay, condition, limit or impairment of Hydro's authorized use of the Right of Way Area, then the Grantor will indemnify and hold harmless Hydro or TELUS, as the case may be, from and against any resulting additional costs. This indemnity is personal to the original Grantor and not binding on any subsequent owner of the Lands or part thereof, so that the Grantor will be bound by this indemnity notwithstanding any transfer of the Lands or part thereof;
- (c) the Grantor will not use or authorize the use of the Lands, including the construction of any improvements, that would create a Risk or Hazard or would interfere with Hydro's exercise of rights under this Agreement; and
- (d) except as specifically provided for in this Agreement, the Grantor will not assess any fee, charge, toll, levy or expense on or in connection with the rights herein granted.

4.0 HYDRO'S COVENANTS

4.1 Hydro will:

- (a) if, contrary to the terms of this Agreement, Hydro or its contractors, damage any structures, buildings, fixtures, improvements, chattels, crops, merchantable timber, livestock, drains, ditches, culverts, fences, or Access Areas, 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 or those for whom it is responsible in law, then Hydro will, within a reasonable period of time:
 - (i) 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 but will otherwise have no liability or responsibility for any maintenance or repair of Access Areas;

- (ii) remediate any other kind of damage or contamination; or
 - (iii) where it is not practical to repair or remediate, compensate the Grantor, or if appropriate, a person in the affected area who suffers any loss as a result of the damage or contamination, to the extent that such damage or contamination was caused by Hydro, provided that compensation paid to the Grantor for merchantable timber pursuant to this sub-section will be calculated in accordance with generally accepted principles of timber valuation and, on payment, ownership of any timber under this Agreement will vest in Hydro and, at the Grantor's request, the Grantor may retain ownership of any merchantable timber cut on the Lands instead of receiving compensation for the timber;
- (b) on written notice and unless prohibited by provincial legislation or its tariff, indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings brought against the Grantor by any third party by reason of or arising out of:
 - (i) any breach, violation or non-performance by Hydro of its covenants, conditions or obligations under this Agreement; or
 - (ii) any negligent act or omission on the part of Hydro in relation to its use of the Access Areas,

but only to the extent such matter is found to be the responsibility of Hydro and was not contributed to by the negligence of, or the breach, violation, or non-performance of this Agreement by, the Grantor or 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.
- (c) undertake activities permitted under this Agreement having regard for the impact on the Environment, and take prudent measures to minimize any danger or disruption to the Environment;
- (d) if Hydro unearths or discovers any Artifact or Feature on the Lands, and there is no previously agreed upon mitigation or management plan with Kitselas:
 - (i) promptly notify Kitselas;
 - (ii) immediately cease any further activity that could affect the Artifact or Feature;
 - (iii) take reasonable measures to protect the Artifact or Feature; and
 - (iv) comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;

- (e) 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 by Hydro of such Lands, provided that Hydro has no obligation to keep any portion of the Lands suitable for use by anyone except Hydro;
- (f) not remove any merchantable timber from the Lands, except in compliance with any applicable laws and with the prior approval of the Grantor; and
- (g) 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 Hydro's use of the Lands and which Hydro is liable to pay;
- (h) notify the Grantor in writing if it no longer requires all or a portion of an Access Area that it has improved pursuant to subsection 2.1(e), and:
 - (i) will meet with the Grantor to discuss decommissioning the road;
 - (ii) the Grantor will have six months after the meeting to notify Hydro in writing that Hydro must decommission the Access Area, in which case Hydro will decommission the Access Area and restore it to a condition as close as reasonably possible to the condition that existing prior to such improvement; and
 - (iii) if Hydro is not required to remove the Access Area, they will have no further liability for its condition, use, maintenance or repair; and
- (i) provide written notice to the Grantor, except in the event of an imminent Risk or Hazard, in which case Hydro will give notice as soon as possible, prior to:
 - (i) constructing drainage works;
 - (ii) undertaking works to maintain slope stability; or
 - (iii) undertaking work within a Fish Bearing Stream,within the Lands, and, subject to its regulatory obligations, will give reasonable consideration to any concerns raised by the Grantor with respect to the proposed work.

5.0 WORK PLANS

- 5.1 Except in the case of an emergency or imminent Risk or Hazard, Hydro will provide to the Grantor a written work plan before:
- (a) constructing any Access Areas pursuant to subsection 2.1(e); or
 - (b) undertaking works or other measures to avoid a Risk or Hazard pursuant to subsection 2.1(f).

- 5.2 The Grantor will provide comments in writing to Hydro no more than 60 days after the delivery of a work plan to the Grantor pursuant to Section 5.1. Hydro will make reasonable efforts to accommodate any suggestions or requests made by the Grantor, taking into account the potential loss of productive capacity and the guiding principle that no more land will be used than is reasonably required for the proposed activity, with the goal of reaching agreement on a work plan within 90 days of delivery of a work plan to the Grantor. If no comments are received, Hydro may proceed with the work.
- 5.3 The Grantor will act reasonably in providing comments on a work plan, including taking into consideration the effects and benefits of the proposed work, the cost of the proposed work compared to the cost of alternate solutions, and any risks that may be associated with not undertaking the work, and Hydro will act reasonably in responding to such comments.
- 5.4 If the parties are not able to reach agreement on a work plan within 90 days of delivery of a work plan to the Grantor, either party may refer the matter to dispute resolution under Article 7.
- 5.5 In the event of an emergency or imminent Risk or Hazard, Hydro may immediately undertake work and take such steps on the Lands as are reasonably required in order to protect the Works or persons or property that may be at risk, and in that event Hydro will as soon as reasonably possible notify the Grantor.
- 5.6 Hydro will, upon request, pay compensation to the Grantor for any loss or damage to the affected property resulting from any error, negligence or omission in the implementation of the work plan. If Hydro disputes that it has an obligation to pay compensation or disputes the amount claimed, the dispute may be referred to dispute resolution under Article 7 by any of the parties.

6.0 MUTUAL COVENANTS

- 6.1 The parties mutually promise and agree as follows:
- (a) this Agreement will run with the Lands and will bind all present and subsequent owners of the Lands;
 - (b) this Agreement will in no way abrogate from or affect any rights, powers or privileges which Hydro may have under any other agreement registered against the title to the Lands or under any federal, provincial or local legislation;
 - (c) no compensation will be payable for any matter for which Hydro has fulfilled its obligations to repair under subsection 4.1(a); and
 - (d) failure to enforce any covenant or restriction contained in this Agreement for a breach or violation of any covenant or right contained in this Agreement will not constitute a waiver, in whole or in part, of any of the injured party's rights or remedies.

7.0 DISPUTE RESOLUTION

- 7.1 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 and agreed upon by the parties;
 - (c) if the dispute is not resolved within 60 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then any party may refer the dispute to a single arbitrator, knowledgeable about the matters in dispute and agreed upon by the parties, for final resolution in accordance with the *Arbitration Act* of British Columbia; and
 - (d) if the parties do not commence arbitration within 60 days of the notice to mediate under subsection (b), then any party may refer the matter to a court of competent jurisdiction.
- 7.2 It is not incompatible with this Article 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.

8.0 GENERAL

- 8.1 The expressions “Grantor” and “Hydro” include their respective heirs, executors, administrators, successors and assigns.
- 8.2 If the Grantor is more than one person, every covenant and agreement by the Grantor will be joint and several.
- 8.3 Words in one gender include all genders and words in the singular include the plural.
- 8.4 If any provision of this Agreement is found to be partially or wholly illegal or unenforceable, then that provision or portion thereof will be considered to be separate and severable from this Agreement and the remaining provisions will be unaffected and will remain enforceable to the fullest extent permitted by law as though the illegal or unenforceable provision or portion thereof had never been included in this Agreement.
- 8.5 This Agreement will not entitle Hydro to exclusive possession of the Lands and the Grantor reserves the right to grant other dispositions of any part of the 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.

- 8.6 The parties acknowledge that the covenant in subsection 3.1(b) relate to the powers of Kitselas as a government. If Kitselas transfers all or any portion of the Lands:
- (a) it will continue to be bound directly to Hydro in respect of those covenants that involve its governmental powers, notwithstanding the transfer; and
 - (b) the transferee will have no liability in respect of those covenants that can only be exercised by Kitselas as a government.
- 8.7 Hydro will be entitled to enforce the covenant described in Section 8.6 directly against Kitselas without additional consideration and without an amendment to this Agreement.
- 8.8 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 address for that party in the General Instrument – Part 1, or to a current email or other electronic address used for such purposes and notified by that party to the other party.
- 8.9 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:
- (a) if it was delivered personally, by courier, or by email, on the next business day; or
 - (b) 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.
- 8.10 A party may change their address, and specify an email address by which they may be notified, by giving notice to the other parties in accordance with this provision.
- 8.11 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. Wherever consent or permission is required under this Agreement, such consent or permission will not be unreasonably delayed, conditioned or withheld.
- 8.12 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.
- 8.13 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.
- 8.14 The Grantor may appoint a delegate to provide Hydro with all commentary, authorizations and approvals required pursuant to this Agreement.

- 8.15 Except where this Agreement expressly provides otherwise, nothing in this Agreement will be interpreted or construed to limit or restrict any rights or obligations that Hydro may have under applicable laws.
- 8.16 Nothing in this Agreement will be interpreted or construed to limit or restrict any rights that Hydro, as a Public Utility (as defined in the Kitselas Treaty), may have as set out under the Kitselas Treaty.
- 8.17 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 and in the Kitselas Treaty, which together supersede all prior understandings, communications and agreements between the parties with respect to the subject matter hereof.
- 8.18 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.
- 8.19 The parties agree that Hydro will only pay compensation for interference with or damage to the Lands pursuant to this Agreement as provided under subsections 2.1(e) and 4.1(a) and section 5.6.

9.0 INTERPRETATION

- 9.1 In this Agreement:
- (a) capitalized terms in this Agreement have the meanings given in Article 1 (Definitions);
 - (b) all attached schedules form an integral part of this Agreement, including any schedule attached to the General Instrument – Part 1;
 - (c) 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;
 - (d) a reference to “party” or “parties” in this Agreement is a reference to the Grantor or Hydro, or both, as the context requires;
 - (e) the words “include”, “includes”, and “including”, are to be read as if they are followed by the phrase “without limitation”;
 - (f) 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;
 - (g) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;

- (h) any reference to a statute means that statute and any regulations made under it, all as amended or replaced from time to time; and
- (i) 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.

END OF SET

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 4: Applicable Forms of Documents for Interests that Cross Both Former Kitselas
Indian Reserves and Former Provincial Crown Land**

Document 3. Right of Way for Electrical Distribution and Telecommunication Works

Note: The Parties will update the Appendices before the Effective Date, as required.

PART 2**STANDARD CHARGE TERMS****RIGHT OF WAY FOR ELECTRICAL DISTRIBUTION AND
TELECOMMUNICATION WORKS**

Filed by: British Columbia Hydro and Power Authority

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

WHEREAS:

- A. Kitselas, Canada and British Columbia have entered into the Kitselas Treaty;
- B. In accordance with the Kitselas Treaty, the Grantor wishes to provide the grants, as herein provided, to each of Hydro and TELUS with respect to the Lands as hereinafter defined; and
- C. The statutory rights of way herein granted are necessary for the operation and maintenance of the respective undertakings of Hydro and TELUS.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises 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. DEFINITIONS**1.1 In this Agreement:**

- (a) “**Affiliate**” will have the meaning ascribed to it in the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended or replaced from time to time and, in the case of TELUS, includes an affiliate (as defined in that Act) of TELUS and any partnership or other unincorporated association in which TELUS or any affiliate (as defined in that Act) of TELUS has a controlling interest;
- (b) “**Agreement**” means the General Instrument – Part 1, the Filed Terms, and all schedules attached to either of them;
- (c) “**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value, including ancestral remains, burials, and areas containing evidence of past human activity;

- (d) “**Effective Date**” has the meaning set out in the Kitselas Treaty;
- (e) “**Environment**” means all the components of the earth including, without limitation, all layers of the atmosphere, air, land (including, without limitation, all underground spaces and cavities and all lands submerged under water), soil, water (including, without limitation, surface and underground water), organic and inorganic matter and living organisms, the interacting natural systems that include the foregoing and all other external conditions or influences under which humans, animals and plants live or develop;
- (f) “**Filed Terms**” means these filed Standard Charge Terms;
- (g) “**Fish Bearing Stream**” means a body of fresh water, either flowing or still, that is wetted at some or all points of the year that contains or supports fish through some or all parts of their life cycle;
- (h) “**Grantor**” means the transferor in Item 5 of the General Instrument – Part 1;
- (i) “**Hydro**” means British Columbia Hydro and Power Authority, the transferee in Item 6 of the General Instrument – Part 1;
- (j) “**Interested Party**” means a person who, in relation to a portion of the Lands to which consent is required under this Agreement:
 - (i) is shown in the records of the Land Title Office as having a right of exclusive possession to such portion of the Lands; or
 - (ii) is identified in a notice in writing by the Grantor to Hydro and TELUS, as appropriate, within ten days of receiving any application from either of them, as a person with the right to give consent as provided under this Agreement in place of the Grantor;
- (k) “**Kitselas Treaty**” means the treaty ratified by each of Kitselas, Canada and British Columbia;
- (l) “**Lands**” means the lands described in Item 2 of the General Instrument – Part 1; **[NTD: Once the parcel boundaries of the treaty lands have been confirmed, Hydro will confirm whether this Agreement is required for each individual parcel]**
- (m) “**Right of Way Area**” has the meaning set out in section 3.1;
- (n) “**Risk or Hazard**” means something that Hydro or TELUS, acting reasonably, determines is causing or could cause:
 - (i) an interference, disturbance or threat to the Works, including without limitation the safety or security of the Works;

- (ii) a disruption of service from the Works to any customer of Hydro or TELUS; or
 - (iii) a hazard to persons or property in relation to the Works;
 - (o) **“Roads”** means any roads, lanes, trails, bridges, or helicopter landing pads, existing from time to time on or through the Lands;
 - (p) **“TELUS”** means TELUS Communications Inc., the transferee in Item 6 of the General Instrument; and
 - (q) **“Works”** means:
 - (i) as it relates to the rights and responsibilities of Hydro, all things and components using any type of technology from time to time necessary or convenient for the purpose of transmitting and distributing electricity, and for the purpose of telecommunications related to the business of Hydro, including: poles, towers, antennae (except for monopole free standing antennae), guy wires, brackets, crossarms, insulators, above ground or underground transformers, submarine cables, equipment shelters including vault boxes, anchors, attachments, lines, access nodes and cables, including underground or fibre optic cables, underground conduits, lines and pipes of every kind, 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, but does not include transmission towers or any electrical works operated at a voltage of 69 kv or higher; and
 - (ii) as it relates to the rights and responsibilities of TELUS, all things and components, using any type of technology from time to time, necessary or convenient for the purpose of telecommunications, including: poles, towers, guy wires, brackets, crossarms, insulators, transformers, anchors, attachments, lines, access nodes and cables, including fibre optic and electrical cables, in whole or in part and underground conduits, lines and pipes of every kind, underground cables, including fibre optic and electrical cables, together with all ancillary appliances and fittings and above ground or underground equipment shelters, cabinets and vault boxes, submarine cables, and wireless telecommunications equipment, including antennas and other associated equipment.
- 1.2 With respect to any right or obligation on the part of Hydro or TELUS under this Agreement, any reference to Hydro or TELUS includes, to the extent reasonably applicable, their respective employees, representatives, agents, contractors, sub-contractors, invitees, licensees, and those for whom either or both of them is responsible

in law. For greater certainty, Hydro or TELUS, as the case may be, remains fully liable for all of its obligations in this Agreement despite the exercise of any such right by such other persons.

2. GRANT OF RIGHT OF WAY

2.1 The Grantor grants, separately to each of Hydro and TELUS, for so long as required, the uninterrupted right, liberty and right of way, at any time, to:

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

- (i) excavate for, construct, install, erect, bury, abandon, replace, extend, upgrade, operate, inspect, maintain, alter, remove and repair the Works on, over, in, under, across and through the Right of Way Area;
- (ii) clear and keep the Right of Way Area cleared of all or any part of any obstruction, improvement or other matter, because of a Risk or Hazard;
- (iii) clear and keep the Right of Way Area cleared (including pruning or removal) of any vegetation, including trees;
- (iv) conduct vegetation management, which may include the application of herbicides, provided Hydro or TELUS, as the case may be:
 - (A) obtains the consent of the Grantor, such consent not to be unreasonably withheld; and
 - (B) does not conduct any aerial application of herbicides on the Lands;
- (v) install, maintain and use gates in any fences on the Right of Way Area from time to time, provided that the Grantor has keys for any locks to allow for access by the Grantor; and
- (vi) ground any structure, installation or thing, by whomsoever owned, situated anywhere on the Right of Way Area, because of a Risk or Hazard;

(b) use the Lands as follows:

- (i) enter, pass and repass for the purposes of this Agreement, with or without vehicles, equipment, machinery or materials;
- (ii) maintain, repair, rebuild, and replace any Roads, to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;
- (iii) if there are no suitable and available Roads, construct a new road, lane,

trail, bridge, or helicopter landing pad, provided Hydro or TELUS, as the case may be, have proceeded in accordance with the requirements of Article 6;

- (iv) with prior notice to the Grantor, cut trees or growth outside the Right of Way Area, because of a Risk or Hazard, except in the event of an imminent Risk or Hazard, in which case notice will be given as soon as possible;
 - (v) ground any structure, installation or thing, by whomsoever owned, because of a Risk or Hazard;
 - (vi) undertake works or take steps to protect any Works located within the Lands, or to protect persons or property that may be at risk from such Works, provided Hydro or TELUS, as the case may be, have proceeded in accordance with the requirements of Article 6; and
 - (vii) Hydro may, acting reasonably, enter onto the Lands to determine electrical consumption, without notice to or prior approval from the Grantor; and
- (c) generally, do all such other acts or things as may reasonably be necessary or incidental to the exercise of rights by Hydro or TELUS under this Agreement, or because of a Risk or Hazard, including investigative studies and related work to ensure compliance with the applicable government or regulatory requirements in relation to the rights in this Agreement.

3. RIGHT OF WAY AREA

3.1 The Right of Way Area includes:

- (a) all those portions of the Lands six (6) metres on either side of the centre alignment of:
 - (i) any Works existing as of the date of this Agreement;
 - (ii) any additional Works constructed after the date of this Agreement adjacent to, under, along the sides of or across any Roads; and
 - (iii) any additional Works that provide service to any Lands adjacent to any Roads;
- (b) any of the Lands as may from time to time be consented to in writing by the Grantor, or by any delegate appointed by the Grantor; and
- (c) any other portion of the Lands as may from time to time be consented to in

writing by an Interested Party.

- 3.2 Before extending any pole line or constructing any new underground equipment shelters or conduits pursuant to paragraph 3.1(a)(ii), Hydro or TELUS, as the case may be, must provide reasonable notice to the Grantor of the proposed location of such Works and must give reasonable consideration, subject to their respective regulatory obligations, to any request by the Grantor to modify the proposed location.
- 3.3 Prior to the date of this Agreement, Hydro and TELUS will provide a sketch showing the approximate location of the Works as of the date of the sketch. Hydro and TELUS will provide the Grantor on request with an updated sketch of the Works, if the Works have been extended in the previous calendar year. All of the terms and conditions of this Agreement will apply to the new Works and the related area of the Lands.

4. NON-EXCLUSIVE USE

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

5. COVENANTS OF HYDRO AND TELUS

- 5.1 Hydro and TELUS each covenant separately with the Grantor to:
 - (a) pay and discharge when due all applicable taxes, levies, charges and assessments from time to time lawfully assessed, levied or charged to the account of Hydro or TELUS, as the case may be, which relate to the Works or the Right of Way Area and which Hydro or TELUS is liable to pay;
 - (b) keep the portions of the Lands used by Hydro or TELUS under this Agreement in a safe, clean and sanitary condition to the extent the condition relates to the use or occupation by Hydro or TELUS of such Lands, provided that Hydro and TELUS have no obligation to keep any portion of the Lands suitable for use by anyone except Hydro and TELUS;
 - (c) bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
 - (d) undertake activities permitted under this Agreement having regard for the impact on the Environment and take prudent measures to minimize any danger or disruption to the Environment;

- (e) if Hydro or TELUS unearths or discovers any Artifact or Feature on the Lands, and there is no previously agreed upon mitigation or management plan with Kitselas:
 - (i) promptly notify Kitselas;
 - (ii) immediately cease any further activity that could affect the Artifact or Feature;
 - (iii) take reasonable measures to protect the Artifact or Feature; and
 - (iv) comply with the direction of a lawful authority in relation to the handling of the Artifact or Feature, which may include compliance with a Kitselas' cultural heritage policy;
- (f) not remove any merchantable timber from the Lands, except in compliance with any applicable laws and with the prior approval of the Grantor;
- (g) not bury debris or rubbish of any kind on the Lands in excavations or backfill, and will remove shoring and similar temporary structures as backfilling proceeds;
- (h) not commit any voluntary or permissive waste, spoil or destruction on the Right of Way Area, or do or suffer to be done thereon anything that may be or become a nuisance to the Grantor, except to the extent required by Hydro or TELUS, acting reasonably, to exercise the rights granted under this Agreement; and
- (i) provide written notice to the Grantor, except in the event of an imminent Risk or Hazard, in which case Hydro or TELUS, as the case may be, will give notice as soon as possible, prior to:
 - (i) constructing drainage works;
 - (ii) undertaking works to maintain slope stability; or
 - (iii) undertaking work within a Fish Bearing Stream,within the Lands, and, subject to its regulatory obligations, will give reasonable consideration to any concerns raised by the Grantor with respect to the proposed work.

6. WORK PLANS

- 6.1 Except in the case of an emergency or imminent Risk or Hazard, Hydro or TELUS, as the case may be, will provide to the Grantor a written work plan before:
- (a) constructing a new Road pursuant to paragraph 2.1(b)(iii); or
 - (b) undertaking any works pursuant to paragraph 2.1(b)(vi).

- 6.2 The Grantor will provide comments in writing to Hydro or TELUS, as appropriate, no more than 60 days after delivery of a work plan to the Grantor pursuant to section 6.1. Hydro or TELUS will make reasonable efforts to accommodate any suggestions or requests made by the Grantor with the goal of reaching agreement on a work plan within 90 days of delivery of a work plan to the Grantor. If no comments are received, Hydro or TELUS, as appropriate, may proceed with the work.
- 6.3 The Grantor will act reasonably in providing comments on a work plan, including taking into consideration the effects and benefits of the proposed work, the cost of the proposed work compared to the cost of alternate solutions, and any risks that may be associated with not undertaking the work.
- 6.4 If the parties are not able to reach agreement on a work plan within 90 days of delivery of a work plan to the Grantor, either party may refer the matter to dispute resolution under Article 16.
- 6.5 In the event of an emergency or imminent Risk or Hazard, Hydro and TELUS may immediately undertake work and take such steps on the Lands as are reasonably required in order to protect the Works or persons or property that may be at risk, and in that event Hydro or TELUS will as soon as reasonably possible notify the Grantor.
- 6.6 Hydro or TELUS will, upon request, pay compensation to the Grantor for any loss or damage to the affected property resulting from any error, negligence or omission in the implementation of a work plan, on the same basis as Hydro or TELUS would compensate other parties suffering comparable loss or damage. If Hydro or TELUS disputes that it has an obligation to pay compensation, or disputes the amount claimed, the dispute may be referred to dispute resolution under Article 16 by any of the parties.
- 7. RELOCATION OF HYDRO WORKS AT THE REQUEST OF THE GRANTOR**
- 7.1 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:
- (a) the new location is, in the reasonable opinion of Hydro, suitable for use for the relocated Works considering construction, maintenance and operation, safety, and cost factors;
 - (b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;
 - (c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation, including costs of design, supervision and construction as estimated by Hydro, with appropriate adjustments based on actuals, after the relocation is complete; and
 - (d) the relocated Hydro Works will be subject to the terms and conditions of this Agreement.

8. RELOCATION OF TELUS WORKS AT THE REQUEST OF THE GRANTOR

- 8.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, TELUS will relocate any Works in the Right of Way Area to a new location on the Lands, provided:
- (a) the new location is, in the reasonable opinion of TELUS, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;
 - (b) the Grantor gives TELUS reasonable notice to permit proper design, planning and construction of the Works to be relocated;
 - (c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation as estimated by TELUS, including costs of design, supervision and construction with appropriate adjustments to be made, based on actuals, after the relocation is complete; and
 - (d) the relocated TELUS Works will be subject to the terms and conditions of this Agreement.

9. RESTORATION

- 9.1 When all or any portion of the Right of Way Area is no longer required for the Works, Hydro or TELUS, as the case may be, will restore the ground surface of the affected portion of the Right of Way Area, as near as reasonably practicable to its condition prior to the installation of the Works, including:
- (a) the removal of any above ground Works, underground transformers and, at the request of the Grantor, any cables located within underground ducts in such portion of the Right of Way Area; and
 - (b) revegetation with suitable grass seed where reasonably appropriate.

- 9.2 This Article will survive the expiration or any termination of this Agreement.

10. REMOVAL OF WORKS

- 10.1 If Hydro or TELUS determine that certain of their respective Works are no longer required under this Agreement, either may, with the consent of the Grantor, abandon such Works and, on a date specified in the consent, all of their right, title, benefit and interest in such Works will be deemed to have been transferred to the Grantor. If the consent of the Grantor is not obtained within six months after the date of the expiration of this Agreement, Hydro or TELUS, as the case may be, will remove the above ground Works, underground transformers and, at the request of the Grantor, any cables located within underground ducts, as soon as reasonably possible in the circumstances.
- 10.2 The Grantor may request that Hydro or TELUS, as the case may be, remove Works no

longer required under this Agreement, in accordance with section 10.1. If Hydro or TELUS dispute the removal of the Works, then any party may submit the dispute to the dispute resolution process in article 16 of this Agreement.

- 10.3 Hydro and TELUS will notify the Grantor in writing if they no longer require any new Road constructed pursuant to paragraph 2.1(b)(iii) and will meet with the Grantor to discuss decommissioning of the Road. The Grantor will have six months after the meeting to notify Hydro and TELUS in writing that Hydro and TELUS must decommission the Road, in which case Hydro and TELUS will decommission the Road. If Hydro and TELUS are not required to remove a Road they will have no further liability for its condition, use, maintenance or repair.
- 10.4 Hydro will remain liable for any environmental damage to the Lands arising from any of its below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, unless the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then Hydro will not be liable for any environmental damage caused by such use or authorized use.
- 10.5 TELUS will remain liable for any environmental damage to the Lands arising from any of its below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, unless the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then TELUS will not be liable for any environmental damage caused by the Grantor's use or authorized use.
- 10.6 This Article will survive the expiration or any termination of this Agreement.

11. COVENANTS OF THE GRANTOR

- 11.1 The Grantor covenants that Hydro and TELUS will and may peaceably enjoy and hold their respective rights under this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any person for whom the Grantor is responsible at law, provided that nothing in this section 11.1 will limit the Grantor's right of inspection pursuant to section 15.1.
- 11.2 If the Grantor attempts to enforce against Hydro or TELUS any by-law, law, regulation, standard or requirement in relation to the Works, or in relation to their respective rights or obligations under this Agreement, that frustrates, or creates an unreasonable delay, condition, limit or impairment of Hydro or TELUS's authorized use of the Right of Way Area, then the Grantor will indemnify and hold harmless Hydro or TELUS, as the case may be, from and against any resulting additional costs. This indemnity is personal to the original Grantor and not binding on any subsequent owner of the Lands or part thereof, so that the Grantor will be bound by this indemnity notwithstanding any transfer of the Lands or part thereof.
- 11.3 If the Grantor requires TELUS to pay any taxes, levies, charges or assessments with respect to the Right of Way Area, their respective Works, or other property of either of them, that are unreasonably in excess of what TELUS would have been required to pay if the said taxes, levies, charges or assessments had been reasonably comparable to those

generally applicable in other jurisdictions in British Columbia, then the Grantor will indemnify and save harmless TELUS from and against such additional cost. This indemnity is personal to the original Grantor and not binding on any subsequent owner of the Lands or part thereof, so that the Grantor will be bound by this indemnity notwithstanding any transfer of the Lands or part thereof. Any dispute as to whether the costs exceed those generally applicable in other comparable jurisdictions, or the extent of those excess costs, may be referred to the dispute resolution process in Article 16.

11.4 Without limitation to Hydro's or TELUS's statutory and regulatory authorities, the Grantor will not, directly or indirectly, without the prior written permission, not to be unreasonably withheld, of Hydro or TELUS, as the case may be:

- (a) 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 growth upon the Right of Way Area, if any such action or thing, in the reasonable opinion of Hydro or TELUS:
 - (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 TELUS; or
 - (iii) may by its operation, use, maintenance or existence on the Right of Way Area create or increase any Risk or Hazard;
- (b) authorize or carry out blasting or aerial logging operations on or near any portion of the Right of Way Area; or
- (c) diminish or increase, or authorize anyone to 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.

12. COMPENSATION FOR DAMAGE

12.1 If, contrary to the terms of this Agreement, Hydro or TELUS damage any structures, buildings, fixtures, improvements, or chattels, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, or Roads on the Lands, or contaminate the Lands in the exercise of its vegetation management rights pursuant to section 2.1, and such damage is not caused by the Grantor's breach of this Agreement or the negligence or wilful act of the Grantor or its contractors, agents or permittees, or those for whom it is responsible in law, then Hydro or TELUS, as the case may be, will, within a reasonable period of time:

- (a) 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, but will otherwise have no liability or responsibility for any

maintenance or repair of Roads;

- (b) remediate any other kind of damage or contamination; or,
- (c) where it is not practical to repair or remediate, compensate the Grantor, or if appropriate, a person in the affected area who suffers any loss as a result of the damage or contamination, to the extent that such damage or contamination was caused by Hydro or TELUS.

- 12.2 Compensation paid to the Grantor for merchantable timber pursuant to section 12.1 will be calculated in accordance with generally accepted principles of timber valuation and on payment, ownership of any timber cut on the Lands under this Agreement will vest in Hydro or TELUS, as the case may be. At the Grantor's request, the Grantor may retain ownership of any merchantable timber cut on the Lands instead of receiving compensation for the timber.

13. OBLIGATION RESPECTING THIRD PARTY CLAIMS

- 13.1 On written notice and unless prohibited by provincial legislation or its tariff, Hydro will at all times save harmless and indemnify and keep indemnified the Grantor from and against all claims, demands, actions, suits or other legal proceedings brought against the Grantor by any third party 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; or
- (b) any negligent act or omission on the part of Hydro in relation to its Works, including:
 - (i) the construction, maintenance, operation or decommissioning of its Works; and
 - (ii) the exercise of its vegetation management rights pursuant to section 2.1,

but only to the extent that any such matter was found to be the responsibility of Hydro and was not contributed to by the negligence, breach, violation or non-performance of the Grantor, and not for any matters based on nuisance or the rule in *Rylands v. Fletcher*, unless Hydro was negligent.

- 13.2 On written notice and unless prohibited by legislation, TELUS will at all times save harmless and indemnify and keep indemnified 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 TELUS of any of TELUS's covenants, conditions or obligations under this Agreement; or
 - (b) any negligent act or omission on the part of TELUS in respect of or in relation to

its Works, including:

- (i) the construction, maintenance, operation or decommissioning of its Works; and
- (ii) the exercise of its vegetation management rights pursuant to section 2.1,

but only to the extent that any such matter was found to be the responsibility of TELUS and was not contributed to by the negligence, breach, violation or non-performance of the Grantor.

14. FENCING

- 14.1 With the exception of transformer stations and equipment shelters, Hydro and TELUS will not fence the Right of Way Area without the prior consent of the Grantor.

15. INSPECTION

- 15.1 The Grantor may, at its expense, at all reasonable times, visually inspect the Right of Way Area and the Works or carry out tests, surveys and inspections that do not interfere with the Works. If the Grantor requires access to any part of the Right of Way Area that has been fenced off or enclosed, the Grantor will notify Hydro and TELUS, who will provide such safe access as may be reasonably required by the Grantor.

16. DISPUTE RESOLUTION

- 16.1 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 and agreed upon by the parties;
 - (c) if the dispute is not resolved within 60 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then any party may refer the dispute to a single arbitrator, knowledgeable about the matters in dispute and agreed upon by the parties, for final resolution in accordance with the *Arbitration Act* of British Columbia;
 - (d) if the parties do not commence arbitration within 60 days of the notice to mediate under subsection (b), then any party may refer the matter to a court of competent jurisdiction; and
 - (e) for the purposes of this section 16.1, Hydro and TELUS will only be considered as one party where the dispute arises between the Grantor, on the one hand, and

Hydro and TELUS jointly, on the other.

- 16.2 It is not incompatible with this Article 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.

17. RUNS WITH THE LAND

- 17.1 Subject to section 17.2, this Agreement runs with and binds the Lands to the extent necessary to give full force and effect to this Agreement.
- 17.2 The parties acknowledge that the covenants in sections 11.2, 11.3 and 20.8 relate to the powers of Kitselas as a government. If Kitselas transfers all or any portion of the Lands:
- (a) it will continue to be bound directly to Hydro and TELUS in respect of those covenants that involve its governmental powers, notwithstanding the transfer; and
 - (b) the transferee will be released from any liability in respect of those covenants that can only be exercised by Kitselas as a government.
- 17.3 Either Hydro or TELUS, as the case may be, will be entitled to enforce the covenants described in section 17.2 directly against Kitselas without additional consideration and without an amendment to this Agreement.

18. ASSIGNMENT

- 18.1 This Agreement may be transferred or assigned at any time by Hydro or TELUS, in whole or in part, without the consent of the Grantor.
- 18.2 During any time that TELUS carries on business as a telecommunications services provider in a partnership controlled by TELUS or one of its Affiliates, TELUS may allow that partnership and its members to exercise any of the rights granted to TELUS in this Agreement, provided that TELUS ensures that the partnership and its members comply with TELUS's obligations in this Agreement. For greater certainty, TELUS will remain fully liable for all of its obligations under this Agreement in such circumstances.

19. NOTICE

- 19.1 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 address for that party in the General Instrument – Part 1, or to the most recent address provided by that party pursuant to section 19.3.
- 19.2 If any question arises as to the date on which such notice was communicated to a party, it will be deemed to have been given on the earlier of:
- (a) if it was delivered personally, by courier, or by email, on the next business day;

or

- (b) 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.

- 19.3 A party may change their address, and specify an email address by which they may be notified, by giving notice to the other parties in accordance with this provision.

20. GENERAL

- 20.1 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. Wherever consent or permission is required under this Agreement, such consent or permission will not be unreasonably delayed, conditioned or withheld.
- 20.2 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.
- 20.3 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.
- 20.4 From and after the date of this Agreement, Hydro and TELUS will not license or authorize a third party to attach its works to the Works on the Right of Way Area unless the third party has first obtained consent from the Grantor for such attachment and provided a copy of such consent to Hydro or TELUS, as the case may be.
- 20.5 For greater certainty, a licence granted by Hydro or TELUS, as the case may be, pursuant to section 20.4, will not grant the licensee the right to use or occupy the Right of Way Area, and the third party will be solely responsible for obtaining its own tenure to the Right of Way Area. Hydro or TELUS, as the case may be, will make reasonable efforts to work with the Grantor to address any third party whose works are attached to the Works without the Grantor's permission, but Hydro and TELUS will have no obligation to remove the works of any third party who has attached its works to the Works, either before or after the date of this Agreement:
 - (a) without the required consent from the Grantor; or
 - (b) whose consent has expired or been revoked.
- 20.6 The Grantor may appoint a delegate to provide Hydro and TELUS with all commentary, authorizations and approvals required pursuant to this Agreement, including all commentary, authorizations or approvals required in relation to work plans.
- 20.7 This Agreement may not be amended except by written agreement signed by all parties to

this Agreement.

- 20.8 Except where this Agreement expressly provides otherwise, nothing in this Agreement will be interpreted or construed to limit or restrict any rights or obligations that Hydro or TELUS may have under applicable laws, including laws relating to environment, archaeology and fish-bearing streams.
- 20.9 Nothing in this Agreement will be interpreted or construed to limit or restrict any rights that Hydro or TELUS, as Public Utilities, may have as set out under the Kitselas Treaty.
- 20.10 Subject to section 10.1, Hydro and TELUS retain ownership for all existing Works and Works that they construct, place or install on the Right of Way Area, including any underground Works. The Works shall not form part of the freehold regardless of the degree to which they are affixed or attached to the Right of Way Area, and regardless of any damage that may be caused by their removal.
- 20.11 Kitselas will make reasonable efforts to notify Hydro and TELUS if it intends to apply for a certificate of indefeasible title in the provincial Land Title Office in respect of any lands that are to be added to the Kitselas' treaty settlement lands after the Effective Date. The Grantor agrees to execute an amendment of this Agreement or a new agreement that incorporates these Filed Terms, at the request of either Hydro or TELUS, in order to extend the application of these Filed Terms to any additional lands acquired by Kitselas after the Effective Date that are or will become treaty settlement lands within the meaning of the Kitselas Treaty. Hydro or TELUS, as the case may be, will be responsible for the cost of preparing any documentation that may be necessary to amend the Agreement, or for the cost of a new agreement, and for the related costs of filing the document in the Land Title Office.
- 20.12 The parties agree that Hydro and TELUS will only pay compensation for interference with or damage to the Lands pursuant to this Agreement as provided under section 6.6 and Article 12.

21. INTERPRETATION

- 21.1 In this Agreement:
- (a) all attached schedules form an integral part of this Agreement, including any schedules attached to the General Instrument – Part 1;
 - (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) reference to "party" or "parties" is a reference to the Grantor, Hydro or TELUS, or all of them, as the context requires;
 - (d) the words "include", "includes", and "including", are to be read as if they are followed by the phrase "without limitation";

- (e) 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;
- (f) any reference to a statute includes any regulations made pursuant to that statute and, unless otherwise expressly provided herein, includes a reference to all amendments made thereto and in force from time to time and any statute or regulation that may be passed which has the effect of supplementing or superseding that statute or those regulations;
- (g) any reference to an Article, section, subsection, paragraph, or sub-paragraph means the appropriate part of this Agreement, which for ease of reference is illustrated as follows:
 - 1. Article;
 - 1.1 section;
 - (a) subsection;
 - (i) paragraph; and
 - (A) sub-paragraph; and
- (h) any reference to “day” means a calendar day.

END OF SET

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 4: Applicable Forms of Documents for Interests that Cross Both Former Kitselas
Indian Reserves and Former Provincial Crown Land**

Document 4. PNG Form of Statutory Right of Way

Note: The Parties will update the Appendices before the Effective Date, as required.

STANDARD CHARGE TERMS

Filed by: Pacific Northern Gas Ltd.

These Filed Terms (as defined below) 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, have entered into a Treaty;
- B. In accordance with the Treaty, the Grantor wishes to provide the grants, as herein provided, to PNG with respect to the Grantor's Lands; and
- C. The grants herein provided are necessary for the operation and maintenance of PNG's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and covenants contained herein, and for 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 (including the recitals to 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*, [SBC 2002] c. 57;
 - (c) **"Agreement"** means these Filed Terms, the General Instrument and all schedules attached to either of them;
 - (d) **"Applicable Laws"** means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, bylaws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time, and the lawful requirements of any Governmental Authority having jurisdiction;
 - (e) **"Area B"** means the area shown as "Area B" on the Plan;
 - (f) **"Area C"** means the area shown as "Area C" on the Plan;

- (g) “**Area of the Works**” means, together, the Right of Way Area, and those portions of the Lands shown as “Area B” on the Plan;
- (h) “**Discovered Works**” has the meaning given to it in Section 3.1;
- (i) “**Emergency**” means a situation that causes, or is in the opinion of PNG (reasonably formed) likely to cause, or is perceived by PNG (acting reasonably) to be, an immediate and serious threat or danger to the public, to PNG or its employees, contractors or agents, or to the Works or other facilities or operations of PNG;
- (j) “**Effective Date**” means the date upon which the Treaty will take effect;
- (k) “**Entry Notice**” has the meaning given to it in Section 6.2;
- (l) “**Environment**” has the meaning given to it in the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33;
- (m) “**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;
- (n) “**Filed Terms**” means these filed standard charge terms;
- (o) “**Gas**” means any hydrocarbons or mixture of hydrocarbons that, at a temperature of 15 degrees Celsius and a pressure of 101.325 kilopascals is in a gaseous state, and/or low carbon gas (including hydrogen) and shall, in no event, contain any mix of components that will, under normal operating conditions, cause the presence of any liquids in the pipeline comprising part of the Works;
- (p) “**General Instrument**” means the Form C General Instrument – Part I, which refers to these Filed Terms and any other pages attached thereto;
- (q) “**Governmental Authority**” means any federal, provincial, regional, municipal, local or other government, governmental or public department, authority, court, tribunal, arbitral body, commission, council, board, bureau or agency (and includes, where applicable, the Grantor);
- (r) “**Grantor**” means the person named as the transferor in Item 5 of the General Instrument;
- (s) “**Grantor’s Lands**” means all and singular those lands and premises described in Item 2 of the General Instrument;
- (t) “**Lands**” means, together, the Area of the Works, and Area C, as shown on the Plan;

- (u) **“Plan”** means the Plan attached as Schedule “A” to the General Instrument, as described in section (a) of Item 3 of the General Instrument; **[NTD: PNG to prepare a draft of the applicable Plan for each parcel]**
 - (v) **“PNG”** means the person named as the transferee in Item 6 of the General Instrument;
 - (w) **“Right of Way Area”** means those portions of the Grantor’s Lands shown as “Area A” on the Plan, as they may be modified from time to time;
 - (x) **“Treaty”** means the Kitselas First Nation Final Agreement among the Grantor, Canada and British Columbia; and
 - (y) **“Works”** means one or more pipelines for the carriage, conveyance, transportation and handling of Gas through or by means of the same, together with all such stations, structures, drips, valves, fittings, meters, communications equipment and all other equipment, appliances, appurtenances, devices for controlling corrosion, and such other works and things ancillary and incidental thereto as PNG considers necessary or convenient in connection therewith for the carriage, conveyance, transportation and handling of Gas.
- 1.2 With respect to any obligation on the part of PNG under this Agreement, any reference to PNG includes its respective servants, officers, employees, agents, contractors, sub-contractors, invitees, licensees, successors, assigns, and those for whom PNG 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 PNG 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, improve, alter, abandon, replace, extend, upgrade, operate, maintain, reconstruct, inspect, 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 PNG 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 PNG might interfere with or endanger the Works, disrupt service to PNG'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 PNG interfere with or endanger the Works, disrupt service to PNG's customers, or pose a hazard to persons or property in relation to the Works; and
 - (v) conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of PNG;
- (c) to enjoy further rights over the Area of the Works and Area C as follows:
 - (i) PNG may cut vegetation if in the opinion of PNG 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. PNG will, except in an Emergency, give the Grantor an Entry Notice prior to exercising its rights under this paragraph 2.1(c)(i);
 - (ii) PNG may maintain and use all fences and gates installed by or on behalf of PNG which are, as at the Effective Date, situated on the Area of the Works, including fences and gates affecting access to Area C;
 - (iii) PNG may install, maintain and use on the Area of the Works such fences and gates as PNG, acting reasonably, considers necessary or advisable for the protection of the Works situated within the Area of the Works or within the Excluded Right of Way Areas, or for the safety of its employees, contractors or agents, or for the safety of the public, including fences and gates affecting access to Area C, subject to the following:
 - (A) in the case of the initial installation of temporary fences or gates, PNG will first provide to the Grantor an Entry Notice; and
 - (B) in the case of the initial installation of permanent fences or gates, PNG will first deliver to the Grantor for approval a written work plan in accordance with Section 7.1, describing the proposed work;

- (iv) PNG 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 PNG 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), PNG 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 PNG in relation to this Agreement, subject to prior 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 PNG does not require the prior approval of the Grantor under this subparagraph 2.1(c)(v)(B) 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 PNG, but without using or applying herbicides or pesticides (unless PNG has the prior written consent of the Grantor for such application or use, which consent may not be unreasonably withheld, conditioned or delayed); and
- (vii) PNG 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) PNG will, before commencing such works, deliver to the Grantor for approval a written work plan in accordance with Section 7.1, 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 alternative solutions and the extent of the risk of not undertaking the work. If PNG and the Grantor cannot agree on a work plan requested by PNG 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) PNG will comply with Section 12.1 in respect of any damage resulting from the work plan, or from any measure taken by PNG pursuant to this subparagraph 2.1(c)(vii)(C);
 - (D) if PNG determines that an Emergency exists, PNG 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 PNG will as soon as reasonably possible notify the Grantor of the works or measures undertaken and the purpose therefor; and
 - (E) generally, do all such other acts or things as may reasonably be necessary or incidental to the protection, or the safe and reliable operation, of the Works located within the Right of Way Area or the Excluded Right of Way Areas.
- 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 PNG or the Grantor, when PNG no longer requires the Lands for the operation and maintenance of its undertaking, and:
- (a) PNG gives 90 days' written notice to the Grantor; or
 - (b) the Grantor gives 90 days' written notice to PNG.
- 2.3 If, in the Grantor's opinion (reasonably formed), PNG is failing to make diligent use of the Lands for the purposes set out in this Agreement, and such failure continues for at least five (5) years after the Grantor gives written notice of such failure to PNG, then PNG will, for the purposes of Section 2.2, be conclusively deemed no longer to require the Lands for the operation and maintenance of its undertaking.
- 2.4 If PNG, in its discretion, determines that it will permanently de-commission the Works situated within the Area of the Works, it will, promptly after making such determination, so notify the Grantor. The rights, liberties and rights of way granted under this Agreement will terminate on the date that is 120 days after the date on which PNG completes de-commissioning the Works.

3.0 RIGHT OF WAY AREA

- 3.1. The parties acknowledge that they have made reasonable efforts to identify all the existing Works and related Right of Way Area as of the Effective Date. However, in the unlikely event that either of the parties subsequently discovers any existing Works outside the Right of Way Area that were missed in such initial identification process (the “**Discovered Works**”), it will promptly notify the other party, and the parties (each acting in good faith) will negotiate and settle upon terms for the extension of the Right of Way Area over those portions of the Lands occupied by the Discovered Works. Such terms will include in

relation to the Discovered Works, a grant from the Grantor to PNG, for so long as required, of a right of way over those portions of the Lands upon which such Discovered Works are located, and the following will apply:

- (a) for and in respect of such Discovered Works, PNG will hold the same rights, privileges and obligations as apply to PNG 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 Discovered Works; and
- (b) the Grantor may at any time require PNG to attach a revised survey plan to this Agreement to include those additional relevant portions of the Grantor's Lands.

4.0 NON-EXCLUSIVE USE

- 4.1 This Agreement will not entitle PNG 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 PNG's rights under this Agreement.

5.0 PROTECTION OF THE ENVIRONMENT

- 5.1 PNG 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 PNG will remediate, in accordance with Applicable Laws, any contamination it causes to the Lands as a result of the exercise of any of its rights under this Agreement.

6.0 COVENANTS OF PNG

- 6.1 PNG 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, PNG will cause that portion of the Lands used by PNG 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 PNG 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) PNG shall pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged to the account of PNG

which relate to the Works and which PNG is liable to pay pursuant to Applicable Laws;

- (c) PNG shall keep the portions of the Lands used by PNG under this Agreement in a safe, clean and tidy condition to the extent the condition relates to the use or occupation of the Lands by PNG, and on written notice from the Grantor, to make safe, clean, and tidy any portion of them that contravene the provisions of this covenant, provided that PNG has no obligation to keep any portion of the Lands suitable for use by anyone except PNG;
 - (d) PNG shall bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
 - (e) PNG shall take all reasonable steps and precautions to minimize disturbance of any archaeological material discovered by PNG on the Lands, and to immediately notify the Grantor;
 - (f) PNG 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) PNG 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 PNG acting reasonably, to exercise its rights under this Agreement or to carry out any work described in a written work plan approved under Section 7.1;
 - (h) PNG does not intend to carry, convey or transport through the pipeline(s) that comprises part of the Works situate on the Area of the Works any crude oil (including light crude, synthetic crude, heavy oil or diluted bitumen);
 - (i) PNG will make available to the Grantor all merchantable timber cut on the Lands by PNG in the exercise of any of its rights hereunder; and
 - (j) PNG shall permit the Grantor to enter upon the Right of Way Area at any time to examine its condition.
- 6.2 Except in the case of an Emergency, PNG shall, by no later than twenty-four (24) hours prior to its entry onto the Lands for the purpose of exercising any of its rights under this Agreement, provide to the Grantor a notice (an “**Entry Notice**”) stating PNG’s intent to so enter onto the Lands, and setting out the nature and extent of the work PNG proposes to conduct and the anticipated duration of such work.

Subject always to the foregoing sentence, PNG shall deliver each Entry Notice to the Grantor such number of days in advance of the proposed date of entry onto the Lands as is reasonable in all the circumstances, having regard to the nature, extent and anticipated duration of the proposed work and the requirements of all Applicable Laws.

- 6.3 In the event of an Emergency, PNG shall provide to the Grantor, as soon as reasonably practical after entering onto the Lands in order to exercise any of its rights under this Agreement, a written report describing the nature and extent of any work done by PNG and the purpose of such entry onto the Lands.

7.0 WORK PLANS

- 7.1 Except in the case of an Emergency, PNG 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 or improvement of any Works;
- (c) construction or relocation of any Access Improvements; and
- (d) initial installation of any permanent fences or gates on or within the Lands or any excluded Right of Way Areas.

In accordance with this Section 7.1, prior to undertaking any work, PNG will deliver a copy of the work plan to the Grantor, for review and comment by the Grantor.

The Grantor will, no more than thirty (30) days after receiving the work plan, provide to PNG in writing any comments that it may have, and PNG will use reasonable efforts to accommodate any suggestions or requests made by the Grantor to PNG 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 (other than a material change caused by PNG), 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 (subject to subsection 8.1(d)), to the relocation and replacement of such Works to a new location on the Grantor's Lands, as follows:
- (a) PNG will before undertaking any work, deliver a written 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) PNG will, acting in good faith, take into account the potential impacts on the Grantor and the Grantor's Lands of the contemplated relocation, including any likely materially adverse effect of the relocated Works on adjacent lands, and the Grantor will, acting in good faith, take into account any cost efficiencies or other benefits that might accrue to PNG owing to the location selected by PNG 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 PNG having to relocate the Works, PNG 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, PNG will relocate any Works in the Right of Way Area to a new location on the Grantor's Lands, provided that:

- (a) the new location is, in the reasonable opinion of PNG, suitable for use for the relocated Works considering engineering feasibility, construction, maintenance and operation, and cost factors;
- (b) the Grantor gives PNG 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 PNG, 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 (within the meaning of the *Land Title Act* [RSBC 1996] c. 250) over other charges and encumbrances, and PNG will thereafter surrender its interest in the portion of the Lands no longer required.

10.0 REMOVAL OF WORKS

10.1 If either party has given a notice pursuant to Section 2.2, or PNG has given a notice pursuant to Section 2.3 or otherwise no longer requires all or a portion of the Right of Way Area, then PNG 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 after PNG's notice, PNG 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 PNG 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 PNG that:

- (a) PNG 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 Treaty, provided however that nothing in this subsection 11.1(a) shall limit the Grantor's right of inspection pursuant to subsection 6.1(j);
- (b) without limiting the generality of subsection 11.1(a), the Grantor agrees that PNG, in carrying out its rights and obligations under this Agreement, is only subject to industry standards and Applicable Laws;
- (c) if the Grantor passes and attempts to enforce against PNG any law, regulation, standard or requirement in relation to the Works or its rights under this Agreement that is in excess of Applicable Laws (excluding those promulgated by the Grantor) or prevailing industry standards that generally apply in British Columbia in circumstances reasonably comparable to those sought to be addressed by such law, regulation, standard or requirement of the Grantor, and which results in a material increase to any or all of PNG's costs, as compared to those costs which PNG would otherwise incur in respect of all activities or things necessary or incidental to the business of PNG and operation of the Works pursuant to this Agreement, then the Grantor shall indemnify and hold harmless PNG 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 PNG:

- (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 PNG; 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 PNG 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 first having obtained:
 - (i) all licences, approvals and permits required under Applicable Laws; and
 - (ii) written permission from PNG, which permission will not be unreasonably withheld (it being acknowledged that it shall be reasonable for PNG to withhold permission if PNG is of the opinion (reasonably formed) that the Grantor's proposed blasting or aerial logging operations would cause a serious threat or danger to the public, to PNG or to the Works or other facilities or operations of PNG);
- (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 PNG, in its sole determination, provided that nothing in this subsection is intended to prevent safe temporary parking of vehicles;
- (h) the Grantor will not use, or authorize the use of the Right of Way Area for fuelling any vehicle or equipment;
- (i) the Grantor will not intentionally do or authorize any act or thing that injures or endangers the Works; and
- (j) 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 PNG would be unsafe or would interfere with PNG's use of the Right of Way Area.

12.0 COMPENSATION FOR DAMAGES

- 12.1 Subject to the rights granted in this Agreement, PNG covenants with the Grantor that if PNG 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 PNG will:

- (a) compensate the Grantor for such damages, to the extent caused by PNG; 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.

13.0 INDEMNITY

13.1 PNG 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 PNG of any of PNG's covenants, conditions or obligations under this Agreement; and
- (b) any act or omission on the part of PNG 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 PNG 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 PNG 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 thirty (30) days of the notice to mediate under subsection 14.1(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 *Arbitration Act* [SBC 2020] c. 2. 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 Grantor's Lands to the extent necessary to give full force and effect to this Agreement.

16.0 NOTICES

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:

Kitselas First Nation
2225 Gitaus Road
Terrace, British Columbia
V8H 0A9

Attention: Kitselas Government

To PNG:

Pacific Northern Gas Ltd.
750 – 888 Dunsmuir Street
Vancouver, British Columbia
V6C 3K4

Attention: Vice President, Regulatory Affairs, Legal and Gas Supply

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; or
- (ii) 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 PNG may not grant licences respecting its rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor (such consent not to be unreasonably withheld, conditioned or delayed) provided that no licence will act as a release of any of PNG's obligations set out in this Agreement.
- 17.5 A delegate appointed by the Grantor may provide PNG 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 PNG as a public utility under the Treaty.
- 17.7 The Grantor agrees to execute an amendment of this Agreement, at the request of PNG, in order to:
- (a) extend the application of this Agreement to any additional lands that are acquired by the Grantor after the Effective Date, on which Works are located, provided such additional lands are treaty settlement lands within the meaning of the Treaty; 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.

PNG 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 PNG, 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.

END OF DOCUMENT

**Appendix G-4 Applicable Forms of Documents for Interests Listed in Appendices G1, G2
and G-3**

**Part 4: Applicable Forms of Documents for Interests that Cross Both Former Kitselas
Indian Reserves and Former Provincial Crown Land**

Document 5. Enbridge PTP Statutory Right of Way - Pipeline

Note: The Parties will update the Appendices before the Effective Date, as required.

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY AGREEMENT

Note: This Statutory Right of Way (SROW) Agreement between the Transferor (Kitselas) and the Transferee (Pacific Trail Pipelines/Enbridge) is subject to such other terms and conditions as will be agreed by the Transferor and the Transferee. Schedules will be completed to the satisfaction of the Transferor and the Transferee.

WHEREAS:

- A. Kitselas, Canada and British Columbia have entered into the Kitselas Treaty;
- B. The Transferee is a pipeline permit holder as defined in section 1(2) of the *Energy Resource Activities Act*;
- C. In accordance with the Kitselas Treaty, the Transferor has agreed to grant to the Transferee a statutory right of way on the terms herein provided; and
- D. The statutory right of way hereby granted is made pursuant to section 218 of the *Land Title Act* (British Columbia) and the rights hereby granted are necessary for the Transferee's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises 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 INTERPRETATION

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

- (a) “**Access Area**” means such portion of the Land adjacent to or around the Construction Area, and subsequently, the SRW Area, that may be reasonably required to be used by the Transferee in order for it to access the Construction Area and the SRW Area, as the case may be, to exercise its rights that have been granted pursuant to this Agreement;
- (b) “**Agreement**” means the General Instrument – Part 1, the Terms of Instrument – Part 2, and all schedules attached to either of them;
- (c) “**Applicable Laws**” means without limitation (whether in existence on the date of this Agreement or executed, promulgated or published after the date hereof), all applicable local, municipal, provincial, territorial, Kitselas and federal laws, including, without limitation, those related to the regulation, protection, preservation, or reclamation of the environment or natural resources or to health

- and safety or to the management, presence, existence or release of Hazardous Substances as well as any common law or civil law as applicable;
- (d) “**Artifact or Feature**” means any artifact or feature that may have heritage, archaeological, or cultural value to Kitselas, including ancestral remains, burials, and areas containing evidence of past human activity;
 - (e) “**Commencement Date**” means the date that the Kitselas Treaty comes into effect;
 - (f) “**Construction Area**” means the area identified on the Land set forth in Schedule “A”;
 - (g) “**disposition**” means the act of disposal, or an instrument by which the act of disposal is effected or evidenced, or by which an interest in the Land is disposed of or effected, or by which Kitselas divests itself of or creates an interest in the Land;
 - (h) “**Environment**” means the components of air and earth and includes, without limitation:
 - (i) air, lands and water;
 - (ii) all layers of the atmosphere;
 - (iii) all organic and inorganic matter and living organisms; and
 - (iv) the interacting natural systems that include the components listed in paragraphs (i), (ii) and (iii) above;
 - (i) “**Fees**” means the fees set out in Article 4;
 - (j) “**Hazardous Substances**” means any pollutants, contaminants, wastes, hydrocarbons, underground or above ground tanks, special wastes, hazardous or toxic substances or materials that are a threat to public health or the Environment, including, without limitation, those that are prohibited, regulated or controlled in any Applicable Law relating to the protection of the natural environment or public health and safety;
 - (k) “**Kitselas**” has the meaning ascribed thereto in the Kitselas Treaty;
 - (l) “**Kitselas Treaty**” means the treaty among Kitselas, Canada, and British Columbia;
 - (m) “**Land**” means the land described in Item 2 of the General Instrument – Part 1;
 - (n) “**Other Property**” means any property located adjacent to the Construction Area, SRW Area or the Access Area;
 - (o) “**Release of Hazardous Substances**” means the introduction into the environment of any Hazardous Substances that are released, discharged, spilled, dumped, abandoned, leaked and/or have migrated on, in, under or adjacent to the

Construction Area, SRW Area or the Access Area as a result of the Works, or their construction;

- (p) “**SRW Area**” means the area to be designated by the Transferee pursuant to Section 2.3;
- (q) “**Taxes**” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority, including Kitselas, having jurisdiction which relates to the Construction Area, SRW Area, the Works or all of them;
- (r) “**Term**” means the period of time set out in Section 2.4;
- (s) “**Transferee**” means the person named as the transferee in Item 6 of the General Instrument – Part 1;
- (n) “**Transferee’s undertaking**” means the construction, maintenance, operation, decommissioning and abandonment of the Works;
- (o) “**Transferor**” means the person named as the transferor in Item 5 of the General Instrument – Part 1;
- (p) “**we**”, “**us**” or “**our**” refers to the Transferor alone and never refers to the combination of the Transferor and the Transferee;
- (q) “**Works**” means a pipeline for the carriage, conveyance and transportation of natural gas and associated products and all things and components, appurtenant, affixed or incidental thereto, including, but without limiting the generality of the foregoing, all pipes, drips, valves, fittings, connections, meters, power transmission lines, cathodic protection equipment, and other equipment and appurtenances whether or not similar to the foregoing, reasonably necessary or convenient for the purposes of the Transferee’s undertaking; and
- (r) “**you**” or “**your**” refers to the Transferee.

1.2 In this Agreement:

- (a) all attached Schedules form an integral part of this Agreement, including any Schedule attached to the General Instrument – Part 1;
- (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) any reference to an Article, Section, subsection or paragraph 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;
 - (d) a reference to:
 - (i) a “party” or “parties” in this Agreement is a reference to the Transferor or to the Transferee, or both, as the context requires;
 - (ii) “we”, “us” or “our” refers to the Transferor alone and never refers to the combination of the Transferor and the Transferee; and
 - (iii) “you” or “your” refers to the Transferee;
 - (e) the words “include”, “includes”, and “including”, are to be read as if they are followed by the phrase “without limitation”;
 - (f) “person” includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require;
 - (g) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation; and
 - (h) any reference to an enactment of Kitselas, the Province of British Columbia or of Canada in this Agreement, includes that enactment and any regulations made under it, and any subsequent enactment of like effect all as amended or replaced from time to time.
 - 1.3 If any provision of this Agreement 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.
 - 1.4 The following provisions of this Agreement and rights and remedies arising from this Agreement, shall survive the expiration of the Term:
 - (n) any indemnity or release in our favour;
 - (o) any provision expressly imposing an obligation to be performed on, or after, the expiration of the Term; and
 - (p) any rights or remedies arising in respect of a breach or nonperformance by a party during the Term.
-

- 1.5 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination, and will not unreasonably withhold, delay or condition such consent or approval; provided however, that the requirement to act reasonably does not apply to a consent or approval or determination over which the party has sole discretion.
- 1.6 Any obligation or right on the part of the Transferee under this Agreement shall be read to include the obligation or right extending to the Transferee's employees, representatives, agents, contractors, sub-contractors, invitees, licensees, and those for whom it is responsible in law. You remain fully liable for all of your obligations under this Agreement notwithstanding the exercise of any such right by such other person.
- 1.7 Notwithstanding any contrary rule of law or equity, the Works shall remain the property of the Transferee even if annexed or affixed to the freehold, and shall at any time and from time to time be removable in whole or in part by the Transferee, its successors and assigns.

1.8 Time is of the essence of this Agreement.

2.0 GRANT AND TERM

- 2.1 On the terms and conditions of this Agreement, the Transferor grants to the Transferee, for the term required for the construction of the Works, and subject to Section 2.2, the right, license, liberty, privilege and easement to use so much of the Construction Area as may be necessary, for the non-exclusive, uninterrupted statutory right of way, on, over, under and through the Construction Area, to enter, work upon, use, pass and repass (with or without machinery, supplies, vehicle and equipment) for the purposes of clearing activities and constructing (inclusive of laydown yards) the Works.
- 2.2 On the terms and conditions of this Agreement, and when the Transferee completes construction of the Works, the Transferor grants to the Transferee, for the Term, the right, licence, liberty, privilege and easement a non-exclusive, uninterrupted statutory right of way on, over and under and through the following area, to enter, work upon, use, pass and repass (with or without materials, machinery, supplies, vehicles and equipment) for the purposes of clearing activities and operating, maintaining, inspecting, testing, patrolling (including aerial patrol), altering, removing, replacing, reconstructing, repairing, decommissioning and abandoning the Works:

A strip of land not more than 18 meters in perpendicular width within the Construction Area, as may be designated and located by the Transferee in connection with the Transferee's undertaking, and shown in the survey referred to in section 2.3 herein (the "SRW Area").

- 2.3 The Transferee must deposit a plan of the SRW Area in the appropriate Land Title Office, based upon a survey in accordance with the requirements of the *Land Title Act* (British Columbia), as amended, and regulations of the Surveyor General, within a reasonable amount of time after construction of the Works, and such plan and the survey of the SRW Area, which shall in all respects establish, govern and define the SRW Area.

- 2.4 The term of this Agreement begins on the Commencement Date and continues for so long as is required by you for the purposes of the grant.
- 2.5 The Transferor shall have the right fully to use and enjoy the SRW Area and Construction Area subject to the rights of the Transferee provided for in this Agreement, provided however that the Transferor shall not, without the prior written consent of the Transferee, excavate, drill, install, erect, place, plant or permit to be excavated, drilled, installed, erected, placed, or planted on, over, under, across or through the Construction Area (prior to or while construction is occurring) and the SRW Area, any pit, well, foundation, pavement, building, tree, crop other than an annual crop, or any other structure, installation or object or do, or permit to be done, any other act or thing which would or could interfere with the construction of the Works or injure the Works or any part thereof, or impair the efficiency of the foregoing, or which would or could obstruct access by the Transferee to the Works, Construction Area or the SRW Area.

3.0 NON-EXCLUSIVE LICENCE FOR ACCESS

- 3.1 In addition to the grants set out in Sections 2.1 and 2.2, we grant you a non-exclusive licence of ingress and egress over the Access Area, with or without vehicles, supplies, machinery or equipment, as is reasonably required for access to and from the Works to carry out your undertakings and the rights granted to you pursuant to this Agreement during the Term, subject to the following:
- (a) you will not make any alteration, change or improvement to the Access Area, other than may be reasonably required to clear or cut vegetation for access to or to properly maintain the Works, without first obtaining written consent from Kitselas (which may include obtaining a permit); and
 - (b) this licence terminates immediately upon the termination of this Agreement.

4.0 FEES

- 4.1 The Fee for the Term is *<to be determined>*, the receipt of which we acknowledge.

5.0 COVENANTS

- 5.1 You will:
- (a) pay, when due:
 - (i) the Fees;
 - (ii) the Taxes; and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Works for use by you, on your behalf or with your permission;

- (b) undertake activities permitted under this Agreement having regard to the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment;
- (c) observe, abide by and comply with:
 - (i) all Applicable Laws, along with any bylaws, orders, directions, ordinances and regulations that are required to be adhered to by any government authority, including Kitselas, having jurisdiction, in any way affecting your use and occupation of the Construction Area, the SRW Area, the Access Area and the Works; and
 - (ii) the provisions of this Agreement;
- (d) keep the Construction Area (when being used by you), the SRW Area and the Works in a safe, clean and sanitary condition as required by Applicable Laws, and on written notice from Kitselas, make safe, clean, and sanitary any portion of the Construction Area, the SRW Area or the Works that contravenes the provisions of this covenant;
- (e) other than pipeline warning markers, test lead posts or pipeline casing vents installed at fence lines, and to the extent reasonably practicable, bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the SRW Area;
- (f) not bury debris or rubbish of any kind on the SRW Area in excavations or backfill, and will remove shoring and similar temporary structures as backfilling proceeds in accordance with all Applicable Laws;
- (g) if you unearth or discover any Artifact or Feature on the Construction Area, the SRW Area or the Access Area, and there is no previously agreed upon mitigation or management plan with Kitselas:
 - (i) notify Kitselas as soon as reasonably practicable;
 - (ii) immediately cease any further activity that could adversely affect the Artifact or Feature;
 - (iii) take reasonable measures to protect the Artifact or Feature; and
 - (iv) comply with all Applicable Laws in relation to the handling of the Artifact or Feature, which may include compliance with Kitselas cultural heritage policy;
- (h) not commit any voluntary or permissive waste, spoliation or destruction on the SRW Area, or do anything thereon that may be or become a nuisance or annoyance to Kitselas, acting reasonably, except to the extent required by you, acting reasonably, to exercise your rights under this Agreement;

- (i) use and occupy the Construction Area, SRW Area and Access Area only in accordance with and for the purposes set out in Article 2.0;
- (j) not construct, place or affix any Works on or to the SRW Area except as necessary for the purposes set out in Article 2.0;
- (k) not cut or remove timber on or from the SRW Area without being granted the right under the Applicable Law to harvest Kitselas timber on the SRW Area;
- (l) if any soil is disturbed by you as a result of the construction or maintenance of the Works, at your expense, restore the surface of the Construction Area or SRW Area to its condition immediately prior to the disturbance, to the reasonable satisfaction of Kitselas;
- (m) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of:
 - (i) your breach, violation or non-performance of any provision of this Agreement;
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off Land by virtue of your entry upon, use or occupation of the Land, and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand,provided that notwithstanding the foregoing, you shall not be required to indemnify us for any claims, actions, causes of actions, losses, damages, costs and liabilities arising through the negligence or misconduct of us, or any of our employees, representatives, members, agents, contractors, sub-contractors, invitees, licensees, and those for whom we are responsible in law;
- (n) permit any person to do anything you are restricted from doing under this Agreement; and
- (o) on the termination of this Agreement:
 - (i) peaceably quit and deliver to us possession of the Construction Area and the SRW Area in accordance with the requirements of Article 7;
 - (ii) within 365 days, remove from the SRW Area any of the Works you want to remove;
 - (iii) remove from the SRW Area any of the Works that we, in our sole discretion, in writing, direct you to remove, provided that you shall, upon reasonable notice to us, be permitted to leave such Works as you may desire in the SRW Area provided that you will:

1. continue to be obligated to maintain the Works so they do not interfere unreasonably with the drainage or ordinary cultivation of the Land; and
 2. continue to have the right, at any time, to remove all or any of the Works from the SRW Area in accordance with this paragraph 5.1(o)(iii);
- (iv) withdraw and discharge any registrations at the Land Title Office pertaining to the Statutory Right of Way, provided that if you determine to leave all or any part of the Works pursuant to paragraph 5.1(o)(iii), you shall modify the registration to remove the words “operate” and “replace, reconstruct” provided from any registration,

and, subject to paragraphs 5.1(o)(iii) and (iv), all of your right, interest and estate in the Construction Area, SRW Area and the Access Area will be absolutely forfeited to Kitselas, and to the extent necessary, this covenant will survive the termination of this Agreement.

- 5.2 We may, at our expense, at all reasonable times, and upon reasonable notice and taking any precautions or steps you may reasonably require, visually inspect the SRW Area and the Works, or carry out tests, surveys and inspections that do not interfere with the Works. If we require access to any part of the SRW Area that has been fenced off or enclosed by you, we will notify you, and you will provide such safe access as we may reasonably require.

6.0 INSURANCE

- 6.1 Prior to construction, you will file with us a certificate of insurance which demonstrates you have a minimum of \$25,000,000 commercial general liability insurance for any one occurrence providing coverage for personal injury, death or property damage or loss occurring at or about the Land. This certificate will confirm that we have been added to your Commercial General Liability policy as an additional insured for this limit with respect to any personal injury, death or property damage or loss covered. We shall be provided with 30 days’ advance written notice of cancellation of that policy.
- 6.2 If we receive notice that this insurance will be cancelled or materially changed, in a manner that is not reasonably acceptable to us, or if the commercial general liability insurance is not renewed, you will provide us with evidence of replacement insurance.
- 6.3 You may, at your discretion, either (1) maintain; or (2) choose to self-insure in lieu of insurance (either in whole or part), the insurance coverages required in subsection 6.1. When the requirements are self-insured by you in lieu of insurance, you shall only be financially responsible for insurable costs from the first dollar stated up to the amount associated with cover in subsection 6.1. You shall, to the extent of your obligations herein, provide defense and indemnity support to us in the same manner and to the same extent, using industry standard claims adjustment practices, as if we were fully insured by a financially sound third-party insurer on insurance forms customarily available for similar

operations undertaken by similar organizations at the time such obligations are realized. You will provide a self-insurance letter to us upon our request.

7.0 DECOMMISSIONING AND ABANDONMENT OF WORKS

7.1 If you determine that you no longer require all or a portion of the Construction Area or the SRW Area, then you will, in respect of such Construction Area, SRW Area or portion thereof:

- (a) provide notice to Kitselas;
- (b) obtain any approvals necessary to remove or abandon any of the Works you wish to remove;
- (c) remove all above ground Works, unless otherwise agreed between the Parties, or elected by you to remain pursuant to paragraph 5.1(o)(iii), such removal to be in accordance with Applicable Laws;
- (d) repair all damage to the SRW Area caused by the removal of the Works within a reasonable period of time, including revegetation with suitable species where reasonably appropriate;
- (e) restore the surface of the SRW Area , or portion thereof that is no longer required, as the case may be, as nearly as may reasonably be possible to the same condition as it was prior to the installation of the Works, to our reasonably satisfaction;
- (f) leave the SRW Area, or portion thereof that is no longer required, as the case may be:
 - (i) in a safe, clean and sanitary condition (as it would be maintained by a prudent owner in occupation), to the extent the condition relates to the use or occupation of the SRW Area by you; and
 - (ii) free from all waste, debris, and things owned or left on the SRW Area by you (including trade fixtures, inventory, and other personal property), except as otherwise provided in this section; and
- (g) quit peaceably the SRW Area, or portion thereof that is no longer required, as the case may be and, where applicable, amend this Agreement to remove the portion no longer required from the SRW Area.

7.2 You will remain liable for any environmental damage to the SRW Area arising from any Works that remain on or in the SRW Area or portion thereof, except that, if we use or authorize the use of any of such remaining Works for any purpose, you will not be liable for any environmental damage to the SRW Area to the extent caused by our use or authorized use of the remaining Works.

7.3 This Article will survive the termination of this Agreement.

8.0 COVENANTS OF THE TRANSFEROR

8.1 The Transferor covenants that:

- (a) the Transferee will and may peaceably enjoy and hold its rights under this Agreement without any interruption, disturbance, molestation or hindrance from the Transferor or any other person for claiming by, through, under or in trust for the Transferor, provided that nothing in this subsection 8.1(a) will limit our right of inspection in Section 5.2; and
- (b) the Transferor will not use or authorize the use of the Access Area, Construction Area or the SRW Area for any purpose that would interfere with your exercise of rights under this Agreement.

9.0 COMPENSATION FOR DAMAGE

9.1 If, contrary to the terms of this Agreement, you or your contractors, or others for whom you are responsible in law, damage any structures, buildings, fixtures, improvements, chattels, crops, merchantable timber, livestock, drains, ditches, culverts, fences, on the Construction Area, SRW Area or Access Area, you will, within a reasonable period of time:

- (a) 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;
- (b) remediate any other kind of damage or contamination caused by you; or
- (c) compensate us, or if appropriate, a person in the affected area who suffers any loss as a result of the damage or contamination caused by you.

10.0 LIMITATIONS

10.1 You acknowledge and agree that:

- (a) we are under no obligation to provide services to the SRW Area or to maintain or improve existing access roads;
- (b) this Agreement is subject to:
 - (i) all subsisting dispositions and subsisting grants to or rights of any person made or acquired under Applicable Laws, including but not limited to the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act, Land Act, Ministry of Lands, Parks and Housing Act* or *Water Act*, or any extension or renewal of the same, whether or not you have actual notice of them; and

- (ii) the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*,

provided we have not and will not issue, grant or otherwise cause or agree to the issuance or granting of any tenure, interest or right of any kind in the Land that may restrict or limit the rights we have granted to you hereunder, without your written consent;

- (c) provided we comply with our obligations under subsection (b), you: (i) release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right made or acquired under the enactments referred to in subsection (b); and (ii) you acknowledge that this Agreement and your rights under this Agreement are subject to those grants and rights referred to in subsection (b) whether or not you have actual notice of them;
- (d) we may make other dispositions of or over the Construction Area, Access Area and the SRW Area, or any part of them, to a person, including a Kitselas agency or institution, provided that this disposition does not affect the exercise of your rights under this Agreement;
- (e) you will make no claim against us for compensation, in damages or otherwise, in respect of a disposition made under subsection (d), where such disposition or the permitted use of the SRW Area pursuant to that disposition does not affect the exercise of your rights under this Agreement;
- (f) subject to subsection (g), all of your costs and expenses, direct or indirect, that arise out of any lawful interference with your rights under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles reserved to us in subsections (d) will be borne solely by you;
- (g) you will not commence or maintain proceedings under applicable law in respect of any lawful interference with your rights under this Agreement relating to the SRW Area that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsection (d), provided we comply with our obligations in subsection (d); and
- (h) if, after the termination of this Agreement, we permit you to remain in possession of the SRW Area and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

11.0 ENVIRONMENTAL

- 11.1 You agree to provide written notification to Kitselas immediately if you become aware of:

- (a) any Release of Hazardous Substance or other discovery of any Hazardous Substance, in, on, under, upon, onto or migration from the SRW Area or other environmental problem or liability with respect to the SRW Area or Other Property; or
- (b) any actual or threatened claim, action, suit, complaint, summons, writ, demand, order, direction, warning, ticket, notice or other communication from any person, entity or governmental authority relating to any environmental problem or liability with respect to the SRW Area and you will immediately provide copies of same to us upon request; and
- (c) on the occurrence of an event specified in subsection (a) or (b) caused by you or persons for whom you are responsible at law for, you will:
 - (i) obtain and furnish to us, upon our request and as specified by us, an environmental audit or survey from an expert satisfactory to us with respect to the Land; and
 - (ii) proceed in a timely manner, taking into account any effects on human health and the Environment, to take all actions which are necessary or desirable to, without limitation, investigate, remediate, restore, clean-up, treat, monitor, contain or remove any Hazardous Substances affecting the Land whose release was caused by you or persons for whom you are responsible for, and to comply with the recommendations of any environmental audit or survey or as required by governmental authorities having jurisdiction or by any Applicable Laws with respect to such release.

12.0 DEFAULT, INTERRUPTION AND TERMINATION

- 12.1 If you fail to pay any amount which it is obligated to pay to us under the terms of this Agreement or to perform any other terms hereof, the sole remedy of us in connection with such failure or act or omission shall be to recover from you such amount payable hereunder and any interest payable thereon or to compel performance of such terms by a legal action in the courts of British Columbia and in no event shall we be entitled to terminate, suspend or interrupt any or your rights under this Agreement or the continued operation of the Works except as authorized by a court order.
- 12.2 We shall not be entitled to interfere with, hinder or interrupt the continued operation of the Works by you in accordance with the terms of this Agreement or interrupt Westcoast in its enjoyment of any of the rights, licences, liberties, privileges, easements or rights of way granted to you under this Agreement. We further agree that any such interference, hindrance or interruption by us cannot be adequately compensated solely by an award of damages to you and that an injunction to prevent such action by us shall be the appropriate remedy (in addition to any award of damages).
- 12.3 Upon termination of this Agreement, you will:

- (a) remediate and reclaim the Construction Area and SRW Area to the condition it was immediately prior to your disturbance and to one that meets the standard set by Kitselas, which shall be comparable to that required under the Applicable Law (excluding laws of Kitselas) related to the remediation and reclamation of comparable land located on provincial Crown lands; and
- (b) comply with the requirements set out in subsection 5.1(o).

13.0 ACCESS TO THE SRW AREA AFTER AGREEMENT ENDS

- 13.1 You are entitled to access the SRW Area after this Agreement ends at reasonable times and on such reasonable conditions as may be specified by Kitselas, and only to perform any of your obligations that survive the ending of this Agreement.
- 13.2 This Article 13.0 survives the termination of this Agreement.

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 and agreed upon by the parties;
 - (c) if the dispute is not resolved within 60 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then the parties may upon agreement refer the dispute to a single arbitrator, knowledgeable about the matters in dispute and agreed upon by the parties, for final resolution in accordance with the *Arbitration Act* of British Columbia; and
 - (d) if the parties do not commence arbitration within 60 days of the notice to mediate under subsection (b), then any party may refer the matter to a court of competent jurisdiction.
- 14.2 It is not incompatible with this Article 14.0 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 Subject to Section 15.2, this Agreement runs with and binds the Construction Area, Access Area and the SRW Area to the extent necessary to give full force and effect to this Agreement.

- 15.2 The parties acknowledge that the covenant in subsection 10.1(e) relates to the powers of Kitselas as a government. If Kitselas transfers all or any portion of the SRW Area it will continue to be bound directly to the Transferee in respect of those covenants that involve its governmental powers, notwithstanding the transfer.

16.0 OTHER LEGISLATION & STANDARDS

- 16.1 Notwithstanding any other provision in this Agreement, we acknowledge and agree that the Works, this Agreement and the interests of you in the Land that are granted to you pursuant to this Agreement are provincial works and undertakings and that the British Columbia *Energy Resource Activities Act* and other legislation governing, related to or applicable to the Works, applies to you and us in respect of the Works and the SRW Area. No law, regulation, rule or policy of us, howsoever implemented or enacted, will in any way apply to you in respect of the Access Area, the Construction Area, the SRW Area, the Works or this Agreement to the extent that such law, regulation, rule or policy of us:
- (a) conflicts with or is inconsistent with the terms of this Agreement or the provincial legislation governing, related to or applicable to pipelines or the Works;
 - (b) impairs the ability of you to use and occupy the Access Area, the Construction Area or the SRW Area or operate the Works in accordance with rights and privileges granted to you under this Agreement or the British Columbia *Energy Resource Activities Act* and other provincial legislation governing, related to or applicable to pipelines or the Works; or
 - (c) specifies a more stringent standard relating to the location, design, operation or maintenance of the Works than the standard set out in any federal or provincial legislation which is applicable to the Works or which could be applicable but for our law or policy.
- 16.2 If the Transferor passes and attempts to enforce against the Transferee any law, regulation, standard or requirement in relation to the Works or its rights under this Agreement that is in excess of Applicable Laws (excluding those promulgated by the Transferor) or prevailing industry standards that generally apply in British Columbia in circumstances reasonably comparable to those sought to be addressed by such law, regulation, standard or requirement of the Transferor, and which results in a material increase to any or all of the Transferee's costs, as compared to those costs which the Transferee would otherwise incur in respect of all activities or things necessary or incidental to the business of the Transferee and operation of the Works pursuant to this Agreement, then the Transferor shall indemnify and hold harmless the Transferee for any additional costs required or incurred to comply with such law, regulation, standard, or requirement.

17.0 NOTICE

- 17.1 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 address for that party in the General Instrument – Part 1, or to a current email or other electronic address used for such purposes and notified by that party to the other party.

17.2 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:

- (a) if it was delivered personally, by courier, or by email, on the next business day; or
- (b) 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.

17.3 A party may change their address, and specify an email address by which they may be notified, by giving notice to the other parties in accordance with this provision.

18.0 GENERAL

18.1 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. Wherever consent or permission is required under this Agreement, such consent or permission will not be unreasonably delayed, conditioned or withheld.

18.2 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.

18.3 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.

18.4 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 and in the Kitselas Treaty, which together supersede all prior understandings, communications and agreements between the parties with respect to the subject matter hereof.

18.5 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.

18.6 Either party may assign this Agreement with the prior written consent of the other.

Appendix G-5 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 before the Effective Date, as required.

Interest Holder	Mineral Tenure	Tenure No.	General Location
BCM Resources Corp.	Mineral Cell Claim	504253	Appendix B-3 Part 2 Maps 13, 18
BCM Resources Corp.	Mineral Cell Claim	514220	Appendix B-3 Part 2 Maps 13, 18
BCM Resources Corp.	Mineral Cell Claim	541265	Appendix B-3 Part 2 Maps 13, 17-18
BCM Resources Corp.	Mineral Cell Claim	541267	Appendix B-3 Part 2 Maps 13, 18
BCM Resources Corp.	Mineral Cell Claim	541268	Appendix B-3 Part 2 Maps 13, 18
BCM Resources Corp.	Mineral Cell Claim	543709	Appendix B-3 Part 2 Maps 6, 13-14
BCM Resources Corp.	Mineral Cell Claim	543710	Appendix B-3 Part 2 Maps 6, 13-14
BURTON, Alex	Mineral Cell Claim	556688	Appendix B-3 Part 2 Maps 17, 25
BURTON, Alex	Mineral Cell Claim	556690	Appendix B-3 Part 2 Map 25
BCM Resources Corp.	Mineral Cell Claim	559141	Appendix B-3 Part 2 Map 6, 13
BCM Resources Corp.	Mineral Cell Claim	559154	Appendix B-3 Part 2 Map 6, 14
BCM Resources Corp.	Mineral Cell Claim	559155	Appendix B-3 Part 2 Map 6
Casa Minerals Inc.	Mineral Cell Claim	854416	Appendix B-3 Part 2 Maps 11-12
BURTON, Alex	Mineral Cell Claim	940817	Appendix B-3 Part 2 Map 17

Interest Holder	Mineral Tenure	Tenure No.	General Location
BURTON, Alex	Mineral Cell Claim	940825	Appendix B-3 Part 2 Maps 17, 25
BURTON, Alex	Mineral Cell Claim	946009	Appendix B-3 Part 2 Map 25
Casa Minerals Inc.	Mineral Cell Claim	1000162	Appendix B-3 Part 2 Maps 6-8, 10-11
Casa Minerals Inc.	Mineral Cell Claim	1000263	Appendix B-3 Part 2 Maps 6-7
Kitselas Geothermal Inc.	Geothermal Permit	PNG 67428	Appendix B-3 Part 2 Map 38

Appendix G-5 Interests to Continue in Accordance with Provincial Law

Part 2: Water Rights Under the *Water Sustainability Act*

Note: The Parties will update the Appendices before the Effective Date, as required.

Water Licence Number	Location	Appurtenance	General Location
C049458	Cabellero Creek	PID 015-276-490, that part of Lot 5423, Range 5, Coast District lying east of Hwy No. 16 (Plan 7241)	Appendix B-3 Part 2 Map 4
C126762	Copper Stage Creek	PID 015-276-490, District Lot 5423, Range 5, Coast District, except part lying west of plan 7241 and except plan 2035 and 7241	Appendix B-3 Part 2 Map 4
C035711	Kenyon Creek	PID 012-408-034, L 4 of Lot 833, Range 5, Coast District Plan 3050	Appendix B-3 Part 2 Maps 18-19, 21
C050314	Noble Five Creek	PID 007-573-332, 20 AC of BLK A of Lot 6639, Range 5, Coast District	Appendix B-3 Part 2 Map 27
C127559	Swede Creek	PID 015-008-029, Powerhouse Site on Lot 1915, Range 5, Coast District	Appendix B-3 Part 2 Map 22
C127792	Swede Creek	PID 015-008-029, Powerhouse Site on Lot 1915, Range 5, Coast District	Appendix B-3 Part 2 Map 22
C061588	Hoover Creek	PID 014-970-511, BLK A of Lot 428, Range 5, Coast District	Appendix B-3 Part 2 Map 25
F120795	Clore Spring	PID 018-572-472, Lot 1 District Lot 989, Range 5, Coast District Plan PRP13871	Appendix B-3 Part 2 Map 25, 30
505512 - IR 1	Singlehurst Spring	IR No. 1 Being Kitselas Range 5 Coast District	Appendix B-2 Part 2 Map 4
C054003	Collins Creek	PID 006-364-438, BLK C of Lot 5130, Range 5, Coast District Plan 9106	Appendix B-3 Part 2 Map 34

Water Licence Number	Location	Appurtenance	General Location
505512 - IR 1	Singlehurst Spring	IR No. 1 Being Kitselas Range 5 Coast District	Appendix B-2 Part 2 Map 4

Appendix G-5 Interests to Continue in Accordance with Provincial Law

**Part 3: Guide Outfitter Licences and Guiding Territory Certificates Issued Under the
Wildlife Act**

Note: The Parties will update the Appendices before the Effective Date, as required.

Certificate No.	General Location
610016	Appendix B-3 Part 2 Maps 1, 4, 6-8, 10-15, 17-19, 21, 25, 26, 28, 29, 33-41
610020	Appendix B-3 Part 2 Maps 1-5, 8-12, 14-16, 18-28, 30-34, 41

Appendix G-5 Interests to Continue in Accordance with Provincial Law

Part 4: Traplines Issued Under the *Wildlife Act*

Note: The Parties will update the Appendices before the Effective Date, as required.

Holder of Trapline Registration No.	General Location
TR0603T103	Appendix B-3 Part 2 Maps 39-41
TR0609T043	Appendix B-3 Part 2 Maps 38, 41
TR0609T044	Appendix B-3 Part 2 Maps 32-34, 36, 37
TR0609T048	Appendix B-3 Part 2 Maps 25, 28, 30-32
TR0609T049	Appendix B-3 Part 2 Maps 23-24
TR0609T050	Appendix B-3 Part 2 Maps 21-23, 26-28
TR0609T051	Appendix B-3 Part 2 Maps 14-16, 18-24, 27
TR0609T052	Appendix B-3 Part 2 Maps 3-5, 8-12, 14-16, 20, 24
TR0609T054	Appendix B-3 Part 2 Maps 1-3, 5
TR0610T001	Appendix B-3 Part 2 Maps 35-37
TR0611T001	Appendix B-3 Part 2 Maps 39-41
TR0611T004	Appendix B-3 Part 2 Maps 39-41
TR0611T036	Appendix B-3 Part 2 Map 42
TR0615T002	Appendix B-3 Part 2 Maps 17, 29

Holder of Trapline Registration No.	General Location
TR0615T003	Appendix B-3 Part 2 Maps 17-18, 21, 25, 26, 28-29
TR0615T004	Appendix B-3 Part 2 Maps 2-4, 6-8, 10-15, 17-19, 21
TR0615T007	Appendix B-3 Part 2 Maps 16, 18, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36

Appendix G-6 Privately Held Subsurface Resources

Privately Held Subsurface Resources

Note: The Parties will update the Appendices before the Effective Date, as required.

Interest Holder	Legal Description	Existing Land Title Parcel Identifier (PID)	General Location
MCRAE, Douglas Richard	District Lot 71, being Emma Mine Mineral Claim, Range 5, Coast District	014-969-637	Appendix B-3 Part 2 Map 19
MCRAE, Douglas Richard	District Lot 72, being I.X.L. Mineral Claim, Range 5, Coast District	014-969-653	Appendix B-3 Part 2 Map 19

Appendix H Crown Corridors

Crown Corridors

Note: The Parties will update the Appendices before the Effective Date, as required.

Road	Width (metres)	General Location
Yellowhead TransCanada Hwy No. 16	60	Appendix B-2 Part 2 Maps 1-3, 5 B-3 Part 2 Map 1-4, 8-12, 14-15, 19-21, 25-30
Kitselas Wagon Road	30	Appendix B-2 Part 2 Map 5 Appendix B-3 Part 2 Map 17, 25-26, 29
Queensway Drive	30	Appendix B-2 Part 2 Map 7
Fiddler Forest Service Road- 7880 Section 03	30	Appendix B-3 Part 2 Map 7, 11-12
Legate Slide Area	7.5 ha excluded area	Appendix B-3 Part 2 Map 10
Crown Land File #0331189	30	Appendix B-3 Part 2 Map 11-12, 15
Skeena West Bridge- 7880 Section 02	30	Appendix B-3 Part 2 Map 12
Old Hwy 16 Right-of-Way by Ste. Croix Creek	100	Appendix B- 3 Part 2 Map 12, 15
Chimdemash Loop Road	30	Appendix B-3 Part 2 Map 19
Gitaus Road	30	Appendix B-3 Part 2 Map 21
Bornite Mountain Road	30	Appendix B-3 Part 2 Map 21, 22
Kleanza Forest Service Road- 0529 Section 01,	30	Appendix B-3 Part 2 Map 22-23, 27
West Copper Main, R08642 Section A	30	Appendix B-3 Part 2 Map 30, 31
Copper Forest Service Road, 7755 Section 01	30	Appendix B-3 Part 2 Map 30-31
Kitimat Cassiar Hwy No. 37	70	Appendix B-3 Map 33-34, 41 Part 2

Road	Width (metres)	General Location
Kitimat Cassiar Hwy No. 37	60	Appendix B-3 Part 2 Map 33
Old Lakelse Lake Road	30	Appendix B-3 Part 2 Map 34
Thunderbird Main Forest Service Road, FSR 8351 01	30	Appendix B-3 Part 2 Map 35
Beam Station Road	30	Appendix B-3 Part 2 Map 36-37
Lakelse Forest Service Road, FSR 8261 01, from its junction with Forest Service Road 9714 0 to its crossing of the CN rail line	30	Appendix B-3 Part 2 Map 39
Unsigned Forest Service Road, R19065 D	30	Appendix B-3 Part 2 Map 39
Wedene Forest Service Road, FSR 9714 01,	30	Appendix B-3 Part 2 Map 39-40
North Kitimat Main Line, R07570	30	Appendix B-3 Part 2 Map 41

Appendix I Expropriation Procedures

Part 1: Federal Expropriation Procedures

Part 2: Provincial Expropriation Procedures

Appendix I Expropriation Procedures

Part 1: Federal Expropriation Procedures**Application of Federal Expropriation Procedures**

1. Where the interest in Kitselas Lands to be expropriated is held by Kitselas, the interest may be expropriated by a Federal Expropriating Authority in accordance with Federal Law, Chapter 3 Kitselas Lands and the procedures set out in this Appendix.
2. Where the fee simple interest in a parcel of Kitselas Lands is held by any person other than Kitselas, any interest in that parcel may be expropriated by a Federal Expropriating Authority in accordance with:
 - (a) Federal Law;
 - (b) Chapter 3 Kitselas Lands; and
 - (c) the procedures set out in sections 3 to 11, and 24 to 31,

and, for greater certainty, the return of any interest expropriated will be to Kitselas in accordance with sections 26 to 31.

Consent of the Governor in Council

3. The Governor in Council may consent to an expropriation of an interest in Kitselas Lands only if the expropriation is justifiable under section 5 and necessary for a public purpose.
4. For greater certainty, where Federal Law deems an expropriation to be for a public purpose, the expropriation will be deemed to be necessary for a public purpose under this Agreement.
5. For the purposes of section 3, an expropriation is justifiable where the Governor in Council is satisfied that the following requirements have been met:
 - (a) there is no reasonably feasible alternative interest to use or acquire that is not an interest in Kitselas Lands;
 - (b) reasonable efforts have been made by the Federal Expropriating Authority to acquire the interest in Kitselas Lands through agreement with the interest holder and Kitselas;

-
- (c) the interest in Kitselas Lands to be expropriated is the most limited interest necessary and for the shortest time required; and
 - (d) all information relevant to the expropriation, other than documents that are protected from disclosure under Federal Law, has been provided to Kitselas.
 - 6. Before the Governor in Council issues an order consenting to the expropriation of an interest in Kitselas Lands, the Federal Expropriating Authority will provide to Kitselas and the Governor-in-Council, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements under section 5.
 - 7. If Kitselas objects to a proposed expropriation of an interest in Kitselas Lands, it may, by providing notice in writing to the Federal Expropriating Authority within 60 days after the report has been provided to Kitselas under section 6, refer the matter directly to neutral evaluation under Stage Two of Chapter 29 Dispute Resolution for a review of the steps taken to satisfy the requirement set out in section 5.
 - 8. The Federal Expropriating Authority will not seek Governor in Council consent to the expropriation of an interest in Kitselas Lands:
 - (a) before the expiration of the time period referred to in section 7;
 - (b) if Kitselas has referred the matter to neutral evaluation in accordance with section 7, before the neutral evaluator has delivered to Kitselas and the Federal Expropriating Authority an opinion on the matter; or
 - (c) within such additional time as Kitselas and the Federal Expropriating Authority may agree.
 - 9. Without limiting the generality of Chapter 29 Dispute Resolution, the opinion of the neutral evaluator under section 8b:
 - (a) is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and Kitselas 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 sections 3 and 5.
-

Expropriation of a Fee Simple Interest

10. If a Federal Expropriating Authority expropriates a fee simple interest in Kitselas Lands, that land will no longer be Kitselas Lands, and the Parties will amend the applicable Appendix in accordance with paragraph 9 of Chapter 31 Amendment.

Expropriation of Less Than a Fee Simple Interest

11. If a Federal Expropriating Authority expropriates less than a fee simple interest in a parcel of Kitselas Lands:
- (a) the parcel of land retains its status as Kitselas Lands;
 - (b) the parcel of land remains subject to Kitselas Law, except to the extent that Kitselas Law is inconsistent with the purpose for which the expropriation took place; and
 - (c) Kitselas, or the person holding the fee simple interest in the parcel of Kitselas Lands, may continue to use and occupy the parcel of land, except to the extent that the use or occupation is inconsistent with the use of the parcel for which the expropriation took place, in the view of the Federal Expropriating Authority.

Total Value of Compensation

12. The total value of compensation for an interest in Kitselas Lands expropriated by a Federal Expropriating Authority under this Appendix will be determined by taking into account the following factors:
- (a) the market value of the expropriated interest;
 - (b) the replacement value of any improvement to the Kitselas Lands in which the 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 Kitselas Lands that is not expropriated which directly relates to the expropriation;
 - (e) any adverse effect on any cultural or other special value to Kitselas of Kitselas Lands in which an interest has been expropriated, provided that:
 - (i) the cultural or other special value is only applied to an interest in Kitselas Lands recognized in law and held by Kitselas; and

- (ii) there is 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 Kitselas Lands by Kitselas to the extent that the value is not otherwise compensated.
- 13. If the Federal Expropriating Authority and Kitselas cannot agree on the total value of compensation or on whether the combination of replacement land and other compensation is equal to the total value of compensation, either Canada, acting on behalf of the Federal Expropriating Authority, or Kitselas may refer the matter for resolution in accordance with Chapter 29 Dispute Resolution.
- 14. Any claim or encumbrance with respect to the interest expropriated by a Federal Expropriating Authority may only be discharged against the amount of compensation payable under section 12.
- 15. Interest on compensation is payable from the date the expropriation takes effect, at the interest rate payable under Federal Law.

Replacement Land as Compensation

- 16. If a fee simple interest in a parcel of Kitselas Lands is expropriated by a Federal Expropriating Authority, the Federal Expropriating Authority will make reasonable efforts to:
 - (a) identify replacement land within the Kitselas Harvest Area, being either federal Crown land or land available on a “willing-seller, willing-buyer” basis, of equivalent or greater size and comparable value; and,
 - (b) with the agreement of Kitselas, acquire and transfer the replacement land to Kitselas as partial or full compensation for the parcel of Kitselas Lands expropriated.
- 17. If the Federal Expropriating Authority and Kitselas are unable to agree on the provision of replacement land as compensation, the Federal Expropriating Authority will provide Kitselas with other compensation in accordance with this Agreement.
- 18. If the acceptance by Kitselas and addition to Kitselas Lands of replacement land identified by the Federal Expropriating Authority under section 16 would result in the total size of Kitselas Lands being less than at the Effective Date, and Kitselas does not agree that the replacement land is of comparable value to the interest in Kitselas Lands being expropriated, Kitselas may refer the issue of whether the replacement land is of

comparable value to the interest in Kitselas Land being expropriated to be finally determined by arbitration under Chapter 29 Dispute Resolution.

19. For greater certainty, a determination of value under section 18 does not obligate Kitselas to accept the replacement land identified by the Federal Expropriating Authority under section 16 as partial or full compensation for the parcel of Kitselas Lands that has been expropriated.

Addition of Replacement Land to Kitselas Lands

20. For greater certainty, Kitselas may make a request under paragraph 96 of Chapter 3 Kitselas Lands to have a parcel of replacement land that has been transferred to Kitselas under section 16 added to Kitselas Lands, if that parcel of land is within the Kitselas Harvest Area.
21. Paragraphs 97 to 104 of Chapter 3 Kitselas Lands apply to a request to add a parcel of replacement land to Kitselas Lands referred to in section 20, except as otherwise provided in sections 22 and 23.
22. When considering a request to add a parcel of replacement land to Kitselas Lands referred to in section 20, Canada will take into account the matters set out in paragraphs 98(a) and 98(b) of Chapter 3 Kitselas Lands, but will not take into account the matters set out in paragraph 98(c) of Chapter 3 Kitselas Lands.
23. Notwithstanding section 22, Canada will agree to a request to add a parcel of replacement land to Kitselas Lands referred to in section 20 if the replacement land does not overlap with an area that is the subject of any claims of, or treaty negotiations with, another First Nation.

Terms and Conditions for Return of an Expropriated Interest in Kitselas Lands

24. The terms and conditions of the return of an interest in Kitselas Lands expropriated by a Federal Expropriating Authority, including:
 - (a) requirements relating to financial considerations based on market value principles;
 - (b) the condition of the land to be returned; and
 - (c) a process for resolving any disputes that may arise at the time of the return relating to the implementation of these terms and conditions,

will be negotiated by Kitselas and the Federal Expropriating Authority at the time of the expropriation.

25. If the terms and conditions of the return of an expropriated interest in Kitselas Lands cannot be agreed to by Kitselas and the Federal Expropriating Authority, either Canada, acting on behalf of the Federal Expropriating Authority, or Kitselas may refer the matter to be finally determined by arbitration in accordance with Chapter 29 Dispute Resolution.

Return of an Interest in Kitselas Lands

26. Where an expropriated interest in a parcel of Kitselas Lands is no longer required for the purpose for which it was expropriated, the Federal Expropriating Authority, or its successor or assign, will ensure that the interest in land is returned to Kitselas on the terms and conditions of reversion negotiated or determined under sections 24 and 25.
27. The return of an interest in Kitselas Lands under section 26 will not result in Canada or British Columbia assuming financial or other obligations, unless agreed to in writing at the time of the expropriation.
28. Where Kitselas becomes the registered owner of the fee simple interest in a parcel of land that is returned to Kitselas under section 26, Kitselas may give notice to Canada and British Columbia that the parcel is to be added to Kitselas Lands.
29. Upon receipt by Canada and British Columbia of a notice under section 28, the Parties will:
- (a) amend the applicable Appendix in accordance with paragraph 9 of Chapter 31 Amendment to reflect the addition of the parcel; and
 - (b) take the steps required to have the parcel recognized as Kitselas Lands in the Land Title Office,
- and the land will become Kitselas Lands when the amendment takes effect.
30. The Federal Expropriating Authority or other entity that holds the expropriated interest may decide, without the consent of the Governor in Council, that the expropriated interest in land is no longer required and may determine the disposition of any improvements made to the land in a manner consistent with an agreement reached under section 24 or the outcome of arbitration under section 25.
31. Where the expropriated interest in Kitselas Lands is held by an entity other than the Federal Expropriating Authority, the entity will provide notice to Canada when the interest is no longer required.

Disputes

32. Except as otherwise provided in sections 7, 13, 18 and 25 of this Appendix, Chapter 29 Dispute Resolution does not apply to disputes respecting the interpretation, application or implementation of paragraphs 114 to 119 of Chapter 3 Kitselas Lands or this Appendix.
33. For greater certainty, a dispute in relation to a matter under sections 13, 18 or 25 will not delay the expropriation.
34. Without limiting the generality of paragraph 15 of Chapter 1 General Provisions, this Agreement prevails to the extent of a Conflict with the federal *Expropriation Act* or other Federal Law relating to the expropriation.

Appendix I Expropriation Procedures

Part 2: Provincial Expropriation Procedures**General**

1. A Provincial Expropriating Authority may expropriate an interest or estate in Kitselas Lands only with the consent and by the order of the Lieutenant Governor in Council.
2. Except to the extent that this Agreement modifies the application of Provincial Law, Provincial Law applies to the expropriation of Kitselas Lands by a Provincial Expropriating Authority, including the process and procedures under Provincial Law.

Purchase of Kitselas Lands

3. A Provincial Expropriating Authority will notify Kitselas of its intention to acquire Kitselas Lands.
4. If a Provincial Expropriating Authority and the owner of an interest or the fee simple estate in Kitselas Lands are unable to reach an agreement on the acquisition of the interest or the fee simple estate under paragraph 108 of Chapter 3 Kitselas Lands, the Provincial Expropriating Authority may proceed with expropriation in accordance with the applicable Provincial Law and this Appendix.
5. If a Provincial Expropriating Authority other than British Columbia has determined that:
 - (a) it requires a fee simple estate in Kitselas Lands; and
 - (b) the fee simple estate may no longer be Kitselas Lands given the purposes for which the land is to be used,

then, notwithstanding any agreement for the purchase of the fee simple estate in Kitselas Lands, the removal of the fee simple estate from Kitselas Lands requires the consent of the Lieutenant Governor in Council having regard for all relevant factors under section 7.

Lieutenant Governor in Council Consent

6. The Lieutenant Governor in Council may issue an order consenting to an expropriation of Kitselas Lands by a Provincial Expropriating Authority only:
 - (a) after the conclusion of the procedures described in sections 9 and 10; and
 - (b) if satisfied the expropriation is justifiable under section 7 based on:
 - (i) information furnished by the Provincial Expropriating Authority; and
 - (ii) if an inquiry has been held under Provincial Law, the inquiry officer's report.

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7. For the purposes of section 6, an expropriation is justifiable if the Lieutenant Governor in Council is satisfied that, in addition to the applicable requirements under Provincial Law, the following requirements have been met:
- (a) there is no other reasonably feasible alternative to the expropriation, including the use of lands that are not Kitselas Lands;
 - (b) reasonable efforts have been made by the Provincial Expropriating Authority to acquire the Kitselas Lands through agreement with the owner;
 - (c) the Provincial Expropriating Authority has confirmed that the proposed expropriation is of the most limited interest or estate necessary and for the shortest time required;
 - (d) in the case of a request by a Provincial Expropriating Authority other than British Columbia for the removal of a fee simple estate from Kitselas Lands under section 5, the Provincial Expropriating Authority has confirmed such removal of is necessary for the purposes for which the land is to be used;
 - (e) if Kitselas has objected to the expropriation, reasonable efforts have been made to resolve the objection;
 - (f) if the Kitselas Lands are held by Kitselas and Kitselas has designated all or a portion of those lands as a Kitselas Heritage Site under Kitselas Law, reasonable efforts have been made to minimize or, where possible, avoid impacts on those portions of the lands that have been designated as a Kitselas Heritage Site; and
 - (g) information relevant to the expropriation, other than documents that would be protected from disclosure under Provincial Law, has been provided to Kitselas, including:
 - (i) the Provincial Expropriating Authority's report referred to in section 9; and
 - (ii) the inquiry officer's report, if an inquiry has been held under Provincial Law.
8. Notwithstanding sections 6 and 7, the Lieutenant Governor in Council may consent to the expropriation if the Minister or Lieutenant Governor in Council has declared a state of emergency.

Expropriation Process

9. Before the Lieutenant Governor in Council makes a decision under section 6, the Provincial Expropriating Authority will provide Kitselas with a report which states the reasons for the expropriation and addresses the factors under section 7(a) to 7(f).
10. Within 30 days of receipt of the report under section 9, Kitselas will notify the Provincial Expropriating Authority if Kitselas objects to the expropriation of Kitselas Lands and, within 30 days of the Provincial Expropriating Authority's receipt of notice from Kitselas, the Provincial Expropriating Authority and Kitselas will make reasonable efforts to resolve the objection raised by Kitselas.

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11. If the Provincial Expropriating Authority and Kitselas are unable to resolve Kitselas's objections under section 10, the Provincial Expropriating Authority may proceed with the expropriation of Kitselas Lands with notice to Kitselas and any person entitled to notice under Provincial Law.
 12. For the purposes of section 11:
 - (a) Kitselas may participate in any inquiry under Provincial Law relating to the expropriation of Kitselas Lands and, whether or not Kitselas participates in the inquiry, Kitselas will be entitled to receive the inquiring officer's report submitted to the approving officer; and
 - (b) if Kitselas Lands are not registered in the Land Title Office, the requirements under Provincial Law to file the expropriation notice in the Land Title Office will not apply.
 13. The Lieutenant Governor in Council is the "approving authority" under Provincial Law in relation to an expropriation of Kitselas Lands.
 14. Unless otherwise agreed by Kitselas and British Columbia, if a Provincial Expropriating Authority expropriates a fee simple interest in Kitselas Lands, the Parties will:
 - (a) amend the applicable Appendices in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the expropriation; and
 - (b) take the steps required to have the parcel no longer recognized as Kitselas Lands in the Land Title Office,and the parcel of land will cease to be Kitselas Lands when the amendment takes effect.
 15. If the Lieutenant Governor in Council has consented to the expropriation of Kitselas Lands and those lands are not registered in the Land Title Office, Kitselas will, at the request of the Provincial Expropriating Authority, register the lands in the Land Title Office in accordance with Chapter 5 Land Title and the Provincial Expropriating Authority will be responsible for the transaction costs of surveying, registering and transferring the land, if applicable.

Compensation

16. If the Lieutenant Governor in Council has consented to a Provincial Expropriating Authority's expropriation of Kitselas Lands, the Provincial Expropriating Authority will, subject to sections 19 and 20, compensate the owner of the land based on the criteria set out in Provincial Law.
17. If the Provincial Expropriating Authority and the owner of the land disagree on the amount of compensation, the amount of compensation will be determined in accordance with Provincial Law and this Agreement.
18. A dispute under section 17 will not delay the expropriation.

Replacement Land

19. If a fee simple estate in Kitselas Lands is expropriated by a Provincial Expropriating Authority, before offering compensation in accordance with Provincial Law, the Provincial Expropriating Authority will first make reasonable efforts to identify and offer replacement land of comparable value within the Kitselas Harvest Area to the owner whose land is expropriated.
20. If there is no agreement on replacement land offered under section 19, or the replacement land is of less than comparable value, the Provincial Expropriating Authority will provide the owner with other or additional compensation in accordance with Provincial Law.
21. At the request of Kitselas, British Columbia will consent to the replacement land being added to Kitselas Lands and, where Canada consents to such replacement lands becoming Kitselas Lands in accordance with a request under paragraph 96 of Chapter 3 Kitselas Lands, upon receipt by Kitselas of notice of the consent of each of British Columbia and Canada, the Parties will:
 - (a) amend Appendix B in accordance with the process set out in paragraph 9 of Chapter 31 Amendment; and
 - (b) take the steps required to have the replacement land recognized as Kitselas Lands in the Land Title Office,

and the replacement land will become Kitselas Lands when the amendment takes effect.

Return of Expropriated Kitselas Lands

22. If a Provincial Expropriating Authority no longer requires the expropriated interest or estate, the Provincial Expropriating Authority will not dispose of that expropriated interest or estate without first offering the owner from whom it was taken or, where such owner does not wish to acquire it, Kitselas, a right of first refusal to acquire the expropriated interest or estate.
23. If land was expropriated and removed from Kitselas Lands, and that land is acquired by the owner from whom it was taken or by Kitselas following an offer made under section 22, Kitselas may provide notice to Canada and British Columbia that the parcel is to be added to Kitselas Lands.
24. If Kitselas is not the owner of a parcel land in relation to which it provides notice under section 23, Kitselas must also provide, in relation to that parcel, the releases and certificates identified in paragraph 43 of Chapter 3 Kitselas Lands.
25. Upon receipt by Canada and British Columbia of notice under section 23 and any releases and certificates required under section 24, the parcel will be added to Kitselas Lands in the same manner described in paragraph 44 of Chapter 3 Kitselas Lands.

Subsurface Resources

26. Unless British Columbia and Kitselas agree otherwise, the expropriation and removal of a fee simple estate from Kitselas Lands under section 7(d) will include Subsurface Resources.

27. British Columbia acknowledges Kitselas's interest in retaining ownership of the Subsurface Resources for any expropriation of Kitselas Lands in fee simple.
28. Kitselas will own the Subsurface Resources on or under any replacement lands or lands that are added to Kitselas Lands under section 21 where:
 - (a) the fee simple includes ownership of the Subsurface Resources; or
 - (b) British Columbia owns the Subsurface Resources.
29. For purposes of subsection 28(b), any Subsurface Tenures and the Tenured Subsurface Resources will be administered by British Columbia accordance with paragraphs 9 to 18 of Chapter 4 Subsurface.

Kitselas Law-Making Authority

30. Nothing under Kitselas Law, including any restrictions on the ownership of Kitselas Lands, prevents the expropriation of Kitselas Lands in accordance with this Agreement and Provincial Law.
31. Kitselas Laws apply to an interest expropriated in accordance with this Appendix, except:
 - (a) to the extent that a Kitselas Law, or a use or occupation authorized by Kitselas Law, is inconsistent with the use of land for which the purposes for which the expropriation took place; or
 - (b) the interest is an estate in fee simple removed from Kitselas Lands.

**Appendix J Kitselas Co-Management Negotiation Areas, Impact Assessment Area, and
Port Essington Water Lot Lease**

Part 1: Map of Areas Subject to Co-Management Negotiations on the Effective Date

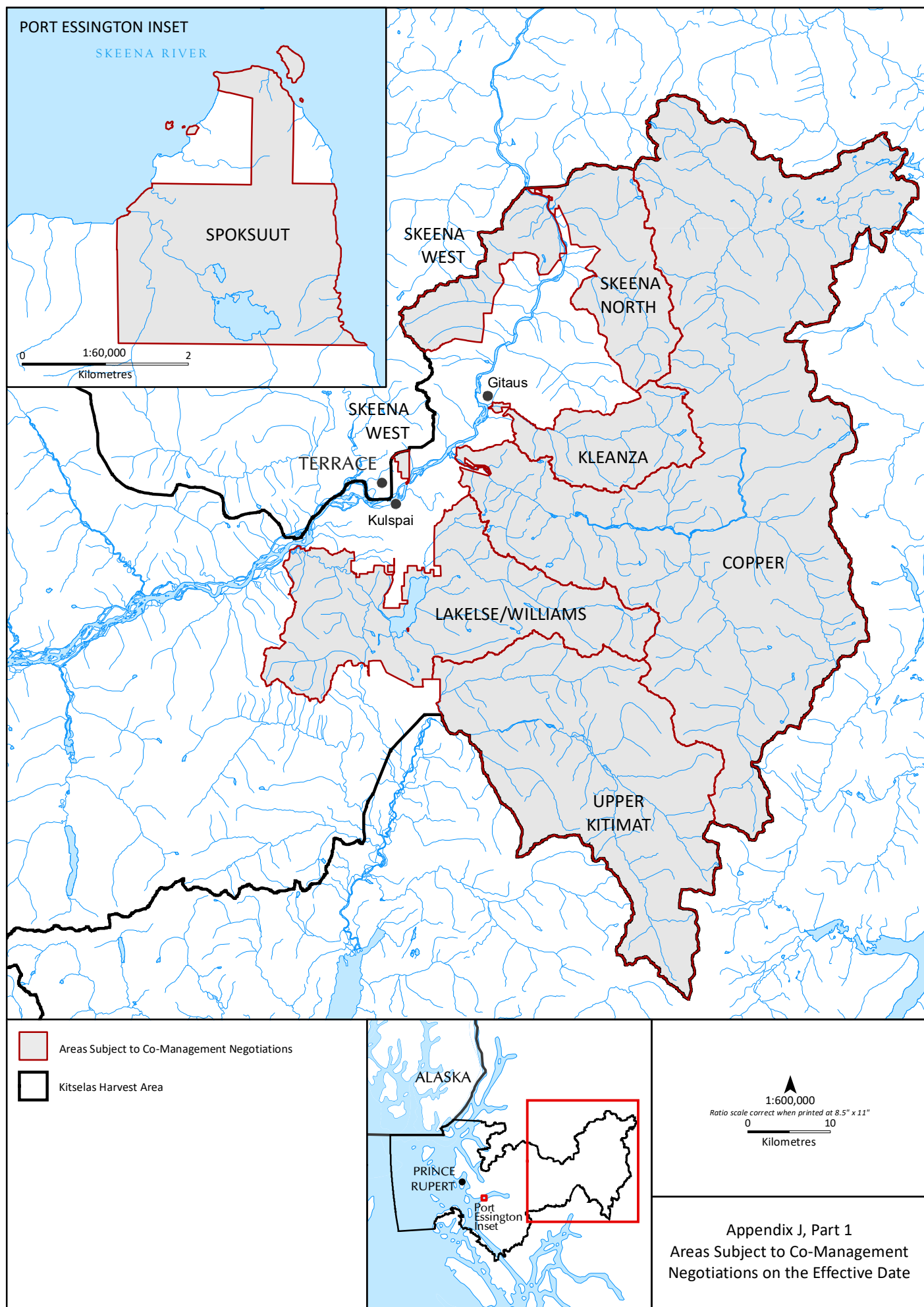
Part 2: Map of Impact Assessment Area

Part 3: Form of Port Essington Water Lot Lease

**Appendix J Kitselas Co-Management Areas, Impact Assessment Area, and Port Essington
Water Lot**

Part 1: Map of Areas Subject to Co-Management Negotiations on the Effective Date

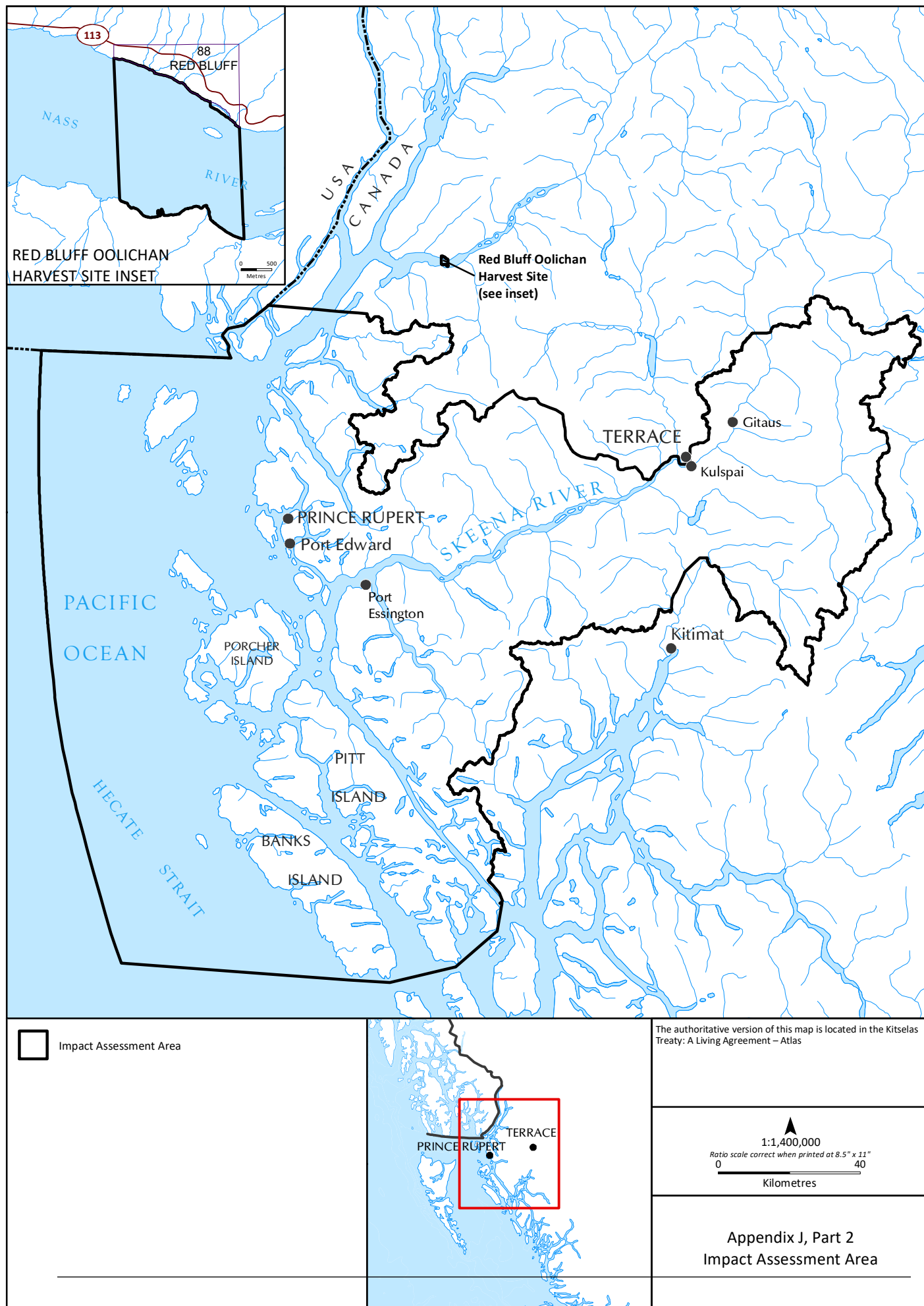
Note: The Parties will update the Appendices before the Effective Date, as required.



**Appendix J Kitselas Co-Management Areas, Impact Assessment Area, and Port Essington
Water Lot**

Part 2: Map of Impact Assessment Area

Note: The Parties will update the Appendices before the Effective Date, as required.



**Appendix J Kitselas Co-Management Areas, Impact Assessment Area, and Port Essington
Water Lot**

Part 3: Form of Port Essington Water Lot Lease

Note: The Parties will update the Appendices before the Effective Date, as required.

Form of Water Lot Lease

THIS AGREEMENT is dated for reference _____ and is made under the *Land Act*.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia (the “Province”)

AND:

[KITSELAS or KITSELAS ENTITY to be confirmed]

AND:

[Such other persons as may become a party such as KITSUMKALUM or as KITSUMKALUM ENTITY to be confirmed]

(the “Lessee”)

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

“**Agreement**” means this lease;

“**Commencement Date**” means the effective date of the K’ómoks Treaty;

“**disposition**” has the meaning given to it in the *Land Act* and includes a licence of occupation;

“**Hazardous Substances**” means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation

or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Land” means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule” except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*);

“Management Plan” means the most recent management plan prepared by you in a form approved by us, signed and dated by the parties, and held on file by us;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Rent” means the rent set out in Article 3;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Province alone and never refers to the combination of the Province and the Lessee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Lessee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.

- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such guideline of general application.

- 1.14 Where this Agreement contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words will have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained in this Agreement, unless the context requires another construction of those words.
- 1.15 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a lease of the Land for purposes of constructing and maintaining a dock and moorage facilities as set out in the Management Plan.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 99th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.
- 2.3 You may at your option renew this Agreement for one or more additional 99-year periods (anyone of which may be referred to as a “renewal term”) in perpetuity.
- 2.4 You will be conclusively deemed to have exercised this right of renewal during the initial term and each successive renewal term unless you give us written notice to the contrary on or before the fifth (5th) year prior to the end of the initial term or any particular renewal term as the case maybe. Any renewal includes the terms and conditions of this Agreement with the modifications that are necessary to reflect the commencement date of the extended term.

ARTICLE 3 - RENT

- 3.1 The Rent for the Term is \$1.00 annually, the receipt of which we acknowledge.

ARTICLE 4 - COVENANTS

- 4.1 You must

- (a) pay, when due,
 - (i) the Rent to us at the address set out in Article 10,
 - (ii) any applicable Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of any applicable Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in the Management Plan;
- (g) not construct, place, anchor, secure or affix any Improvement in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan (where applicable) or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over

the Land; or

- (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access;

- (h) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;
- (k) not interrupt passage by the public on foot, over the intertidal portion of the Land;
- (l) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
- (m) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (n) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and

- (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (o) on the termination of this Agreement,

- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition,
- (ii) within TBA days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
- (iii) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
- (iv) restore the surface of the Land to the condition the land was in on the Commencement Date, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which

may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.
- 4.7 We will provide you with quiet enjoyment of the Land.
- 4.8 In addition to the covenants set out above in section 4.1, the Parties agree to comply with the terms and conditions set out in Schedule X.

ARTICLE 5 - LIMITATIONS

- 5.1 You agree with us that
- (a) in addition to the other reservations and exceptions expressly provided in this Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
 - (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Sustainability Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
 - (c) with your prior consent, which consent you will not unreasonably withhold, we may make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, including a Crown agency or ministry, and, upon such consent being given you will, if required by us, execute and deliver to us such instrument as may be necessary to subordinate your rights under this Agreement to such easement, right of way or statutory right of way;
 - (d) for the purpose of subsection (c), you will be deemed to have reasonably withheld your consent if a disposition made under that subsection would have a material adverse impact on your use of the Land under this Agreement;

- (e) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);
- (f) if a proposed disposition under subsection (c) will not have a material adverse impact on your use of the Land under this Agreement you must not require any payment, whether as compensation or any other charge, as a condition of your consent to that disposition;
- (g) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);
- (h) any interference with your use of the Land under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles described in subsection (a), (b) and (c) will not constitute a breach of our covenant of quiet enjoyment and you release and discharge us from all claims for loss or damage arising directly or indirectly out of any such interference;
- (i) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
- (j) you will not dredge or displace beach materials on the Land unless you have obtained our prior written approval;
- (k) you will not interrupt or divert the movement of water or of beach materials by water along the shoreline unless you have obtained our prior written approval;
- (l) you will make no claim against us or any person acting under the authority of any enactment of the Province of British Columbia for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement because of erosion, flooding or debris flow affecting the Land;
- (m) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (n) any interest you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed

under paragraph 4.1(q)(ii) or (iii) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(q)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(q)(iii); and

- (o) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$XXX which will
 - (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Rent and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
 - (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;and you will, within 60 days of receiving such notice, deliver to us written confirmation that the

change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
 - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed “Province of British Columbia Certificate of Insurance”;
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed “Province of British Columbia Certificate of Insurance”;
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed “Province of British Columbia Certificate of Insurance” for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by

law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

- 6.9 You waive all rights of recourse against us with regard to damage to your own property, provided such damage is not caused as a result of our breach of the terms of this Agreement or our negligence or the negligence of those for whom we are responsible in law.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublease, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and your default or failure continues for 60 days after we give written notice of the default or failure to you,
 - (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
 - (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court

of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate, and all of your right, interest and estate in the Land will be absolutely forfeited to us.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1,

we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.

- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Courtenay British Columbia, and if we or our authorized representative have no office in Courtenay, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Courtenay, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

to you

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

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other,

a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.

- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublease, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublease, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.

11.6 You acknowledge and agree with us that

- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
- (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
 - (v) the application of any federal or provincial enactment or law to the Land;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site profile” under the *Environmental Management Act* or any regulations made under that act;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

- 11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.
- 11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HIS MAJESTY
THE KING IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by the minister responsible for the *Land Act*
or the minister's authorized representative

Minister responsible for the *Land Act*
or the minister's authorized representative

SIGNED on behalf of
KITSELAS by a duly
authorized signatory

Authorized Signatory

SIGNED on behalf of
KITSUMKALUM by a duly
authorized signatory

Authorized Signatory

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION:

Appendix K Kitselas Migratory Birds Harvest Area, Kitselas Fishing Area, and Areas for Possible Water Quality and Biotoxin Monitoring Related to Harvesting of Intertidal Bivalves

Part 1: Map of Kitselas Migratory Birds Harvest Area

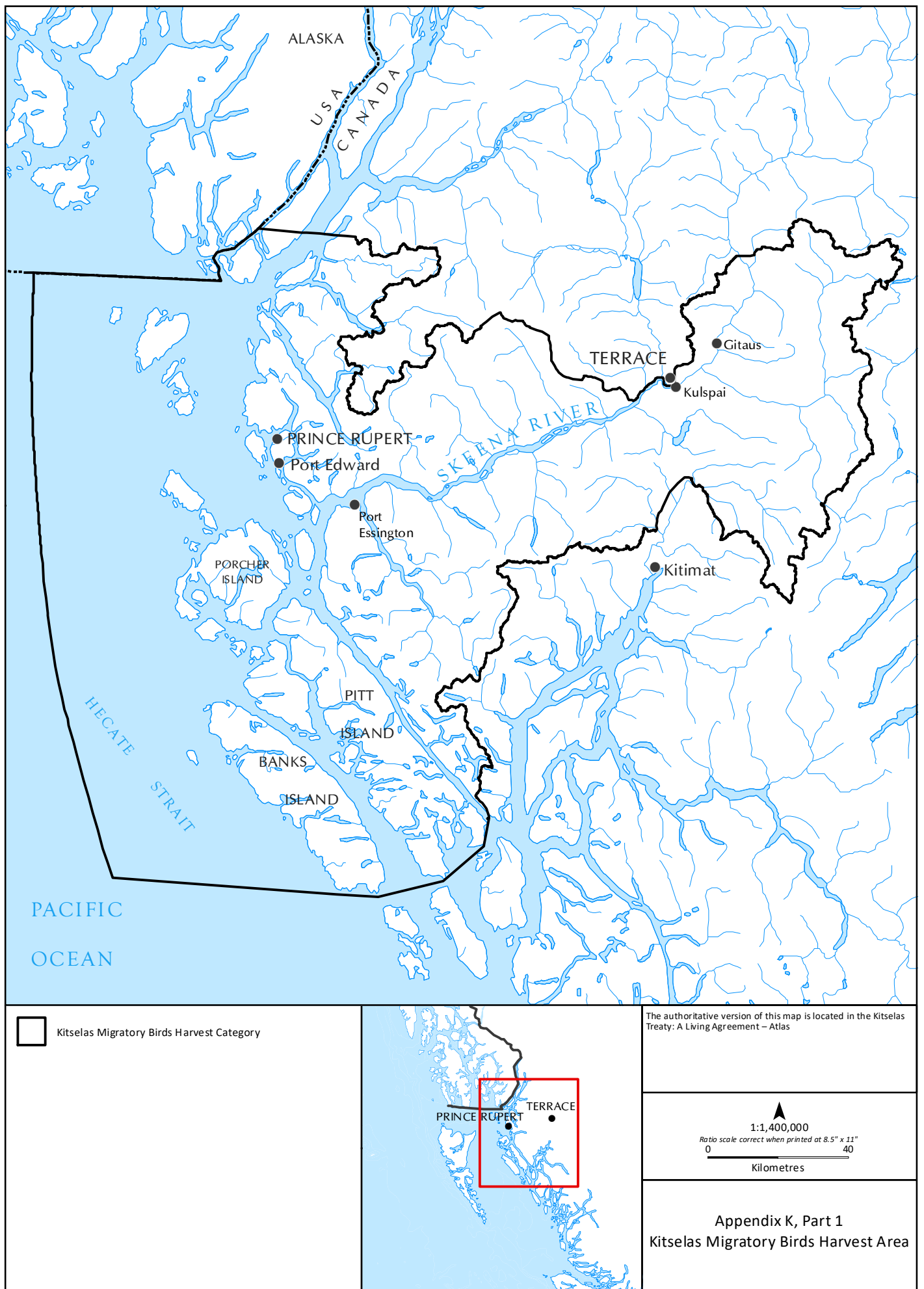
Part 2: Map of Kitselas Fishing Area

Part 3: Map of Areas for Possible Water Quality and Biotoxin Monitoring Related to Harvesting of Intertidal Bivalves

**Appendix K Kitselas Migratory Birds Harvest Area, Kitselas Fishing Area and Areas
for Possible Water Quality and Biotoxin Monitoring Related to Harvesting of Intertidal
Bivalves**

Part 1: Map of Kitselas Migratory Birds Harvest Area

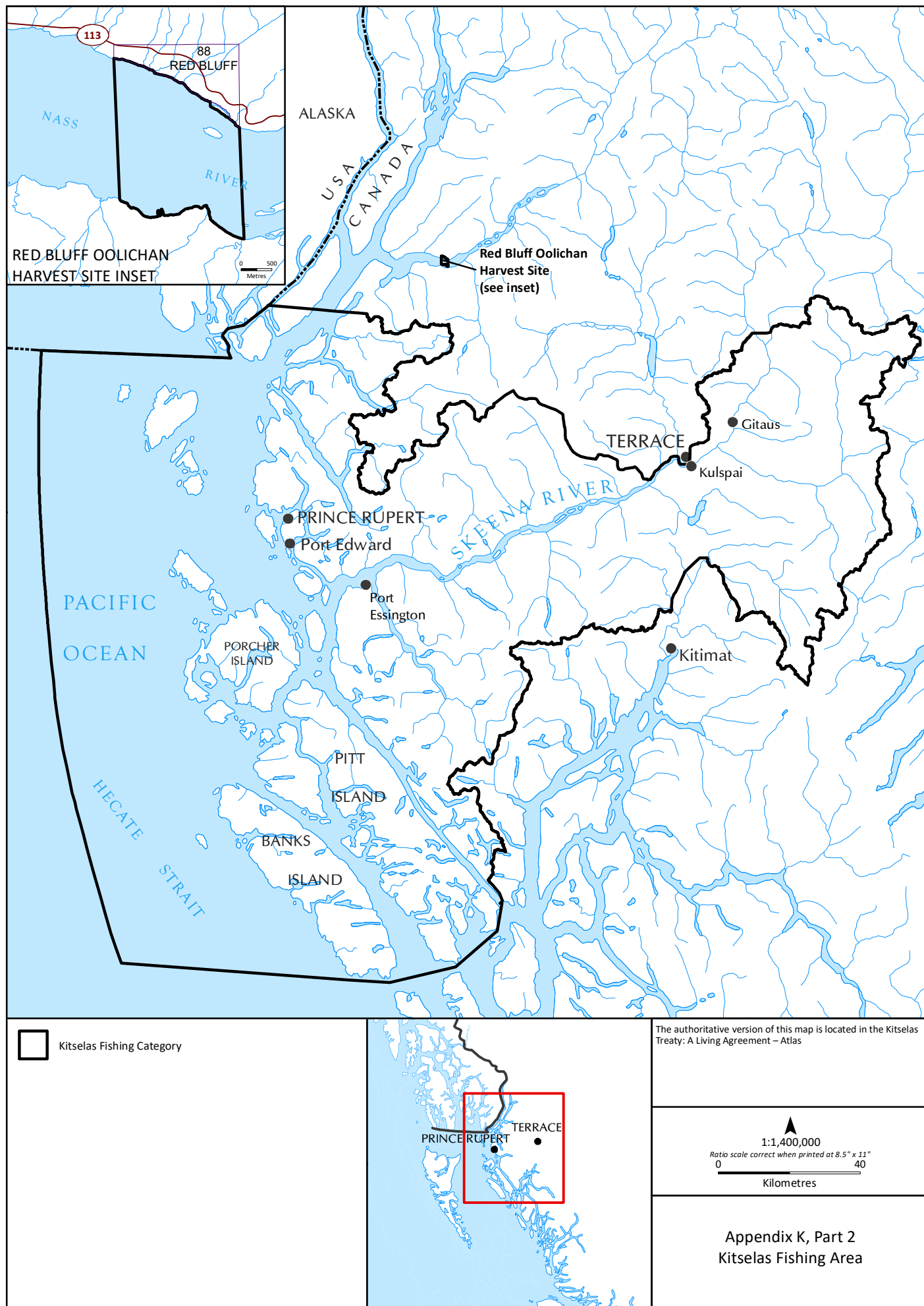
Note: The Parties will update the Appendices before the Effective Date, as required.



**Appendix K Migratory Birds Harvest Area, Fishing Area and Areas for Possible Water
Quality and Biotoxin Monitoring Related to Harvesting of Intertidal Bivalves**

Part 2: Map of Kitselas Fishing Area

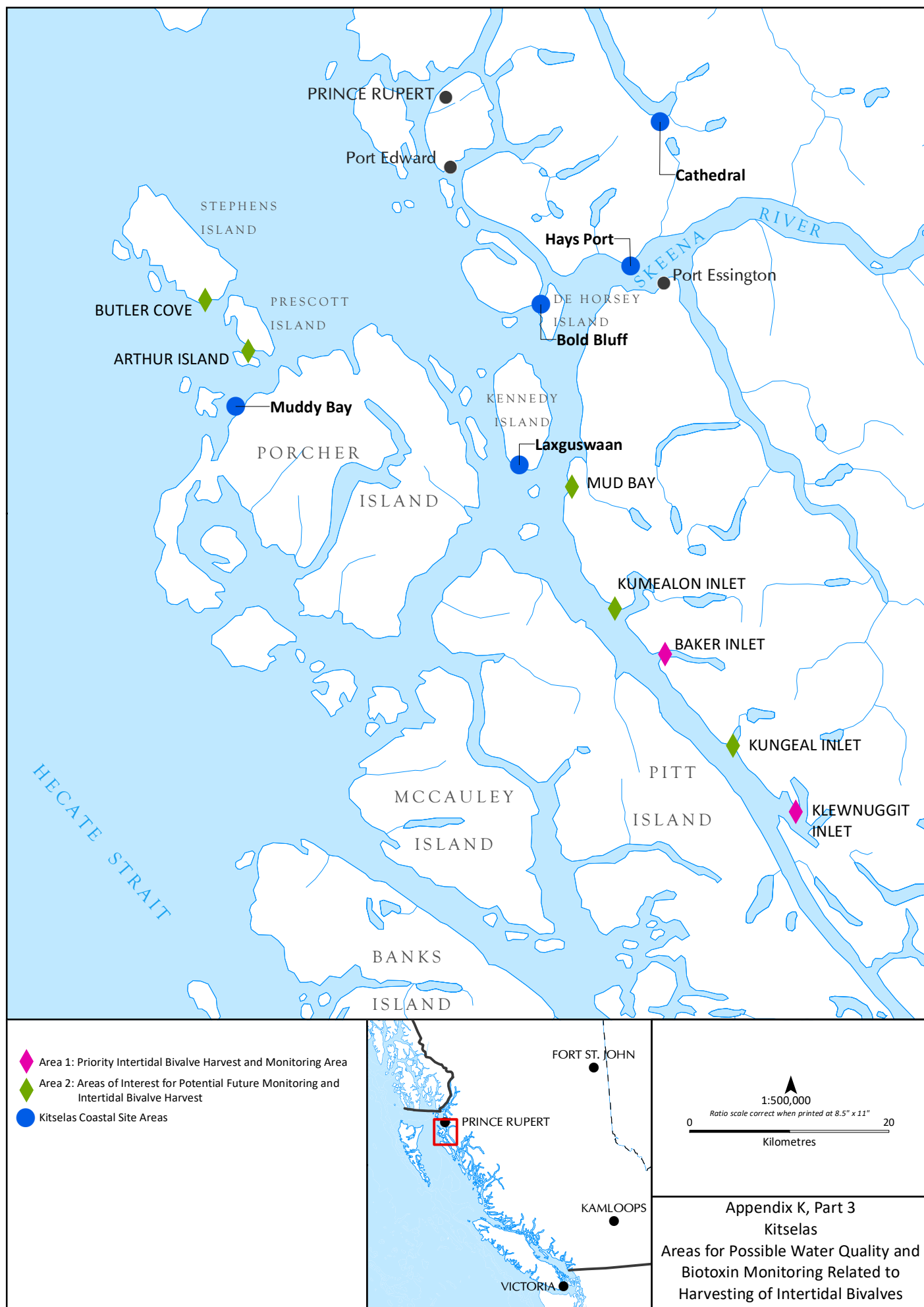
Note: The Parties will update the Appendices before the Effective Date, as required.



Appendix K Migratory Birds Harvest Area, Fishing Area and Areas for Possible Water Quality and Biotoxin Monitoring Related to Harvesting of Intertidal Bivalves

Part 3: Map of Areas for Possible Water Quality and Biotoxin Monitoring Related to Harvesting of Intertidal Bivalves

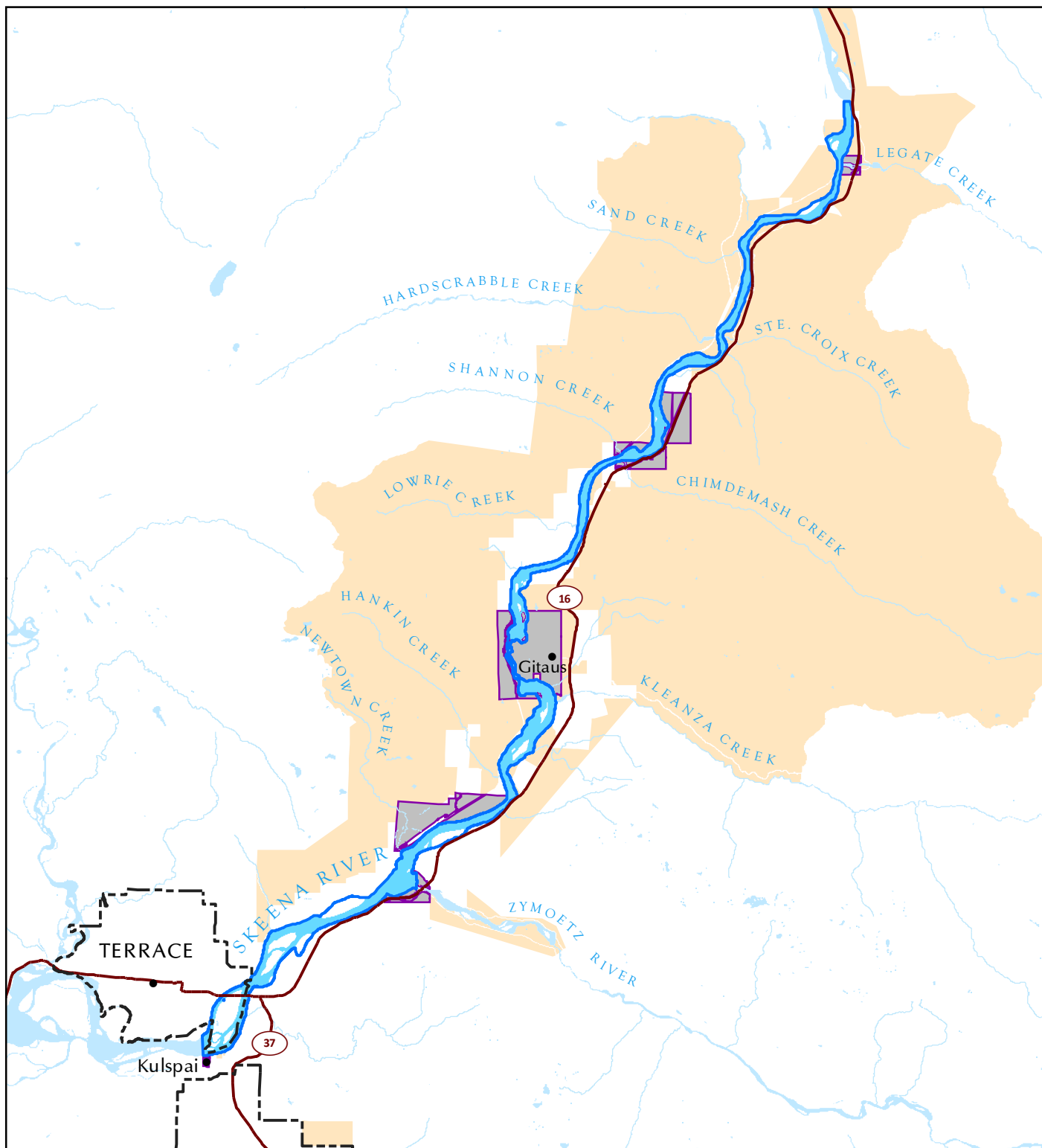
Note: The Parties will update the Appendices before the Effective Date, as required.



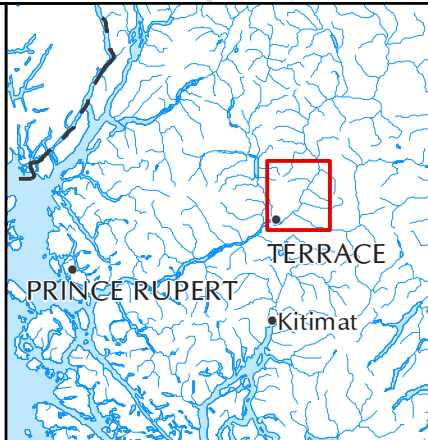
Appendix L Kitselas Community Fishing Area

Map of Kitselas Community Fishing Area

Note: The Parties will update the Appendices before the Effective Date, as required.



- Kitselas Community Fishing Area
- Kitselas Lands - Former Kitselas Indian Reserves
- Kitselas Lands
- Municipality



Where there is a conflict between a map contained in the Appendices and an Adequate Survey that has been accepted for filing in the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.


 1:180,000
 Ratio scale correct when printed at 8.5" x 11"
 0 2
 Kilometres

Appendix L Kitselas Community Fishing Area

Appendix M Estates in Fee Simple That Require Access Over Kitselas Lands

Estates in Fee Simple That Require Access Over Kitselas Lands

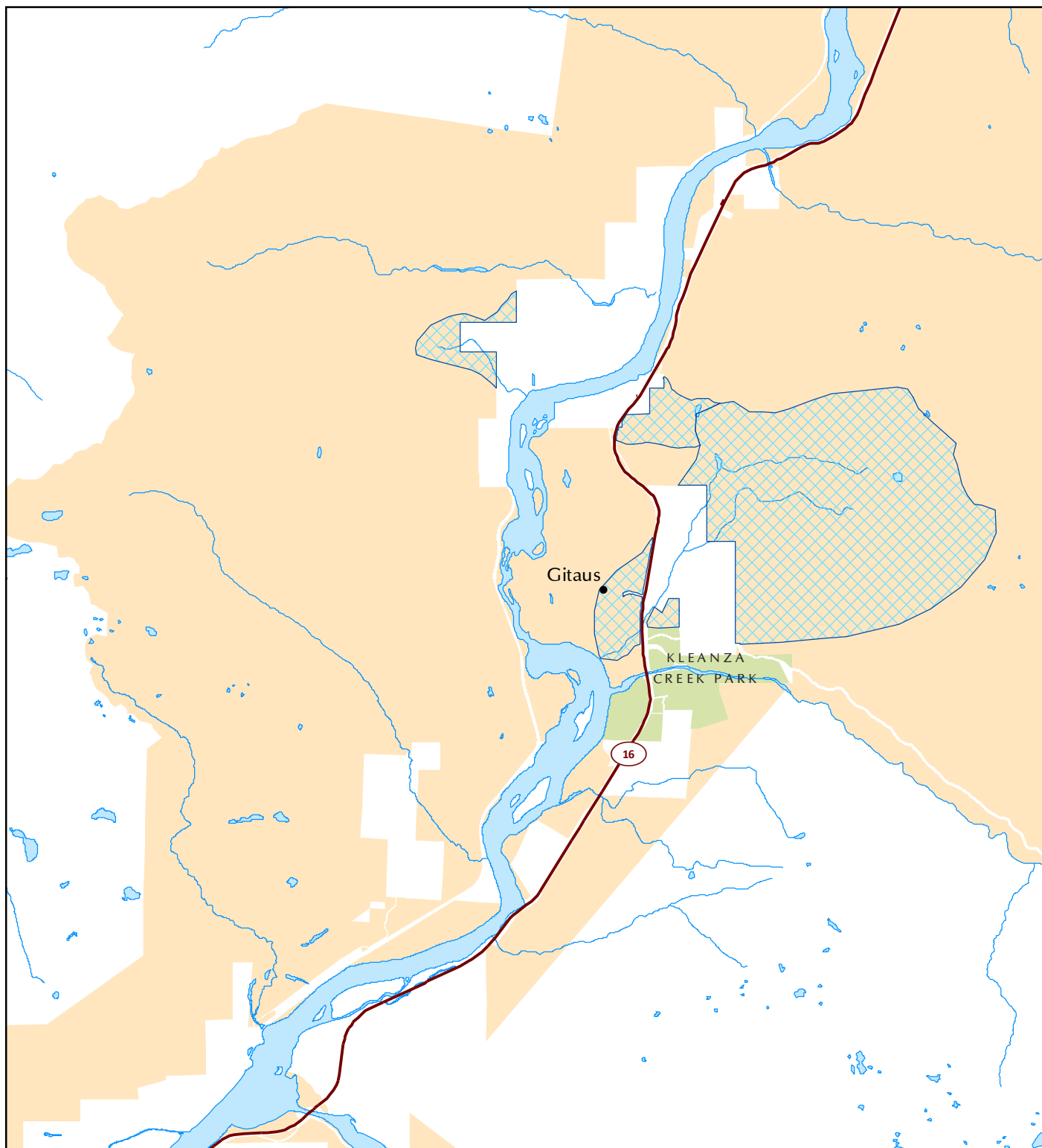
Note: The Parties will update the Appendices before the Effective Date, as required.

Legal Description	Land Title Parcel Identifier (PID)	General Location
District Lot 71, Range 5, Coast District (Subsurface Resources Only)	014-969-637	Appendix B-3 Part 2 Map 19
District Lot 72, Range 5, Coast District (Subsurface Resources Only)	014-969-653	Appendix B-3 Part 2 Map 19
District Lot 5979, Range 5, Coast District	015-275-400	Appendix B-3 Part 2 Maps 14, 19
District Lot 2218, Range 5, Coast District	015-130-304	Appendix B-3 Part 2 Map 25
District Lot 7651, Range 5, Coast District	015-191-290	Appendix B-3 Part 2 Map 25

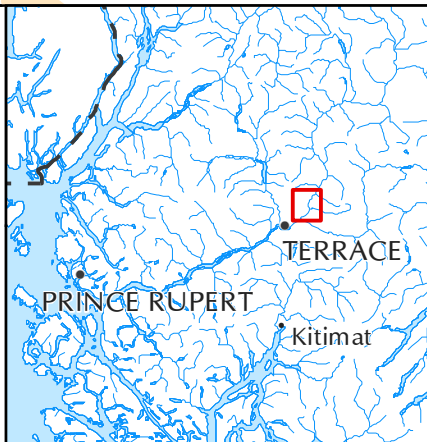
Appendix N Kitselas Community Watershed Lands

Map of Kitselas Community Watershed Lands

Note: The Parties will update the Appendices before the Effective Date, as required.



-  Kitselas Community Watershed Lands
-  Kitselas Lands
-  Park or protected area



This map is not to be relied on for any purpose other than defining the legal boundaries or descriptions of Kitselas Community Watershed Lands.

Where this map conflicts with an Adequate Survey that has been filed with the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.

1:80,000
Ratio scale correct when printed at 8.5" x 11"
0 2
Kilometres

Appendix N Kitselas Community Watershed Lands

Appendix O Dispute Resolution Procedures

Appendix O-1 Collaborative Negotiations

Appendix O-2 Mediation

Appendix O-3 Technical Advisory Panel

Appendix O-4 Neutral Evaluation

Appendix O-5 Arbitration

Appendix O-1 Collaborative Negotiations

Definitions

1. In this Appendix:

"Chapter" means Chapter 29 Dispute Resolution of this Agreement; and

"Section" means a section in this Appendix.

General

2. Collaborative negotiations commence:
- (a) on the date a written notice is delivered requiring the commencement of collaborative negotiations; or
 - (b) in the case of negotiations in the circumstances described in paragraph 5(c) of the Chapter, on the date of the first negotiation meeting.

Notice

3. A written notice under paragraph 14 of the Chapter requiring the commencement of collaborative negotiations will include the following:
- (a) the names of the Disputing Parties;
 - (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 assist the Parties in collaborative negotiations.

Representation

4. A Participant may attend collaborative negotiations with or without legal counsel.
5. At the commencement of the first negotiation meeting, each Participant will advise the other Participants of any limitations on the authority of its representatives.

Negotiation Process

6. The Participants will convene their first negotiation meeting in collaborative negotiations, other than those described in paragraph 5(c) of the Chapter, within 21 days of the commencement of the collaborative negotiations.

7. Before the first scheduled negotiation meeting, the Participants will discuss and attempt to reach agreement on any procedural issues that will facilitate the collaborative negotiations, including the requirements of paragraph 25 of the Chapter.
8. For the purposes of paragraph 25(a) of the Chapter, "timely manner" means disclosure made within 15 days of a request for disclosure by a Participant.
9. The Participants 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 an individual 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 Participants, and all persons, will keep confidential:
 - (a) all oral and written information disclosed in the collaborative negotiations; and
 - (b) the fact that the information referred to in Section 12(a) has been disclosed.
13. The Participants 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 Participants 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 Participant in respect of a possible settlement of the Disagreement;
 - (c) any admissions made by any Participant in the course of the collaborative negotiations, unless otherwise stipulated by the admitting Participant; and
 - (d) the fact that any Participant 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;
 - (c) if the oral or written information referred to in these Sections is in the public forum; or
 - (d) if disclosure of information is required by Federal or Provincial Law or Kitselas Law, including for the purposes of fulfilling procedural fairness obligations.
15. Before disclosing information under Section 14(d), the Party intending to disclose information will notify the other Participants of the information it intends to disclose and provide an opportunity for the recipient of the notice to express any views regarding the proposed disclosure.

Right to Withdraw

16. A Participant may withdraw from collaborative negotiations at any time.

Termination of Collaborative Negotiations

17. Collaborative negotiations are terminated when any of the following occurs:
- (a) the expiration of:
 - (i) 30 days; or
 - (ii) in the case of negotiations in the circumstances described in paragraph 5(c) of the Chapter, 120 days after the first scheduled negotiation meeting or any longer period agreed to by the Disputing Parties in writing;
 - (b) a Disputing Party withdraws from the collaborative negotiations under Section 16;
 - (c) the Participants agree in writing to terminate the collaborative negotiations; or
 - (d) the Disputing Parties sign a written agreement resolving the Disagreement.

Appendix O-2

Mediation

Definitions

1. In this Appendix:

"Chapter" means Chapter 29 Dispute Resolution of this Agreement; and

"Section" means a section in this Appendix.

General

2. A mediation commences on the date the Disputing Parties agree in writing to use mediation, or are deemed to have agreed to use mediation, under paragraph 23 of the Chapter.

Appointment of Mediator

3. A mediation will be conducted by one mediator jointly appointed by the Participants.
4. A mediator must 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 Participants fail to agree on a mediator within 15 days of the commencement of a mediation, or within 15 days of the termination of a mediator's appointment under Section 10, the Neutral Appointing Authority will make the appointment on the written request of a Participant that is copied to the other Participants.
6. Subject to any limitations agreed to by the Participants, a mediator may employ reasonable and necessary administrative or other support services.

Requirement to Withdraw

7. If at any time a Participant has justifiable doubts as to the mediator's independence or impartiality, the Participant may give the mediator and the other Participants a written notice, with or without reasons, requiring the mediator to withdraw from the mediation.
 8. On receipt of a written notice under Section 7, the mediator must immediately withdraw from the mediation.
-

9. A mediator who is a Kitselas Citizen, or related to a Kitselas Citizen, must not be required to withdraw under Section 8 solely on the grounds of being a Kitselas Citizen or of that relationship to a Kitselas Citizen.

End of Appointment

10. A mediator's appointment terminates if:
 - (a) the mediator is required to withdraw under Section 8;
 - (b) the mediator withdraws for any reason; or
 - (c) the Participants agree to terminate the appointment.
11. If a mediator's appointment terminates, a replacement will be appointed under Sections 3 to 5 within the required time commencing from the date of the termination of the appointment.

Representation

12. A Participant 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 Participant.
14. At the commencement of the first meeting of a mediation, each Participant will advise the mediator and the other Participants of any limitations on the authority of its representatives.

Conduct of Mediation

15. The Participants 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 Participants to resolve the Disagreement in a fair, efficient and cost-effective manner
17. Within seven days of the appointment of a mediator, each Participant will deliver a brief written summary to the mediator of the relevant facts, the issues in the Disagreement, and the Participant's viewpoint in respect of them.

18. At the end of the seven-day period referred to in Section 17, the mediator will deliver copies of the written summaries to each Participant.
19. A mediator may conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting the Participants.
20. Disclosures made by any Participant to a mediator in private caucus must not be disclosed by the mediator to any other Participant without the consent of the disclosing Participant.
21. No transcript or recording will be kept of a mediation meeting but this does not prevent an individual from keeping notes of the mediation meeting.

Confidentiality

22. In order to assist in the resolution of a Disagreement, a mediation will not be open to the public.
23. The Participants, and all persons, will keep confidential:
 - (a) all oral and written information disclosed in the mediation; and
 - (b) the fact that the information referred to in Section 23(a) has been disclosed.
24. The Participants 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 Participants 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 Participant in the course of the mediation, unless otherwise stipulated by the admitting Participant;
 - (d) any recommendations for settlement made by the mediator; and
 - (e) the fact that any Participant has indicated a willingness to make or accept a proposal or recommendation for settlement.
25. Sections 23 and 24 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;
 - (c) if the oral or written information referred to in Sections 23 and 24 is in the public forum; or

- (d) if disclosure of information is required by Federal or Provincial Law or Kitselas Law, including for the purposes of fulfilling procedural fairness obligations.
- 26. Before disclosing information under Section 25(d), the Party intending to disclose information will notify the other Participants of the information it intends to disclose and provide an opportunity for the recipient of the notice to express any views regarding the proposed disclosure.
- 27. 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 individual as a result of the mediation, and all Parties participating in that proceeding will oppose any effort to have that individual or that information subpoenaed.
- 28. A mediator, or anyone retained or employed by the mediator, may not act as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Participant to the mediation.

Referral of Issues to Other Processes

- 29. During a mediation the Participants 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 Participants 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 Participants.
- 30. 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 29.

Right to Withdraw

- 31. A Participant may withdraw from a mediation at any time in accordance with the processes set out in Sections 32 and 33.
- 32. Before withdrawing from the mediation, a Participant will:
 - (a) deliver written notice to the mediator of the Participant's intent to withdraw;
 - (b) speak with the mediator to disclose its reasons for withdrawing; and
 - (c) give the mediator the opportunity to discuss with the Participant the consequences of its withdrawal.
- 33. Following the process set out in Section 32, if the Participant decides to withdraw from the mediation:
 - (a) the Participant will deliver written notice of its withdrawal to the mediator and all other Participants; and

- (b) that withdrawal is effective upon delivery of the written notice.

Termination of Mediation

34. A mediation is terminated when any of the following occurs:
- (a) subject to Section 30, the expiration of 30 days after the appointment of the mediator, or any longer period agreed by the Participants in writing;
 - (b) the Participants have agreed in writing to terminate the mediation or not to appoint a replacement mediator under Section 11;
 - (c) a Disputing Party withdraws from the mediation under Section 31; or
 - (d) the Disputing Parties sign a written agreement resolving the Disagreement.

Mediator Recommendation

35. If a mediation is terminated without the Disputing Parties reaching agreement, the Disputing Parties may agree to request that the mediator give a written non-binding recommendation for settlement, but the mediator may decline the request without reasons.
36. Within 15 days of delivery of any mediator's recommendation under Section 35, the Participants will meet with the mediator to attempt to resolve the Disagreement.

Costs

37. A Participant withdrawing from a mediation under Section 31 is not responsible for any costs of the mediation that are incurred after the date that Participant's withdrawal takes effect.

Appendix O-3
Technical Advisory Panel

Definitions

1. In this Appendix:

"Chapter" means Chapter 29 Dispute Resolution of this Agreement;

"Panel" means a technical advisory panel appointed under this Appendix;

"Panel Member" means a member of a Panel;

"Reference" means a reference of a Disagreement to a Panel; and

"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 Disputing Parties agree in writing to use a Panel under paragraph 23 of the Chapter.

Appointment of Panel Members

4. A Panel will have three Panel Members unless the Participants agree on a Panel of five Panel Members.
5. A Panel Member must have Indigenous, technical, or scientific knowledge and skills related to the subject matter or issues of the Disagreement.
6. If there are two Participants, then the Panel will have either:
 - (a) three Panel Members, in which case:
 - (i) each Participant will appoint one Panel Member; and then
 - (ii) the two appointed Panel Members will jointly appoint the third Panel Member; or
 - (b) five Panel Members, in which case:
 - (i) each Participant will appoint two Panel Members; and then

- (ii) the four appointed Panel Members will jointly appoint the fifth Panel Member.
- 7. If there are three Participants, then the Panel will have either:
 - (a) three Panel Members, in which case each Participant will appoint one Panel Member; or
 - (b) five Panel Members, in which case:
 - (i) each Participant will appoint one Panel Member; and then
 - (ii) the three appointed Panel Members will jointly appoint the fourth and fifth Panel Members.
- 8. During an appointment process set out in Section 6 or 7, if:
 - (a) a process under Section 6(a)(i), 6(b)(i), 7(a) or 7(b)(i), as applicable, is not completed within 30 days of the commencement of the Reference; or
 - (b) a process under Section 6(a)(ii), 6(b)(ii) or 7(b)(ii), as applicable, is not completed within 15 days of the completion of the process under Section 6(a)(i), 6(b)(i) or 7(b)(i),

then the applicable appointment will be made by the Neutral Appointing Authority on the written request of a Participant that is copied to the other Participants.

End of Appointment

- 9. The appointment of a Panel Member appointed by the appointing Panel Members or by the Neutral Appointing Authority terminates if:
 - (a) the Panel Member withdraws from office for any reason; or
 - (b) the Participants agree to the termination.
- 10. The appointment of a Panel Member appointed by one Participant, or by the Neutral Appointing Authority in place of the Party, terminates if:
 - (a) the Panel Member withdraws from office for any reason; or
 - (b) the appointing Participant terminates the appointment.
- 11. Subject to Section 12, if the appointment of a Panel Member terminates, a replacement Panel Member will be appointed under the same process by which the former Panel Member was appointed under Section 6 or 7, as applicable, within the required time commencing from the termination of the former Panel Member's appointment.

12. A Participant may elect not to replace a Panel Member it had appointed but the Participant may not withdraw from the Reference, except as permitted under Sections 30 to 33.

Terms of Reference

13. Within 15 days of the appointment of the last Panel Member, the Participants will provide the Panel with written terms of reference that will include:
 - (a) the Disputing Parties and any other Participants;
 - (b) the subject matter and issues of the Disagreement;
 - (c) the kind of assistance that the Participants request from the Panel, including providing advice, finding facts, conducting, evaluating and reporting on studies and making determinations or recommendations;
 - (d) the time period within which the Participants request the assistance to be provided;
 - (e) the time within which the Panel must provide the Parties with the budget described in Section 15;
 - (f) a schedule for when the Panel will provide the Participants with written interim reports on the Panel's progress and related expenditures under the budget described in Section 16;
 - (g) any limitations on the application of Sections 36 to 42 to the Reference; and
 - (h) the time period by which the Panel will provide the Participants with its final written report.
14. The Participants may discuss the proposed terms of reference with the Panel before they are finally settled.
15. Within the time referred to in Section 13(e), the Panel will provide the Participants with a budget for the costs of conducting the Reference, including:
 - (a) fees to be paid to the Panel Members;
 - (b) costs of required travel, food and accommodation of Panel Members;
 - (c) costs of any required administrative assistance; and
 - (d) costs of any studies.
16. The Participants will consider the budget submitted by the Panel and approve that budget with any amendments agreed to by the Participants before the Panel undertakes any activities under the Reference.

17. The Participants are not responsible for any costs incurred by the Panel that are in excess of those approved under Section 16, and the Panel is not authorized to incur any costs beyond that amount without obtaining prior written approval from all the Participants.
18. The Participants 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

19. The Participants 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.
20. Subject to the terms of reference and the budget, the Panel may conduct its Reference using any procedure it considers necessary or appropriate, including holding a hearing.
21. 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 Participants.
22. If a hearing is held, the Panel will give the Participants reasonable written notice at least seven days before the hearing date.
23. No transcript or recording will be kept of a hearing, but this does not prevent an individual attending the hearing from keeping notes of the hearing.
24. The legal rules of evidence do not apply to a hearing before the Panel.
25. The Panel will give the Participants the interim and final written reports specified in its terms of reference within the required times.
26. The interim and final written reports of the Panel are not binding on the Participants.

Panel Business

27. A Panel will appoint one of its Panel Members to act as chair of the Panel.
28. The chair of a Panel is responsible for all communications between the Panel, the Participants and any other person to whom the Panel wishes to communicate, but this does not preclude a Panel Member from communicating informally with a Participant.
29. The 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 Panel Members; and
- (b) if a majority is not possible, by actions approved by the chair of the Panel.

Right to Withdraw

30. If one of two Participants to a Reference, or two of three Participants 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,
- then the dissatisfied Participant or Participants, as the case may be, may give written notice to the Panel and the other Participant that the Participant or Participants are withdrawing from the Reference and that the Reference is terminated.
31. If one of three Participants 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,
- then the dissatisfied Participant may give written notice to the Panel and the other Participants that it is withdrawing from the Reference.
32. The two Participants who receive a notice under Section 31 will advise the Panel in writing that they have agreed to:
- (a) terminate the Reference; or
 - (b) continue the Reference.
33. If no Participant gives a notice under Section 30 or 31 within 10 days of:
- (a) receipt of an interim report; or
 - (b) the deadline for the Panel to submit an interim report,
- then all Participants will be deemed to be satisfied with the progress of the Reference until submission of the next required interim report.
34. No Participant may withdraw from a Reference except as permitted under Sections 30 to 33.

Confidentiality

35. The Participants may, in the terms of reference referred to in Section 13, limit the application of all or any part of Sections 36 to 42 in a Reference.
36. In order to assist in the resolution of the Disagreement, a Reference will not be open to the public.
37. The Participants, and all persons, will keep confidential:
 - (a) all oral and written information disclosed in the Reference; and
 - (b) the fact that the information referred to in Section 37(a) has been disclosed.
38. The Participants 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 Participants 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 Participant in the course of the Reference, unless otherwise stipulated by the admitting Participant;
 - (d) the fact that any Participant has indicated a willingness to make or accept a proposal or recommendation for settlement; and
 - (e) any reports of the Panel.
39. Sections 37 and 38 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;
 - (c) if the oral or written information referred to in Sections 37 and 38 is in the public forum; or
 - (d) if disclosure of information is required by Federal or Provincial Law or Kitselas Law, including for the purposes of fulfilling procedural fairness obligations.

40. Before disclosing information under Section 39(d), the Participant intending to disclose information will notify the other Participants of the information it intends to disclose and provide an opportunity for the recipient of the notice to express any views regarding the proposed disclosure.
41. A Panel Member, or anyone retained or employed by the Panel Member, is not compellable in any proceeding to give evidence about any oral or written information acquired or opinion formed by that individual as a result of the Reference, and all Parties participating in that proceeding will oppose any effort to have that individual or that information subpoenaed.
42. A Panel Member, or anyone retained or employed by the Panel Member, may not act as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Participant to the Reference.

Attempt to Resolve After Report

43. Within 21 days of receipt of the final written report of a Panel, the Participants 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 Participants and the Panel agree, the Panel Members may attend the meeting under Section 43 and provide any necessary assistance to the Participants.

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 30 or 32;
 - (b) the expiration of 30 days after receipt of the final report of the Panel, or any longer period agreed by the Participants in writing; or
 - (c) the Disputing Parties sign a written agreement resolving the Disagreement.

Costs

46. A Participant is not responsible for sharing any costs of the Reference that were incurred after the date that Participant notified the other Participant or Participants, under Section 31, of its withdrawal from the Reference.

Appendix O-4 Neutral Evaluation

Definitions

1. In this Appendix:

"Chapter" means Chapter 29 Dispute Resolution of this Agreement; and

"Section" means a section in this Appendix.

General

2. A neutral evaluation commences on the date that the Disputing Parties have agreed in writing to use neutral evaluation under paragraph 23 of the Chapter.

Appointment of Neutral Evaluator

3. A neutral evaluation will be conducted by one individual jointly appointed by the Participants.
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 Participants fail to agree on a neutral evaluator within 21 days of the commencement of a neutral evaluation, the appointment will be made by the Neutral Appointing Authority on the written request of a Participant that is copied to the other Participants.
6. Subject to any limitations agreed to by the Participants, a neutral evaluator may employ reasonable and necessary administrative or other support services.

Requirement to Withdraw

7. If at any time a Participant has justifiable doubts as to the neutral evaluator's independence or impartiality, the Participant may give the neutral evaluator and the other Participants a written notice, with or without reasons, requiring the neutral evaluator to withdraw from the neutral evaluation.
8. On receipt of a written notice under Section 7, the neutral evaluator must immediately withdraw from the neutral evaluation.

9. A neutral evaluator who is a Kitselas Citizen, or related to a Kitselas Citizen, will not be required to withdraw under Section 8 solely on the grounds of being a Kitselas Citizen or that relationship to a Kitselas Citizen.

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 for any reason; or
 - (c) the Participants agree to terminate the appointment.
11. If a neutral evaluator's appointment terminates, a replacement will be appointed under Sections 3 to 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 33, the Participants will not communicate with the neutral evaluator:
 - (a) orally except in the presence of all Participants; or
 - (b) in writing without immediately sending a copy of that communication to all Participants.
13. Section 12 also applies to any communication by a neutral evaluator to the Participants.

Conduct of Neutral Evaluation

14. The Participants 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 Participants under Section 20 unless the Participants 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 Participants.

17. If a hearing is held, the neutral evaluator must give the Participants reasonable written notice at least seven days before the hearing date.
18. No transcript or recording will be kept of a hearing, but this does not prevent an individual 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 of the appointment of a neutral evaluator, each Participant will deliver to the other Participants and to the neutral evaluator a written submission respecting the Disagreement, including facts upon which the Participants agree or disagree, and copies of any documents, affidavits and exhibits on which the Participant relies.
21. Within 21 days after the appointment of a neutral evaluator, a Participant may submit a reply to the submission of any other Participant and, in that event, will provide copies of the reply to the other Participants and the neutral evaluator.
22. Where the matter referred to the neutral evaluator is an objection to a proposed expropriation of an interest in Kitselas Lands under Section 7 of Appendix I Part 1, the following time limits apply to the neutral evaluation process unless the Parties agree otherwise in writing:
 - (a) under Section 20, written submissions must be delivered within 28 days after the commencement of a neutral evaluation;
 - (b) under Section 21, replies must be delivered within 35 days after the commencement of a neutral evaluation;
 - (c) under Section 16, if a hearing is held it must be held within 45 days after the commencement of a neutral evaluation; and
 - (d) under Section 31, the neutral evaluator will deliver a written opinion within 60 days after the commencement of a neutral evaluation.

Confidentiality

23. In order to assist in the resolution of the Disagreement, a neutral evaluation will not be open to the public.
24. The Participants, and all persons, will keep confidential:
 - (a) all oral and written information disclosed in the neutral evaluation; and
 - (b) the fact that the information referred to in Section 24(a) has been disclosed.
25. The Participants 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 Participants 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 Participant in the course of the neutral evaluation, unless otherwise stipulated by the admitting Participant;
 - (d) the fact that any Participant has indicated a willingness to make or accept a proposal for settlement; and
 - (e) subject to Section 30, the opinion of the neutral evaluator.
26. Sections 24 and 25 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;
 - (c) if the oral or written information referred to in Sections 24 and 25 is in the public forum; or
 - (d) if disclosure of information is required by Federal or Provincial Law or Kitselas Law, including for the purposes of fulfilling procedural fairness obligations.
27. Before disclosing information under Section 26(d), the Participant intending to disclose information will notify the other Participants of the information it intends to disclose and provide an opportunity for the recipient of the notice to express any views regarding the proposed disclosure.
28. 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 individual as a result of a neutral evaluation under this Appendix, and all Parties participating in that proceeding will oppose any effort to have that individual or that information subpoenaed.
29. A neutral evaluator, or anyone retained or employed by the neutral evaluator, may not act as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Participant to the neutral evaluation.

30. Notwithstanding Sections 24 to 27, after an Arbitral Tribunal has delivered its final Arbitral Award, or a court has referred its decision, in respect of a Disagreement, a Participant, 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 Disagreement; or
 - (b) the neutral evaluator's written notice of termination under Section 7.

Non-Binding Opinion

31. Within 21 days of 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 Participants 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.
32. An opinion under Section 31 is not binding on the Participants.

Attempt to Resolve After Opinion

33. Within 21 days of delivery of an opinion under Section 31, the Participants will meet and make an effort to resolve the Disagreement, taking into account the opinion of the neutral evaluator or any other considerations.
34. If the Participants and the neutral evaluator agree, the neutral evaluator may attend a meeting under Section 33, and provide any necessary assistance to the Participants.

Failure to Comply

35. If a Participant fails to participate in the neutral evaluation as contemplated in Sections 14 to 22, the neutral evaluator may:
- (a) provide an opinion based solely upon the information and submissions the neutral evaluator has obtained; or
 - (b) give a written notice of termination of the neutral evaluation,
- to the Participants and, in either event, the neutral evaluator will record that Participant's failure to participate.

Termination of Neutral Evaluation

36. A neutral evaluation is terminated when any of the following occurs:
- (a) the neutral evaluator gives a notice of termination under Section 35(b);
 - (b) the expiration of 30 days after receipt of an opinion under Section 31 or 35, as the case may be, or any longer period agreed by the Participants;
 - (c) the Disputing Parties agree in writing to terminate the neutral evaluation; or
 - (d) the Disputing Parties sign a written agreement resolving the Disagreement.

Costs

37. A Participant that has failed to participate in a neutral evaluation as contemplated in Sections 14 to 22 is responsible for its share of the costs of the neutral evaluation, despite its failure to participate.

Appendix O–5 Arbitration

Definitions

1. In this Appendix:

"Applicant" means:

- (a) in an arbitration commenced under paragraph 28 of the Chapter, the Disputing Party that delivered the notice of arbitration, and
- (b) in an arbitration commenced under paragraph 29 of the Chapter, the Disputing Party that the Disputing Parties have agreed will be the applicant in the agreement to arbitrate;

"Arbitration Agreement" includes:

- (a) the requirement to refer to arbitration Disagreements described in paragraph 28 of the Chapter; and
- (b) an agreement to arbitrate a Disagreement as described in paragraph 29 of the Chapter;

"Chapter" means Chapter 29 Dispute Resolution of this Agreement;

"Respondent" means a Participant other than the Applicant;

"Section" means a section of this Appendix;

"Supreme Court" means the Supreme Court of British Columbia; and

"Tribunal Member" means a member of the Arbitral Tribunal appointed under this Appendix.

General

2. A Reference in this Appendix, other than in Section 89 or 124(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 2 of the Chapter, the Participants may not vary Section 55 or 99.

Communications

4. Except in respect of administrative details, the Participants will not communicate with the Arbitral Tribunal:
 - (a) orally, except in the presence of all other Participants; or
 - (b) in writing, without immediately sending a copy of that communication to all other Participants.
5. Section 4 also applies to any communication by the Arbitral Tribunal to the Participants.

Waiver of Right to Object

6. A Participant will be deemed to have waived its right to object where it knows that:
 - (a) any provision of this Appendix; or
 - (b) any requirement under this Agreement or an Arbitration Agreement,has 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.
7. In Section 6(a), "any provision of this Appendix" includes any provision of this Appendix which the Participants have agreed to vary.

Extent of Judicial Intervention

8. In matters governed by this Appendix:
 - (a) no court will 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, will 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 Agreement or 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 Participant commences legal proceedings in a court against another Participant in respect of a matter required or agreed to be submitted to arbitration, a Participant 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 Participant to request from a court, before or during arbitral proceedings, an interim measure of protection as provided in paragraph 13 of the Chapter, and for a court to grant that measure.

Commencement of Arbitral Proceedings

14. Arbitral proceedings in respect of a Disagreement:
 - (a) required to be arbitrated as set out in paragraph 28 of the Chapter, commence 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, commence 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 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.

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. All arbitrators:
- (a) will be independent and impartial, and
 - (b) preferably, will have knowledge of, or experience in, the subject matter or issues of the Disagreement.
19. A single arbitrator or a chair of an Arbitral Tribunal will be an experienced arbitrator or arbitration counsel or have had training in arbitral procedure.

Appointment of Arbitrators

20. A Participant proposing the name of an arbitrator will also submit a copy of that individual's resume and the statement that individual is required to make under Section 27.
21. In an arbitration with a single arbitrator, if the Participants fail to agree on the arbitrator within 30 days of the commencement of the arbitration, the appointment will be made by the Neutral Appointing Authority on the written request of a Participant that is copied to the other Participants.
22. In an arbitration with three arbitrators and two Participants:
- (a) each Participant will appoint one arbitrator;
 - (b) the two appointed arbitrators will appoint the third arbitrator; and
 - (c) the three arbitrators will select a chair from among themselves having regard to the qualifications of a chair as set out in Section 19.
23. During the appointment process set out in Section 22, if:
- (a) a Participant fails to appoint an arbitrator under Section 22(a) within 30 days of receipt of a request to do so from the other Participant;

- (b) the two appointed arbitrators fail to agree on the third arbitrator under Section 22(b) within 30 days of the completion of the process under Section 22(a); or
- (c) the three arbitrators fail to appoint a chair under Section 22(c) within 15 days of the completion of the process under Section 22(b),

then the applicable appointment will be made by the Neutral Appointing Authority on the written request of a Participant that is copied to the other Participant.

24. In an arbitration with three arbitrators and three Participants:

- (a) the three Participants will jointly appoint the three arbitrators; and
- (b) the three arbitrators will select a chair from among themselves having regard to the qualifications of a chair as set out in Section 19.

25. During the appointment process set out in Section 24, if:

- (a) the three Participants fail to agree on the three arbitrators under Section 24(a) within 60 days of the commencement of the arbitration; or
- (b) the three arbitrators fail to appoint a chair under Section 24(b) within 15 days of the completion of the process under Section 24(a),

then the applicable appointment will be made by the Neutral Appointing Authority on the written request of a Participant copied to the other Participants.

26. The Neutral Appointing Authority, in appointing an arbitrator or the chair of an Arbitral Tribunal, will have due regard to:

- (a) any qualifications set out in Sections 18 or 19 or as otherwise agreed in writing by the Participants; and
- (b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator or chair.

Challenge of Arbitrator

27. When an individual is approached in connection with a possible appointment as an arbitrator, that individual will provide to the Participants 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.

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28. An arbitrator, from the time of appointment and throughout the arbitral proceedings, will, without delay, disclose to the Participants any circumstances referred to in Section 27 unless the Participants have already been informed of them.
 29. A Participant may challenge an arbitrator 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 Sections 18 and 19 or as otherwise agreed in writing by the Participants.
 30. A Participant may only challenge an arbitrator appointed by that Participant, or in whose appointment that Participant has participated, for reasons under Section 29 if that Participant becomes aware of those reasons after the appointment has been made.
 31. An arbitrator who is a Kitselas Citizen, or related to a Kitselas Citizen, may not be challenged under Section 29 solely on the grounds that they are a Kitselas Citizen or on the grounds of that relationship to a Kitselas Citizen.
 32. A Participant may challenge an arbitrator by sending a written statement of the reasons for the challenge to the Arbitral Tribunal within 15 days of becoming aware of:
 - (a) the constitution of the Arbitral Tribunal; or
 - (b) any circumstances referred to in Section 29.
 33. Unless the arbitrator challenged under Section 32 withdraws from office, or the other Participants agree to the challenge, the Arbitral Tribunal will decide on the challenge and provide the Participants with written notice of the decision.
 34. If a challenge under any procedure agreed upon by the Participants or under the procedure under Section 32 is not successful, the challenging Participant, within 30 days of having received written notice of the decision rejecting the challenge, may request that the Neutral Appointing Authority decide on the challenge.
 35. The decision of the Neutral Appointing Authority under Section 34 is final and is not subject to appeal.
 36. While a request under Section 34 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 Participants; or
 - (b) the Participants otherwise agree.
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Termination of Mandate and Substitution of Arbitrator

37. 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.
38. If a controversy remains concerning any of the grounds referred to in Section 37, a Participant may request that the Neutral Appointing Authority decide on the termination of the mandate of the arbitrator.
39. In addition to the circumstances referred to in Sections 32 to 34 and 37, the mandate of an arbitrator terminates:
 - (a) if the arbitrator withdraws from office for any reason; or
 - (b) by written agreement of the Participants.
40. If the mandate of an arbitrator terminates, a replacement arbitrator will be appointed under Sections 20 to 26 within the required time commencing from the date of the termination of the appointment.
41. If a single arbitrator or a chair of an Arbitral Tribunal is replaced, any hearings previously held will be repeated and the replacement arbitrator will review any previous award made under Section 36.
42. If an arbitrator other than a single arbitrator or a chair of an Arbitral Tribunal is replaced, any hearings previously held may be repeated at the discretion of the Arbitral Tribunal.
43. An order or ruling of the Arbitral Tribunal made before the replacement of an arbitrator under Section 40 is not invalid solely because there has been a change in the composition of the Arbitral Tribunal.

Competence of Arbitral Tribunal to Rule on Its Jurisdiction

44. An Arbitral Tribunal may rule on its own jurisdiction.
45. A plea that an Arbitral Tribunal does not have jurisdiction will be raised no later than the submission of the statement of defence.
46. A Participant is not precluded from raising a plea under Section 45 by the fact that the Participant has appointed, or participated in the appointment of, an arbitrator.
47. A plea that an Arbitral Tribunal is exceeding the scope of its jurisdiction will be made as soon as the matter alleged to be beyond the scope of its jurisdiction is raised during the arbitral proceedings.

48. An Arbitral Tribunal may, in either of the cases referred to in Section 45 or 47, admit a later plea if it considers the delay justified.
49. An Arbitral Tribunal may rule on a plea referred to in Section 45 or 47 either as a preliminary question or in the Arbitral Award.
50. If an Arbitral Tribunal rules as a preliminary question that it has jurisdiction, any Participant, within 15 days after having received written notice of that ruling, may request the Supreme Court to decide the matter.
51. A decision of the Supreme Court under Section 50 is final and is not subject to appeal.
52. While a request under Section 50 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 Participants; or
 - (b) the Participants otherwise agree.

Interim Measures Ordered by Arbitral Tribunal

53. Unless otherwise agreed by the Participants, the Arbitral Tribunal may, at the request of a Participant, order a Participant to take any interim measure of protection as the Arbitral Tribunal may consider necessary in respect of the subject matter of the Disagreement.
54. The Arbitral Tribunal may require a Participant to provide appropriate security in connection with a measure ordered under Section 53.

Equal Treatment of Parties

55. The Participants will be treated with equality and each Participant will be given a full opportunity to present its case.

Determination of Rules of Procedure

56. Subject to this Appendix, the Participants may agree on the procedure to be followed by the Arbitral Tribunal in conducting the arbitral proceedings.
57. If the Participants do not agree to a procedure under Section 56, the Arbitral Tribunal, subject to this Appendix, may conduct the arbitral proceedings in the manner it considers appropriate.
58. 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.

59. The Arbitral Tribunal will 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.
60. The Arbitral Tribunal may extend or abridge a period of time:
 - (a) set out in this Appendix, except the period specified in Section 108; or
 - (b) established by the Arbitral Tribunal.

Pre-Hearing Meeting

61. Within 10 days after the completion of the appointment process for the Arbitral Tribunal set out in Sections 22 or 24, as applicable, the Arbitral Tribunal will convene a pre- hearing meeting of the Participants 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.
62. The Arbitral Tribunal will prepare and distribute promptly to the Participants a written record of all business transacted, and decisions and orders made, at the pre-hearing meeting.
63. The Arbitral Tribunal may conduct the pre-hearing meeting by video conference or in any manner it considers appropriate.

Place of Arbitration

64. Subject to Section 65, the arbitration will take place in British Columbia.
65. An Arbitral Tribunal may meet at any place it considers appropriate for consultation among the Tribunal Members, for hearing witnesses, experts or the Participants, for inspection of documents, goods or other personal property, or for viewing physical locations.

Language

66. If the Arbitral Tribunal determines that it was necessary or reasonable for a Participant to incur the costs of translating documents and oral presentations in the circumstances of a particular Disagreement, the Arbitral Tribunal, on application of a Participant, may order that any of the costs of that translation be included in the costs of the arbitration under paragraph 43 of the Chapter.

Statements of Claim and Defence

67. Within 21 days after the completion of the appointment process for the Arbitral Tribunal set out in Section 21, 22 or 24, as applicable, the Applicant will deliver a written statement to all of the Parties stating the facts supporting its claim or position, the points at issue and the relief or remedy sought.
68. Within 15 days after receipt of the Applicant's statement, each Respondent will deliver a written statement to all of the Parties stating its defence or position in respect of those particulars.
69. Each Participant will attach to its statement a list of documents:
- (a) upon which the Participant intends to rely; and
 - (b) which describes each document by kind, date, author, addressee and subject matter.
70. The Participants 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 that would be suffered by the other Participants.
71. Each Participant will deliver to all of the Parties copies of all amended, supplemented or new documents delivered under Section 70.

Disclosure

72. The Arbitral Tribunal may order a Participant to produce, within a specified time, any documents that:
- (a) have not been listed under Section 69;
 - (b) the Participant has in its care, custody or control; and
 - (c) the Arbitral Tribunal considers to be relevant.

73. Each Participant will allow the other Participants the necessary access at reasonable times to inspect and take copies of all documents that it has listed under Section 69, or that the Arbitral Tribunal has ordered to be produced under Section 72.
74. The Participants will prepare and send to the Arbitral Tribunal an agreed statement of facts within the time specified by the Arbitral Tribunal.
75. At least 21 days before a hearing commences, each Participant will give the other Participants:
 - (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.
76. At least 15 days before a hearing commences, each Participant will give to the other Participants and the Arbitral Tribunal an assembly of all documents to be introduced at the hearing.

Hearings and Written Proceedings

77. Subject to Section 78, the Arbitral Tribunal will decide whether to:
 - (a) hold hearings for the presentation of evidence or for oral argument; or
 - (b) conduct the proceedings on the basis of documents and other materials.
78. Unless the Participants 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 Participant.
79. The Arbitral Tribunal will give the Participants sufficient advance written notice of any hearing or meeting of the Arbitral Tribunal for the purpose of inspecting documents, goods or other property or viewing any physical location.
80. All statements, documents or other information supplied to, or applications made to, the Arbitral Tribunal by one Participant will be communicated to the other Participants, and any expert report or evidentiary document on which the Arbitral Tribunal may rely in making its decision must be communicated to the Participants.
81. 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.
82. The Arbitral Tribunal will schedule hearings to be held on consecutive days until completion, unless the Participants otherwise agree.

83. All oral evidence will be taken in the presence of the Arbitral Tribunal and all Participants unless a Participant is absent by default or has waived the right to be present.
84. 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.
85. The document assemblies delivered under Section 76 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 Participant may challenge the admissibility of any document so introduced.
86. 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 69, or produced as required under Section 72 or 76, 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.
87. If the Arbitral Tribunal permits the evidence of a witness to be presented as a written statement, a Participant may require that witness to be made available for cross examination at the hearing.
88. The Arbitral Tribunal may order a witness to appear and give evidence, and, in that event, the Participants may cross examine that witness and call evidence in rebuttal.

Default of a Participant

89. If, without showing sufficient cause, the Applicant fails to communicate its statement of claim in accordance with Section 67, the Arbitral Tribunal may terminate the proceedings.
90. If, without showing sufficient cause, a Respondent fails to communicate its statement of defence in accordance with Section 68, the Arbitral Tribunal will continue the proceedings without treating that failure in itself as an admission of the Applicant's allegations.
91. If, without showing sufficient cause, a Participant fails to appear at a hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the Arbitral Award on the evidence before it.
92. Before terminating the proceedings under Section 89, the Arbitral Tribunal will 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

93. After consulting the Participants, 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 Participant 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.
94. The Arbitral Tribunal will give a copy of the expert's report to the Participants, and the Participants will have an opportunity to reply to the expert's report.
95. If a Participant so requests, or if the Arbitral Tribunal considers it necessary, the expert will, after delivery of a report, participate in a hearing where the Participants will have the opportunity to cross examine the expert and to call any evidence in rebuttal.
96. If a Participant requests, the expert will:
- (a) make available to that Participant for examination all documents, goods or other property in the expert's possession that were provided to the expert in order to prepare a report; and
 - (b) provide that Participant with a list, including the location, of all documents, goods or other personal property or land not in the expert's possession to which the expert was given access in order to prepare a report.

Law Applicable to Substance of Disagreement

97. An Arbitral Tribunal will decide the Disagreement in accordance with the law.
98. If the Participants have expressly authorized it to do so, an Arbitral Tribunal may decide the Disagreement based upon equitable considerations.
99. In all cases, an Arbitral Tribunal will make its decisions in accordance with the spirit and intent of this Agreement.
100. Before a final Arbitral Award is made:
- (a) an Arbitral Tribunal; or
 - (b) a Participant, with the agreement of the other Participants,
- may refer a question of law to the Supreme Court for a ruling.
101. A Participant may appeal:

- (a) a decision in the Supreme Court under Section 100 to the British Columbia Court of Appeal, with leave of the British Columbia Court of Appeal, and
 - (b) a decision of the British Columbia Court of Appeal under Section 101(a) to the Supreme Court of Canada, with leave of the Supreme Court of Canada.
- 102. While any decision of a court under Section 100 or any appeal under Section 101 is pending, the Arbitral Tribunal may continue the arbitral proceedings and make an Arbitral Award unless:
 - (a) the costs occasioned by proceeding before any applicable ruling is made would unduly prejudice the Participants; or
 - (b) the Participants agree otherwise.

Decision Making by Panel of Arbitrators

- 103. Subject to Section 105, in arbitral proceedings with more than one arbitrator, any decision of the Arbitral Tribunal will be made by a majority of all Tribunal Members.
- 104. If there is no majority decision on a matter to be decided, the decision of the chair of the Arbitral Tribunal is the decision of the Arbitral Tribunal.
- 105. If authorized by the Participants or all Tribunal Members, questions of procedure may be decided by the chair of the Arbitral Tribunal.

Settlement

- 106. If, during arbitral proceedings, the Participants settle the Disagreement, the Arbitral Tribunal will terminate the proceedings and, if requested by the Participants, will record the settlement in the form of an Arbitral Award on agreed terms.
- 107. An Arbitral Award on agreed terms:
 - (a) will be made in accordance with Sections 109 to 111;
 - (b) will 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

- 108. An Arbitral Tribunal will make its final award as soon as possible and, in any event, within 60 days after:
 - (a) the hearings have closed; or

- (b) the final submission has been made,

whichever is the later date.
- 109. An Arbitral Award will be made in writing and will be signed by all of the Tribunal Members.
- 110. An Arbitral Award will state the reasons upon which it is based, unless:
 - (a) the Participants have agreed that no reasons are to be given; or
 - (b) the award is an Arbitral Award on agreed terms under Sections 106 and 107.
- 111. A signed copy of an Arbitral Award must be delivered to the Parties by the Arbitral Tribunal.
- 112. 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.

Costs

- 113. An Arbitral Tribunal may award interest on costs awarded under Sections 114 and 116.
- 114. The costs of an arbitration are in the discretion of the Arbitral Tribunal which, in making an order for costs:
 - (a) may include as costs:
 - (i) the fees and expenses of the arbitrators and expert witnesses;
 - (ii) legal fees and expenses of the Participants;
 - (iii) any administration fees of a Neutral Appointing Authority; or
 - (iv) any other expenses incurred in connection with the arbitral proceedings; and
 - (b) will specify, if applicable:
 - (i) the Participant entitled to costs;
 - (ii) the Participant who will pay the costs;
 - (iii) subject to Section 115, the amount of costs or method of determining that amount; and
 - (iv) the manner in which the costs will be paid.

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115. For purposes of Section 114, an Arbitral Tribunal may award up to 50% of the reasonable and necessary legal fees and expenses that were actually incurred by a Participant, and, if the legal services were provided by an employee or employees of that Participant, 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.
116. Notwithstanding Section 114, and in accordance with paragraph 21 of Chapter 2 Periodic Renewal and Orderly Process, an Arbitral Tribunal will award the following costs against any Party that it determines has not participated in a Periodic Renewal in good faith:
- (a) costs incurred in connection with the arbitral proceedings; and
 - (b) costs incurred in connection with the Periodic Renewal.
117. An order for costs under Section 116(a) will be composed of the following costs:
- (a) the fees and expenses of the arbitrators and expert witnesses;
 - (b) legal fees and expenses of the Parties;
 - (c) any administration fees of a Neutral Appointing Authority, if applicable; and
 - (d) any other expenses incurred in connection with the arbitral proceedings.
118. An order for costs under Section 116(b) will be composed, as determined by the Arbitral Tribunal, of the cost of the legal fees and expenses and other reasonable expenses of the Parties incurred in connection with or wasted as a result of a Party's failure to participate in Periodic Renewal in good faith.
119. An order for costs under Section 116 will specify:
- (a) the Party entitled to costs;
 - (b) the Party who will pay the costs;
 - (c) subject to Section 120, the amount of costs or method of determining that amount; and
 - (d) the manner in which the costs will be paid.
120. For the purposes of Section 116, an Arbitral Tribunal will award 100% of the reasonable and necessary legal fees and expenses that were actually incurred by a Party during the arbitral proceedings and the Periodic Renewal, and where 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.
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121. An Arbitral Tribunal may, in its discretion, include in any order of costs that it may make under Section 116 an additional financial penalty of up to three times the amount of the total costs awarded.

Termination of Proceedings

122. An Arbitral Tribunal will close any hearings if:
- (a) the Participants advise they have no further evidence to give or submissions to make; or
 - (b) the Arbitral Tribunal considers further hearings to be unnecessary or inappropriate.
123. A final Arbitral Award, or an order of the Arbitral Tribunal under Section 124, terminates arbitral proceedings.
124. An Arbitral Tribunal will issue an order for the termination of the arbitral proceedings if:
- (a) the Applicant withdraws its claim, unless a Respondent objects to the order and the Arbitral Tribunal recognizes a legitimate interest in obtaining a final settlement of the Disagreement;
 - (b) the Participants 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.
125. Subject to Sections 126 to 131 and 135, the mandate of an Arbitral Tribunal terminates with the termination of the arbitral proceedings.

Correction and Interpretation of Award, and Additional Award

126. Within 30 days after receipt of an Arbitral Award, a Participant may:
- (a) request that the Arbitral Tribunal correct in the Arbitral Award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and
 - (b) if agreed by all the Participants, request that the Arbitral Tribunal give an interpretation of a specific point or part of the Arbitral Award.
127. If an Arbitral Tribunal considers a request made under Section 126 to be justified, it will 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.
128. An Arbitral Tribunal, on its own initiative, may correct any error of the type referred to in Section 126(a) within 30 days after the date of the Arbitral Award.

129. Within 30 days after receipt of an Arbitral Award, a Participant may request that the Arbitral Tribunal make an additional Arbitral Award respecting claims presented in the arbitral proceedings but omitted from the Arbitral Award.
130. If the Arbitral Tribunal considers a request made under Section 129 to be justified, it will make an additional Arbitral Award within 60 days.
131. Sections 109 to 111 and Sections 113 to 115 apply to a correction or interpretation of an Arbitral Award made under Section 127 or 128 or to an additional Arbitral Award made under Section 130.

Application for Setting Aside Arbitral Award

132. Subject to Sections 137 and 139, an Arbitral Award may be set aside by the Supreme Court, and no other court, only if a Participant making the application establishes that:
 - (a) the Participant 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 Participant'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 Participants, unless that agreement was in conflict with a provision of this Appendix from which the Participants cannot derogate, or, failing any agreement, was not in accordance with this Appendix;
 - (d) the Arbitral Tribunal or a Tribunal Member has committed a corrupt or fraudulent act; or
 - (e) the Arbitral Award was obtained by fraud.

133. An application to set aside an Arbitral Award may not be made more than 90 days after the date on which:
- (a) the Participant making that application receives the Arbitral Award; or
 - (b) the Arbitral Award disposes of a request made under Section 126 or 129.
134. An application to set aside an Arbitral Award on the grounds that the Arbitral Tribunal or a Tribunal Member has committed a corrupt or fraudulent act or that the Arbitral Award was obtained by fraud must be commenced:
- (a) within the period referred to in Section 133; or
 - (b) within 30 days after the Participant discovers or ought to have discovered the fraud or corrupt or fraudulent act,
- whichever is the longer period.
135. When asked to set aside an Arbitral Award, the Supreme Court may, where it is appropriate and it is requested by a Participant, adjourn the court proceedings for a period of time 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.
136. A Party that was not a Participant in an arbitration will be given written notice of an application under Section 132 and is entitled to be a party to, and make representations on, the application.

Appeal on Question of Law

137. A Participant may appeal an Arbitral Award to the Supreme Court, with leave, on a question of law, which the Supreme Court will grant only if it is satisfied that:
- (a) the importance of the result of the arbitration to the Participants 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.
138. An application for leave may not be made more than 90 days:
- (a) after the date on which the Participant making the application received the Arbitral Award; or
 - (b) if a request had been made under Section 126 or 129, after the date on which that request was disposed of by the Arbitral Tribunal.

139. The Supreme Court may confirm, vary or set aside the Arbitral Award or may remit the Arbitral Award to the Arbitral Tribunal with directions, including the court's opinion on the question of law.
140. When an Arbitral Award is appealed on a question of law, the Supreme Court may, where it is appropriate and it is requested by a Participant, adjourn the court proceedings for a period of time in order to give the Arbitral Tribunal an opportunity to:
 - (a) resume the arbitral proceedings; or
 - (b) take any other action that, in the Arbitral Tribunal's opinion, will eliminate the grounds for appealing the Arbitral Award.
141. A Party that was not a Participant in an arbitration will be given notice of an application under Section 137 and is entitled to be a party to, and make representations on, the application.
142. A decision of the Supreme Court under Section 139 may be appealed to the British Columbia Court of Appeal, with leave of the British Columbia Court of Appeal.
143. A decision of the British Columbia Court of Appeal under Section 142 may be appealed to the Supreme Court of Canada, with leave of the Supreme Court of Canada.
144. No application may be made under Section 137 in relation to:
 - (a) an Arbitral Award based upon equitable considerations as permitted in Section 98; or
 - (b) an Arbitral Award made in an arbitration commenced under paragraph 29 of the Chapter.
145. No ruling of the Supreme Court made under Section 100 may be appealed under Section 137 if the time limit for appealing that ruling has already expired.

Recognition and Enforcement

146. An Arbitral Award is binding on all Parties and, upon application to the Supreme Court, will be enforced subject to paragraphs 134 to 139 of Chapter 8 Self-Government.
147. Unless the Supreme Court orders otherwise, the Participant relying on an Arbitral Award or applying for its enforcement will supply the duly authenticated original Arbitral Award or a duly certified copy of it.

Grounds for Refusing Enforcement

148. Subject to Sections 136 and 141, a Party that was not a Participant in an arbitration will not bring an application under Section 132 or 137 to set the Arbitral Award aside but may resist enforcement of the award against it by bringing an application under Section 149.

149. On the application of a Party that was not a Participant 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 documents referenced in Sections 67 to 71 of this Appendix;
- (b) the Arbitral Tribunal refused to add the Party as a Participant 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 Tribunal Member has committed a corrupt or fraudulent act; or
- (f) the Arbitral Award was obtained by fraud.

