

INCREMENTAL TREATY AGREEMENT

Between the Province of British Columbia and Kaska Dena Council



Daylu Dena Council



Kwadacha First Nation



Dease River First Nation

TABLE OF CONTENTS

Article 1 – Interpretation_____	5
Article 2 – Reconciliation and Purposes_____	9
Article 3 – Coming into Effect and Termination _____	10
Article 4 – Representations and Warranties_____	10
Article 5 – Conditions Precedent _____	11
Article 6 – Transfer of Lands _____	12
Article 7 – Conditions of Lands _____	14
Article 8 – Encumbrances_____	15
Article 9 – Transaction Costs_____	16
Article 10 – Other Covenants_____	16
Article 11 – Status of Lands on Effective Date_____	18
Article 12 – Overlapping Claims_____	18
Article 13 – Litigation _____	19
Article 14 – Dispute Resolution _____	19
Article 15 – Notices _____	20
Article 16 – General _____	21

SCHEDULES

Schedule "1" – Maps of Lands for Illustrative Purposes

- Schedule 1-1: Lower Post Mill
- Schedule 1-2: Old Faddy
- Schedule 1-3: Rapid River
- Schedule 1-4: Good Hope Lake
- Schedule 1-5: Troutline Intake
- Schedule 1-6: Troutline Powerhouse
- Schedule 1-7: Obo Lake Camp
- Schedule 1-8: Fort Ware North
- Schedule 1-9: Finbow
- Schedule 1-10: Turnagain River

Schedule "2" – Permitted Encumbrances

- Schedule 2-1: Permitted Encumbrances
- Schedule 2-2: Interests Not Registered on Title

Schedule "3" – Instruments of Registration

- Schedule 3-1: BC Hydro Incremental Treaty Distribution Statutory Right-of-Way
- Schedule 3-2: Agreement for Forest Research Plots: Growth and Yield Site 85-21-20G

Schedule "4" – Additions to Reserve Restrictive Covenant

Schedule "5" – Designated Company Agreement

Schedule "6" – HST Certificate

Schedule "7" – Band Council Resolutions

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

This Incremental Treaty Agreement (ITA) is dated for reference the 10 day of APRIL, 2013

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation

AND:

Kaska Dena Council on behalf of Daylu Dena Council, Dease River First Nation and Kwadacha First Nation

herein after, the "BC Kaska Dena"

Collectively referred to as the "Parties" and individually referred to as a "Party"

WHEREAS:

- A. The Parties recognize that the BC Kaska Dena have a unique culture with distinct practices, customs and traditions and a distinct system of laws and governance;
- B. The Kaska Dena Council is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process;
- C. The Parties wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- D. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations – BC Region, First Nations Summit and the Union of BC Indian Chiefs, have entered into a New Relationship;
- E. This Agreement will provide the BC Kaska Dena with incremental economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship;
- F. The BC Kaska Dena assert aboriginal rights and title to the lands, water and resources within BC Kaska Dena Traditional Territory as recognized and affirmed under section 35(1) of the *Constitution Act*, 1982;
- G. The position of the BC Kaska Dena is that the BC Kaska Dena use and stewardship of the lands, water and resources within our Traditional Territory is

integral to the BC Kaska Dena, and their governance and economy. The BC Kaska Dena governance of their land and resources remains a paramount responsibility and the BC Kaska Dena look to the Crown's duty to consult and accommodate as one of the ways to fulfill that responsibility.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.1 Definitions. In this Agreement

“AIP” means the BC Kaska Dena Agreement-in-Principle currently being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

“BC Kaska Dena” means the Daylu Dena Council, Dease River First Nation and Kwadacha First Nation as represented by the Kaska Dena Council;

“BC Kaska Dena Lands” means those lands identified in the Final Agreement which form treaty settlement lands designated as BC Kaska Dena Lands;

“Closing” means the completion of the transfer of the Lands by the Province to a Designated Company on the Closing Date;

“Closing Date” means the date or dates on which the documents for the transfer of the Lands to a Designated Company under 6.2 are uploaded to the electronic meet and are filed in the Land Title Office;

“Council” means, in respect of the BC Kaska Dena, the elected “council” within the meaning of the *Indian Act*;

“Crown Corridor” means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes and that, where the Lands are not surveyed or have to be re-surveyed, is identified in Schedules 1-1 through 1-10;

“Crown Grant” means a grant (as defined in the *Land Act*) of the fee simple title to Land;

“Designated Company” means a company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by the BC Kaska Dena, and which the BC Kaska Dena, has designated to take fee simple title to any of the Lands;

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

“Final Agreement” means the BC Kaska Dena Final Agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

“Governmental Action” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements and other actions whatsoever issued, granted, entered into or otherwise taken by a Provincial Official either before or after the date of this Agreement;

“HST” means the harmonized sales tax imposed under the *Excise Tax Act* (Canada) or equivalent tax imposed under federal or provincial law;

“ITA Date” means the date on which this Agreement is executed by the Parties;

“Kaska Dena Council” means the society incorporated under the *Society Act*, S-0019141 (1984);

“Lands” means any or all of the following:

a) **“Lower Post Mill”** means the area as shown for illustrative purposes in Schedule 1-1;

“Old Faddy” means the area as shown for illustrative purposes in Schedule 1-2;

“Rapid River” means the area as shown for illustrative purposes in Schedule 1-3;

“Good Hope Lake” means the area as shown for illustrative purposes in Schedule 1-4;

“Troutline Intake” means the area as shown for illustrative purposes in Schedule 1-5;

“Troutline Powerhouse” means the area as shown for illustrative purposes in Schedule 1-6;

“Obo Lake Camp” means the area as shown for illustrative purposes in Schedule 1-7;

“Fort Ware North” means the area as shown for illustrative purposes in Schedule 1-8;

“Finbow” means the area as shown for illustrative purposes in Schedule 1-9;

“Turnagain River” means the area as shown for illustrative purposes in Schedule 1-10; or

b) following completion and approval of the surveys of each of those Lands identified in a), as set out in subsection 5.2 f), the areas legally described in those surveys, which for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor;

“Member” means any person who is:

- a) a "member of the band", as that phrase is defined in the *Indian Act*, of the Dease River First Nation or Kwadacha First Nation; or
- b) a member of the Daylu Dena Council; or
- c) enrolled or entitled to be enrolled as a beneficiary under the Final Agreement;

and includes their heirs, descendants, legal representatives, successors and assigns;

"New Relationship" means the vision developed in March 2005 by the Province and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal rights including title;

"Other BC Kaska Dena Lands" means those lands identified in the Final Agreement which do not form part of BC Kaska Dena Lands but are nonetheless held by BC Kaska Dena under the Final Agreement;

"Permitted Encumbrances" means the reservations, exceptions, liens, charges, and interests described in Part 1 and 2 of Schedule "2" for each of the Lands or any other Permitted Encumbrances agreed to by the Parties;

"Province" means Her Majesty the Queen in right of the Province of British Columbia;

"Provincial Official" means:

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

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed on December 15, 1993 by the Kaska Dena Council with the British Columbia Treaty Commission.

1.2 Interpretation. For purposes of this Agreement:

- a) "this Agreement" means this Incremental Treaty Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- b) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";

- c) the headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;
- f) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;
- g) any reference to the delivery on Closing of an agreement, document or instrument "in the form" of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- h) each and every release, covenant and other agreement given, and action to be taken, by the BC Kaska Dena under this Agreement will be conclusively deemed to have been given, or taken, by the BC Kaska Dena for and on behalf of its Members; and
- i) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

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

- Schedule "1" – Maps of Lands;
- Schedule "2" – Permitted Encumbrances;
- Schedule "3" – Instruments of Registration;
- Schedule "4" – Form C Additions to Reserve Restrictive Covenant;
- Schedule "5" – Agreement of Designated Company;
- Schedule "6" – HST Certificate;
- Schedule "7" – Band Council Resolutions.

ARTICLE 2 – RECONCILIATION AND PURPOSE

2.1 Reconciliation. The BC Kaska Dena acknowledges and agrees that, in the spirit of the New Relationship and to advance Final Agreement negotiations, the Lands transferred to the BC Kaska Dena in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the BC Kaska Dena's interests within the Traditional Territory through treaty negotiations and, as such, the benefits provided to BC Kaska

Dena under this Agreement will be counted as a portion of the Province's contribution towards the Final Agreement settlement.

2.2 **Purpose.** The purpose of this Agreement is to:

- a) demonstrate the commitment of the Parties to concluding a Final Agreement; and
- b) in the spirit of the New Relationship, provide the BC Kaska Dena with land as incremental treaty benefit in advance of a Final Agreement which will be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.

ARTICLE 3 - COMING INTO EFFECT AND TERMINATION

3.1 **Coming into Effect.** This Agreement comes into effect when it has been executed by the Parties.

3.2 **Termination.** This Agreement may be terminated in writing:

- a) by the Parties on a date mutually agreed on by the Parties; or
- b) by either Party prior to the ministerial order authorizing the disposition of the Lands that are the subject of the ministerial order under 5.2(g).

3.3 **Termination on Litigation.** Notwithstanding 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the BC Kaska Dena commences, becomes a party to, or takes any steps to advance any court action or other legal proceeding relating to any Governmental Action within the Traditional Territory.

3.4 **Survival of Lands Conditions.** Notwithstanding 3.2, and subject to the Final Agreement, where any of the Lands are transferred under this Agreement, Articles 7 (Condition of Lands), 10 (Other Covenants) and 12 (Overlapping Claims) will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.1 **Representations.** The BC Kaska Dena represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:

- a) it enters into this Agreement for, and on behalf of, its Members;
- b) its Members have provided it with a mandate to negotiate an AIP and a Final Agreement;

- c) it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of its Members;
- d) any company designated by the BC Kaska Dena for the purposes of this Agreement will be a Designated Company;
- e) any Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
- f) the Province has fulfilled its obligation to consult with BC Kaska Dena in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands.

4.2 **Provincial Representations.** The Province represents and warrants to BC Kaska Dena, with the intent and understanding that they will be relied on by BC Kaska Dena in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement; and
- b) on satisfaction or waiver of the conditions precedent under 5.2 it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company as contemplated by this Agreement.

ARTICLE 5 – CONDITIONS PRECEDENT

5.1 **Band Council Resolution.** Prior to the execution of this Agreement, the Daylu Dena Council, Dease River First Nation and Kwadacha First Nation will deliver to the Province a resolution made by their elected Councils authorizing BC Kaska Dena representatives named in the resolution to execute this Agreement on their behalf and authorizing Kaska Dena Council to act on their behalf in entering into this Agreement.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to the BC Kaska Dena under this Agreement is subject to:

- a) there being sufficient monies available in an appropriation, as defined in the Financial Administration Act, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;
- b) the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on cost sharing the value of the Lands for treaty settlement purposes;
- c) the representations and warranties of the BC Kaska Dena under this Agreement being true and correct on the applicable Closing Date;

- d) the BC Kaska Dena having complied with all its covenants under this Agreement on the applicable Closing Date;
 - e) in respect of all previously transferred Lands, all obligations of the BC Kaska Dena and the Designated Company having been fully performed in accordance with this Agreement;
 - f) surveys for the Lands having been completed on or before the applicable Closing Date; and
 - g) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with Provincial Law.
- 5.3 **Satisfaction of Conditions Precedent.** The Province will not be required to satisfy the conditions precedent under paragraphs 5.2 until such time as the BC Kaska Dena have notified the Province in writing that it is prepared to proceed with the transfer of the Lands under this Agreement.
- 5.4 **Waiver of Conditions Precedent.** The conditions precedent set out in 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the BC Kaska Dena.

ARTICLE 6 – TRANSFER OF LANDS

- 6.1 **Pre-Closing Deliveries by BC Kaska Dena.** Within 60 days of written notice under 5.3, the BC Kaska Dena will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Lands under 6.2.
- 6.2 **Closing Deliveries by Province.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.1 and 5.2, the Province will provide the Designated Company identified under 6.1 with a Crown Grant to the Lands as follows:
- a) Finbow, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
 - b) Fort Ware North, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
 - c) Good Hope Lake, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
 - d) Lower Post Mill, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
 - e) Obo Lake Camp, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
 - f) Old Faddy, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;

- g) Rapid River, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
- h) Troutline Intake, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date;
- i) Troutline Powerhouse, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date; and
- j) Turnagain River, within 120 days after the issuance of a ministerial order under 5.2(g) after the ITA Date.

6.3 **Closing Deliveries by BC Kaska Dena.** Not less than 14 days before the Closing Date, the BC Kaska Dena will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:

- a) a restrictive covenant granted by the Designated Company in the form attached as Schedule 4 in relation to the applicable Lands;
- b) an agreement executed by the Designated Company in the form attached as Schedule 5 in relation to the applicable Lands;
- c) a certificate signed by an officer of the Designated Company in the form attached as Schedule 6 confirming the Designated Company's HST registration number and registered status;
- d) a letter of undertaking signed by the BC Kaska Dena legal counsel undertaking, among other things, that the restrictive covenant (Schedule 4) will be filed concurrently with the Crown Grant and that the Province will be provided with a signed copy of the Designated Company Agreement (Schedule 5) and the HST certificate (Schedule 6); and
- e) all such other documents that may be necessary or advisable for the BC Kaska Dena or a Designated Company to provide to complete the transactions contemplated under this Agreement.

6.4 **Registration of Lands.** Subject to the Final Agreement, all Lands transferred under 6.2 will be registered in the Land Title Office.

6.5 **Closing Procedure.** The legal counsel for the BC Kaska Dena and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:

- a) provide a letter of undertaking to legal counsel for the other Party;
- b) use of the Land Title and Survey Authority electronic filing system; and
- c) provide all documents filed under 6.5(b) to legal counsel for the other Party.

ARTICLE 7 – CONDITION OF LANDS

- 7.1 **Lands “As Is”.** The BC Kaska Dena acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 7.2 **Viability of Lands.** The BC Kaska Dena acknowledges and agrees that the Province has not given any representation or warranty concerning:
- a) physical access to the Lands including, without limitation, overland access;
 - b) the economic feasibility of the development of the Lands;
 - c) the fitness of the Lands for any particular use, including the intended use of it by the BC Kaska Dena or by a Designated Company; and
 - d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.
- 7.3 **Environmental Condition.** The BC Kaska Dena:
- a) waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands; and
 - b) acknowledges and agrees that the Province has not given any representation or warranty concerning the condition of the Lands (including surface water and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land.
- 7.4 **Environmental Remediation.** The BC Kaska Dena will from and after the Closing
- a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
 - b) release all Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
 - c) indemnify and save harmless all Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

ARTICLE 8 – ENCUMBRANCES

- 8.1 **Permitted Encumbrances.** The BC Kaska Dena acknowledges that it is familiar with the Permitted Encumbrances and accepts fee simple title to the Lands subject to the Permitted Encumbrances and covenants not to do, or allow to be done, anything that would interfere with any rights under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.
- 8.2 **Finalization of Permitted Encumbrances.** The Parties acknowledge that between the execution of this Agreement and the registration of the Lands with the Land Title and Survey Authority:
- a) the Permitted Encumbrances may require updating;
 - b) the Permitted Encumbrances will be as identified and agreed by the Parties on the Closing Date;
 - c) Schedule 2 (Permitted Encumbrances) and Schedule 3 (Instruments of Registration) will be revised and will, as revised, form part of this Agreement; and
 - d) the Permitted Encumbrances will be subject to the Final Agreement.
- 8.3 **Establishment of Conditional Withdrawal.** Notwithstanding 8.2, the Province will seek to establish a Conditional Withdrawal under Section 17 of the *Land Act* on the Lands after ITA Date.

ARTICLE 9 – TRANSACTION COSTS

- 9.1 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:
- a) subject to 9.5, any costs or fees associated with the preparation of Crown Grants or any other documents required to register the Lands and Permitted Encumbrances including, without limitation, any fees charged by the Land Title and Survey Authority; and
 - b) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province agrees to either pay or waive.
- 9.2 **Public Utility Permitted Encumbrances.** All costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.
- 9.3 **HST and Charges.** The BC Kaska Dena is responsible for any federal or provincial sales tax, including HST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

- 9.4 **Annual Taxes and Other Costs.** Subject to the Final Agreement, and in accordance with provincial law, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume financial or other obligations with respect to the Lands.
- 9.5 **Survey Cost.** Subject to 5.2a, 5.3 and the Parties agreeing to the prioritization of the parcels to be surveyed, as recommended by BC Kaska Dena, the Province is responsible for the cost of surveys of the Lands.

ARTICLE 10 - OTHER COVENANTS

- 10.1 **Other BC Kaska Dena Covenants.** The BC Kaska Dena further acknowledges and covenants that:
- a) in order to preserve the possibility of the Lands becoming “BC Kaska Dena Lands” in accordance with the Final Agreement, the BC Kaska Dena will not permit the Designated Company to dispose of its fee simple estate in the Lands for a period of time commencing on the applicable Closing Date and ending on the earlier of:
 - i) the 10 year anniversary of the Closing Date; or
 - ii) the Effective Date;
 - b) any of the Lands that may be transferred to a Designated Company in accordance with this Agreement will not be “lands reserved for the Indians” within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act* and at no time after Closing will the BC Kaska Dena seek to add any of the Lands to its reserve lands;
 - c) the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the BC Kaska Dena challenge the applicability of provincial laws to the Lands unless a Final Agreement is entered into by the Parties which alters the application of those laws to the Lands; and
- 10.2 **Disposition of Interests in Lands.** Notwithstanding 10.1(a), the BC Kaska Dena may charge or encumber the Lands provided that the BC Kaska Dena advises the intended charge or encumbrance holder in writing that the Lands will, on the Effective Date
- a) be transferred by the Designated Company to the BC Kaska Dena and will become BC Kaska Dena Lands; or
 - b) be retained by the Designated Company, or transferred by the Designated Company to the BC Kaska Dena, and will become Other BC Kaska Dena Lands.

- 10.3 **Indemnity for Charges.** The BC Kaska Dena will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with any Permitted Encumbrance, any charge or encumbrance granted by the BC Kaska Dena under 10.2, the transfer of the fee simple estate in the Lands to the BC Kaska Dena and the Lands becoming BC Kaska Dena Lands, or Other BC Kaska Dena Lands.
- 10.4 **Failure to Ratify.** The restriction on the disposition of the Lands under 10.1(a) will not apply where the Final Agreement is not signed by the authorized representative of the Parties or Canada, or the Final Agreement is not approved, given effect, declared valid and given the force of law under federal and provincial law.
- 10.5 **Registration of Unregistered Interests.** For the purposes of 10.4, the BC Kaska Dena will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

ARTICLE 11 – STATUS OF LANDS ON EFFECTIVE DATE

- 11.1 **Status of Lands on Effective Date.** Subject to 11.2, as part of Final Agreement negotiations, the Parties will negotiate the status of the Lands transferred under this Agreement to the BC Kaska Dena as “BC Kaska Dena Lands” or “Other BC Kaska Dena Lands” within the meaning of the Final Agreement.
- 11.2 **Exception of Subsurface Resources on Effective Date.** The Troutline Intake and Troutline Powerhouse parcels will continue to have subsurface resource excepted from the surface ownership by BC Kaska Dena at Effective Date.

ARTICLE 12 – OVERLAPPING CLAIMS

- 12.1 **Shared Territories.** The Province acknowledges that the BC Kaska Dena are making efforts to address shared territorial claims with neighbouring First Nations, and the Parties agree that these efforts will contribute to progress in treaty negotiations.
- 12.2 **Other First Nations’ Litigation.** In the event of any action, proceeding, suit, claim or demand whatsoever, whether known or unknown, and whether in law, in equity or otherwise, brought by any other aboriginal group against the Province or any Provincial Official with respect to the transfer of the Lands to the Designated Company on behalf of the BC Kaska Dena in accordance with this Agreement, the BC Kaska Dena will provide the Province with reasonable

assistance, upon request, in support of its defence of the action, proceeding, suit, claim or demand.

ARTICLE 13 – EXISTING LITIGATION

- 13.1 **Existing Legal Proceedings.** The Parties acknowledge that there is no existing litigation which requires abeyance for the purposes of this Agreement. Without limiting the generality of the foregoing:
- a) the Daylu Dena Council represents and warrants that it will not itself take any steps to advance the Liard First Nation v. The Attorney General of Canada and The Province of British Columbia, No. S-S 100990, Victoria Registry litigation; and
 - b) the Dease River First Nation and Kwadacha First Nation represent and warrant that, with respect to the litigation in a) and consistent with Schedule 7:
 - i) they will not apply to have their names added as a party; and
 - ii) they will oppose any application or other attempt to be added as a party.
- 13.2 **Termination of 13.1.** The representations and warranties set out in 13.1 will terminate:
- a) where a Final Agreement is concluded, on the Effective Date of the Final Agreement; or
 - b) where a Final Agreement is not concluded, on the date on which the BC Kaska Dena formally withdraws from the treaty negotiation process.
- 13.3 **New Litigation.** Before commencing, becoming a party to, or taking any steps to advance any court action or other legal proceeding relating to any Government Action within the Traditional Territory, the BC Kaska Dena will:
- a) notify the Province of any interests it may have that may be impacted by the Government Action; and
 - b) participate in the dispute resolution process set out in 14.1-14.2.

ARTICLE 14 - DISPUTE RESOLUTION

- 14.1 **Representatives.** If a dispute arises between the Province and the BC Kaska Dena regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.

- 14.2 **Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the BC Kaska Dena.
- 14.3 **Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 15 – NOTICES

- 15.1 **Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows,

if to the Province:

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O Box Stn. Prov. Gvt.
Victoria, BC V8W 9B1
Facsimile: (250) 387-6073

and if to the BC Kaska Dena:

Kaska Dena Council
PO Box 9,
Lower Post, BC V0C 1W0
Attention: Chair
Facsimile: (250) 779-3020

- 15.2 **Change of Address.** Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

ARTICLE 16 – GENERAL

- 16.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.

- 16.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
- 16.3 **No Implied Waiver.** Any waiver of:
- a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) a default by a Party of an obligation under this Agreement, will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 16.4 **Successors.** This Agreement will enure to the benefit of and be binding on the BC Kaska Dena and its successors and the Province.
- 16.5 **No Admissions.** Nothing in this Agreement will be construed as an:
- a) admission by the Province of the validity of any claim by the BC Kaska Dena to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
 - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the BC Kaska Dena; or
 - c) admission by the BC Kaska Dena that it has ever ceded, released or surrendered any of its Aboriginal rights including title.
- 16.6 **Not a Treaty.** This Agreement does not:
- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982 (Canada)*; or
 - b) recognize, affirm, define, deny, limit, abrogate, derogate or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
- 16.7 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
- 16.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
- 16.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 16.10 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

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

Signed on behalf of the BC Kaska Dena Council by:


George Miller, Chair


Witness

Signed on behalf of Her Majesty the
Queen in Right of the Province of
British Columbia by the Minister
Responsible for the Ministry of
Aboriginal Relations and
Reconciliation


Honourable Ida Chong


Witness

Schedule "1" – Map of Lands for Illustrative Purposes

Schedule 1-1: Lower Post Mill

Schedule 1-2: Old Faddy

Schedule 1-3: Rapid River

Schedule 1-4: Good Hope Lake

Schedule 1-5: Troutline Intake

Schedule 1-6: Troutline Powerhouse

Schedule 1-7: Obo Lake Camp

Schedule 1-8: Fort Ware North

Schedule 1-9: Finbow

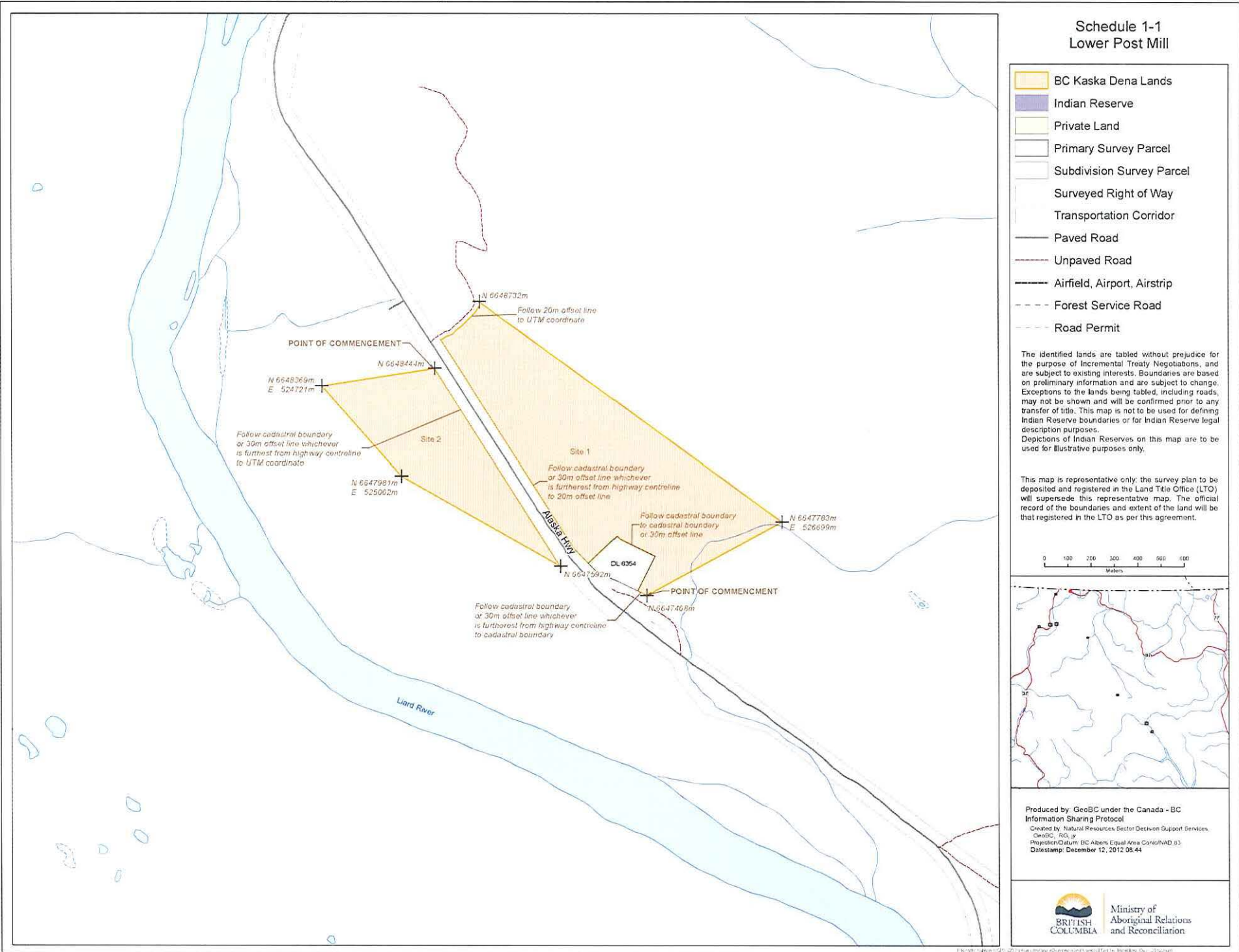
Schedule 1-10: Turnagain River

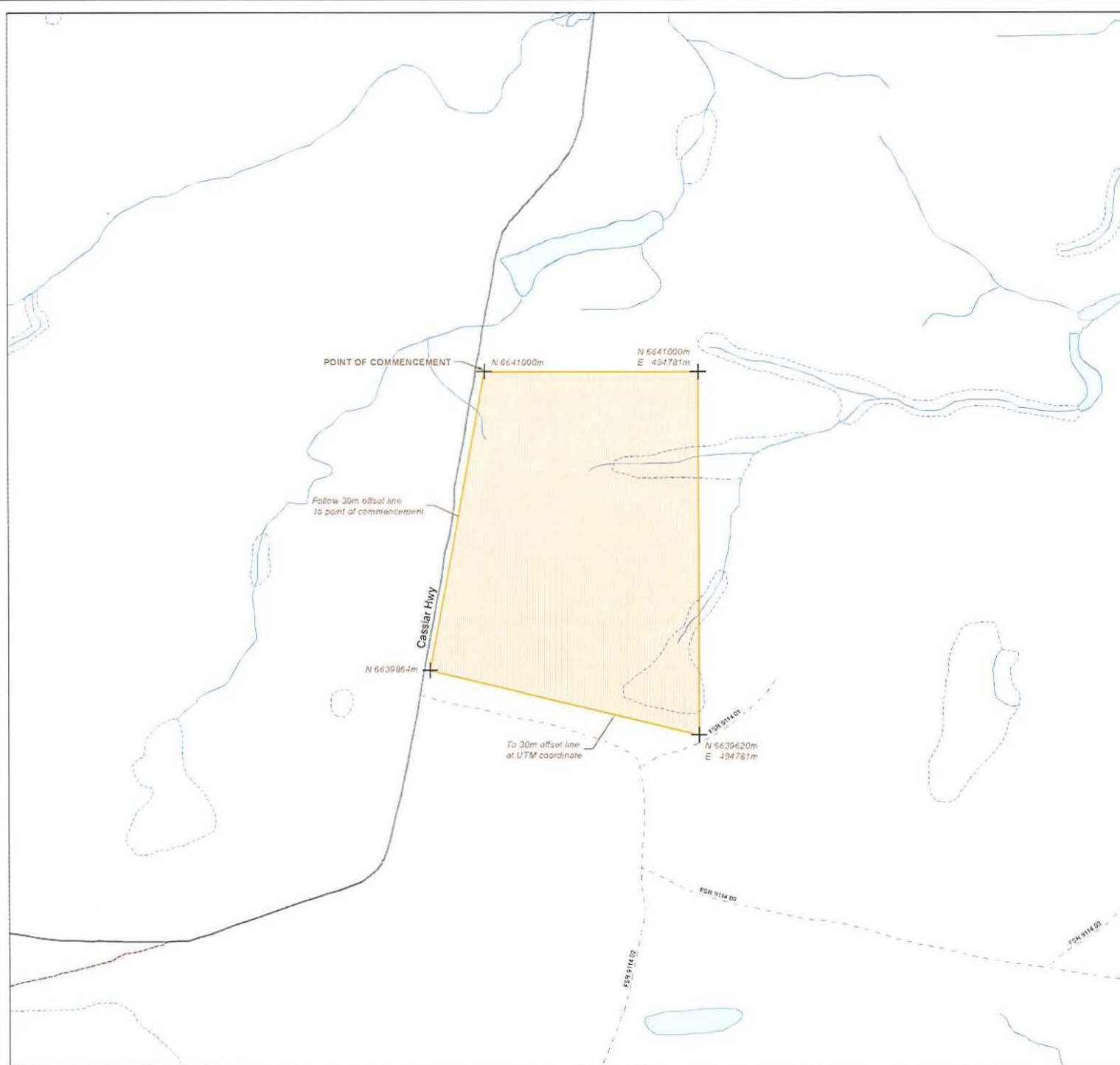
Initialed: December 17, 2012

Kaska Dena Council

British Columbia

CONFIDENTIAL – FOR DISCUSSION PURPOSES ONLY This document including proposed changes is subject to Kaska Dena Council and British Columbia approvals (including any necessary Cabinet, Treasury Board and Executive approvals).



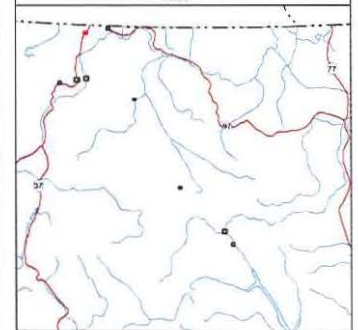
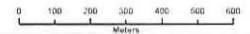


Schedule 1-2 Old Faddy

- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

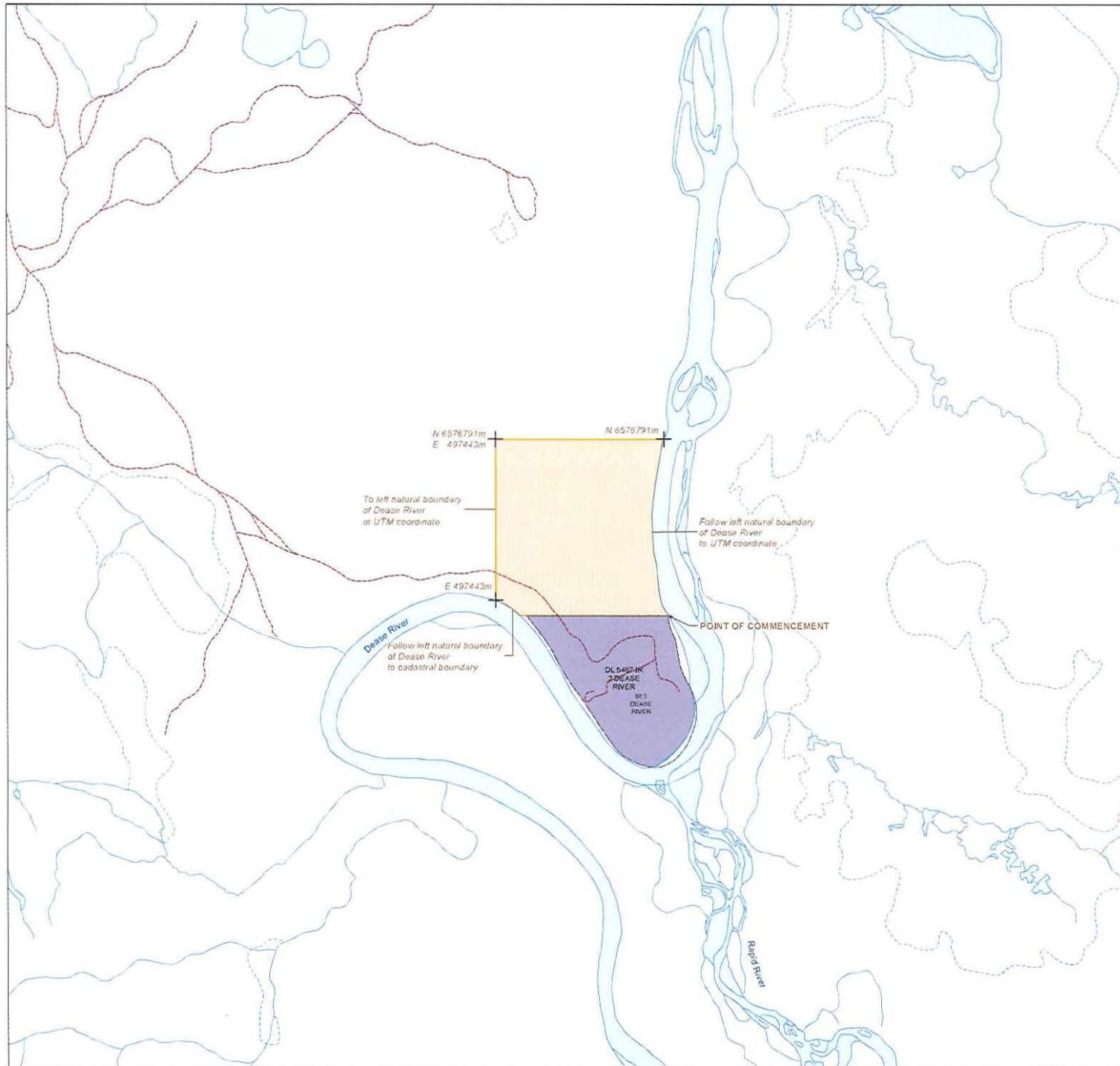
This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by GeoBC under the Canada - BC Information Sharing Protocol
 Created by: Natural Resources Sector Decision Support Services, GeoBC, RG, jr
 Projection/Datum: BC Albers Equal Area Conic/RAD 83
 Datestamp: December 12, 2012 08:44



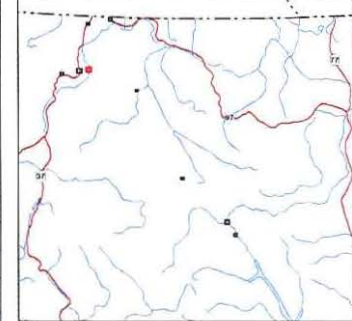
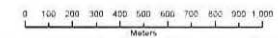
Schedule 1-3 Rapid River



- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

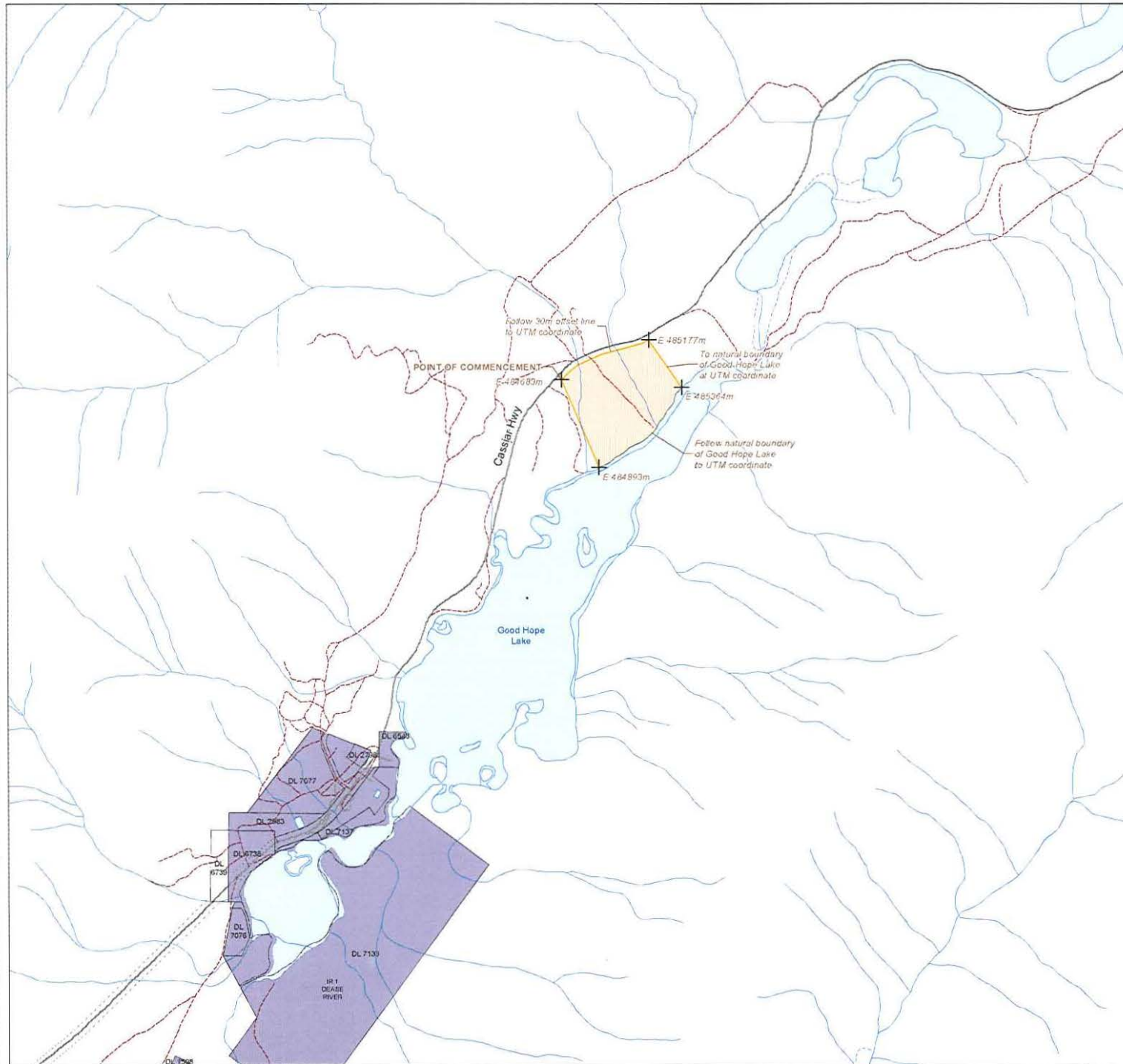
This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by GeoBC under the Canada - BC Information Sharing Protocol
 Created by: Natural Resources Sector Decision Support Services
 GeoBC, RC, y
 Projection: Datum: BC Albers, Equal Area Conic/NA83
 Datestamp: December 12, 2012 08:44



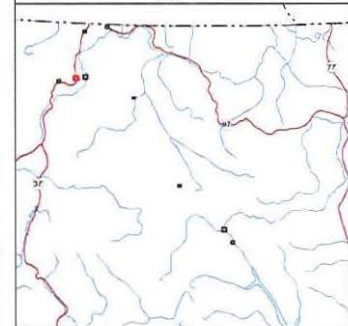
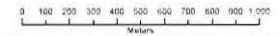
Schedule 1-4 Good Hope Lake



- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

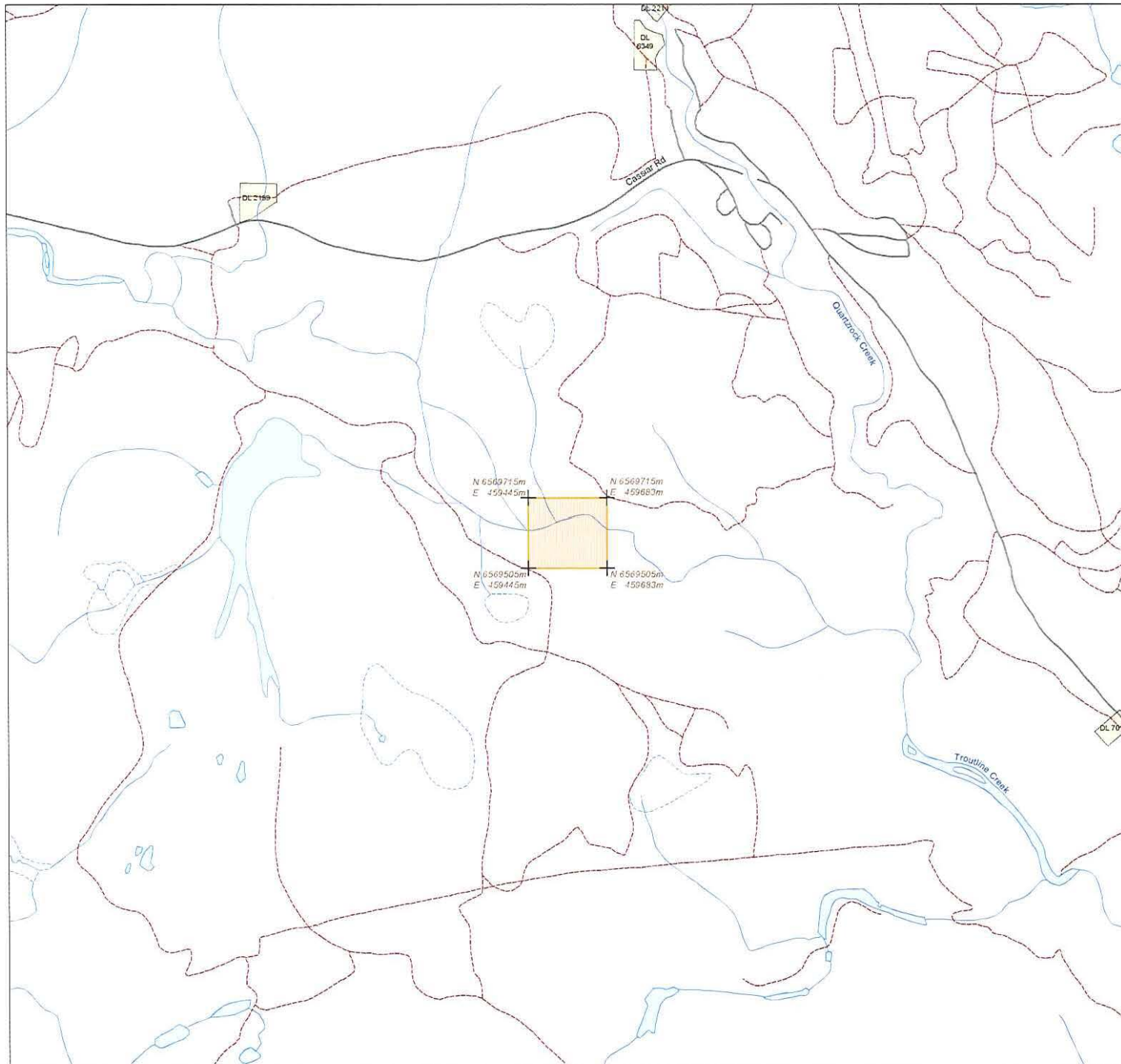
This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by GeoBC under the Canada - BC Information Sharing Protocol
 Created by: Natural Resources Sector Decision Support Services,
 GeoBC, RGO, jr
 Projection: datum: BC Albers Equal Area Conic NAD 83
 Datestamp: December 12, 2012 08:44



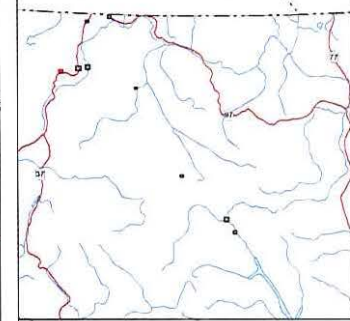
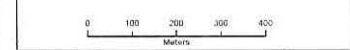
Schedule 1-5 Troutline Intake



- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by GeoBC under the Canada - BC Information Sharing Protocol
 Created by Natural Resources Sector Decision Support Services,
 GeoBC, RG, jr
 Projection/Datum: BC Albers Equal Area Conic/NA83
 Datestamp: December 12, 2012 08:44

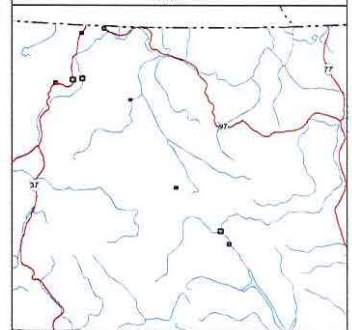
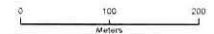


Schedule 1-6 Troutline Powerhouse

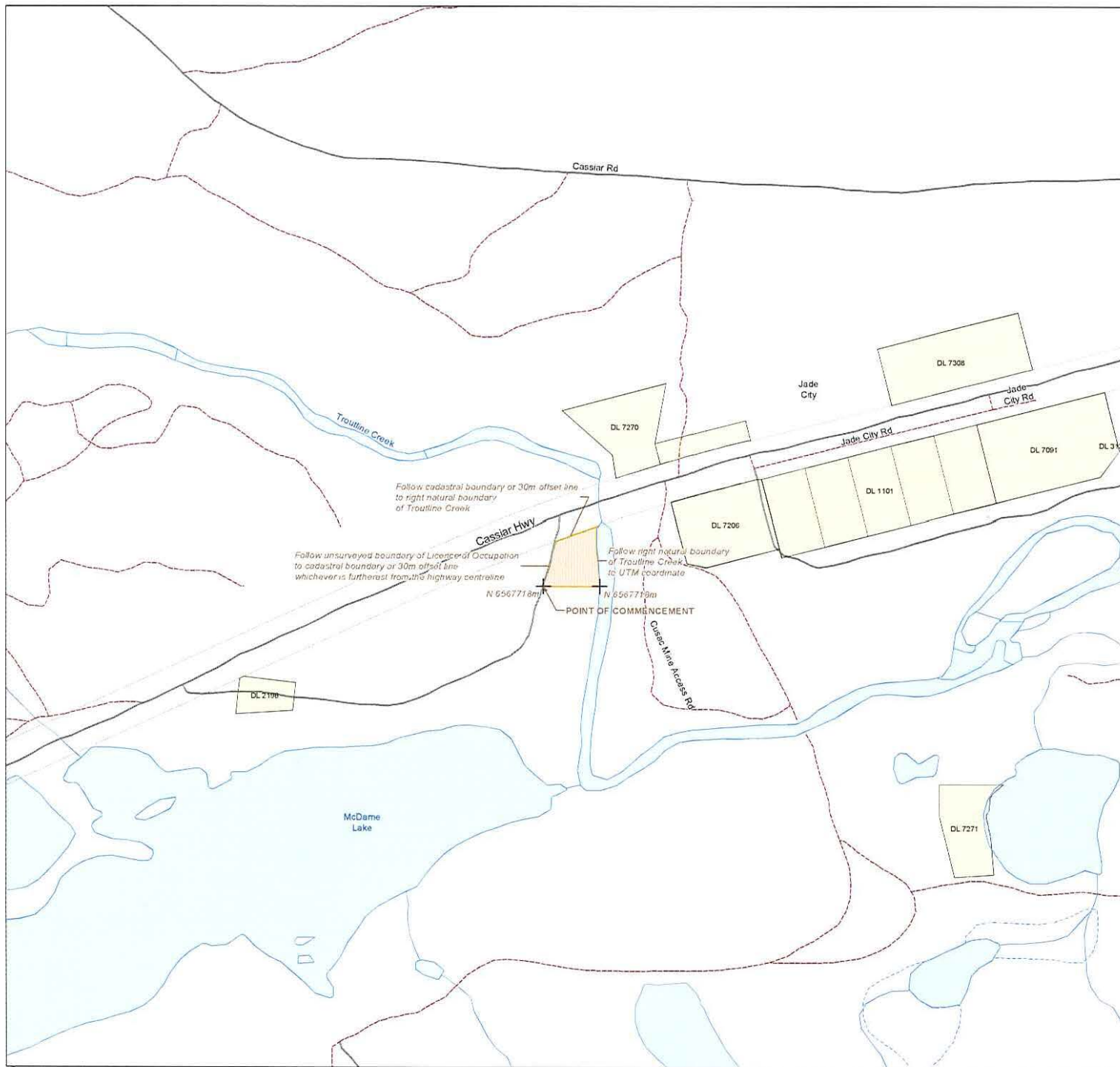
-  BC Kaska Dena Lands
-  Indian Reserve
-  Private Land
-  Primary Survey Parcel
-  Subdivision Survey Parcel
-  Surveyed Right of Way
-  Transportation Corridor
-  Paved Road
-  Unpaved Road
-  Airfield, Airport, Airstrip
-  Forest Service Road
-  Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

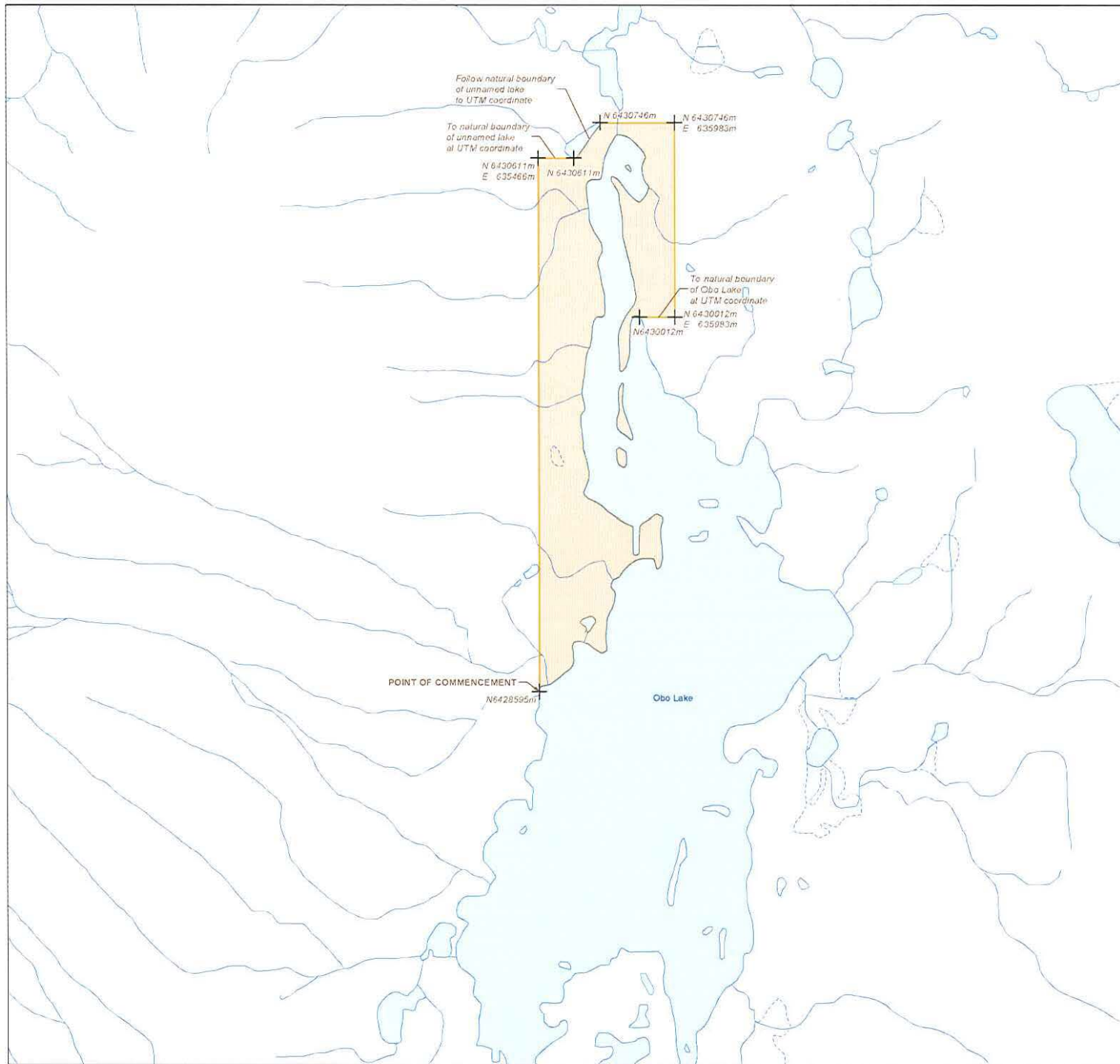
This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.














Produced by: GeoBC under the Canada - BC Information Sharing Protocol
 Created by: Natural Resources Sector Decision Support Services,
 GeoBC, RG, y
 Prepared at: BC Aboriginal Equal Area Consultation
 Datestamp: December 12, 2012 08:44



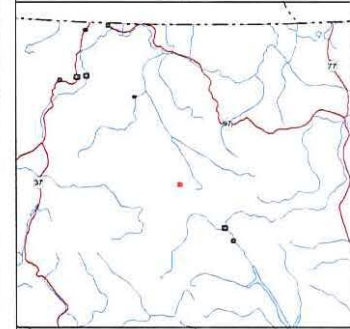
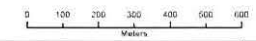
Schedule 1-7 Obo Lake Camp



-  BC Kaska Dena Lands
-  Indian Reserve
-  Private Land
-  Primary Survey Parcel
-  Subdivision Survey Parcel
-  Surveyed Right of Way
-  Transportation Corridor
-  Paved Road
-  Unpaved Road
-  Airfield, Airport, Airstrip
-  Forest Service Road
-  Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

This map is representative only: the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.

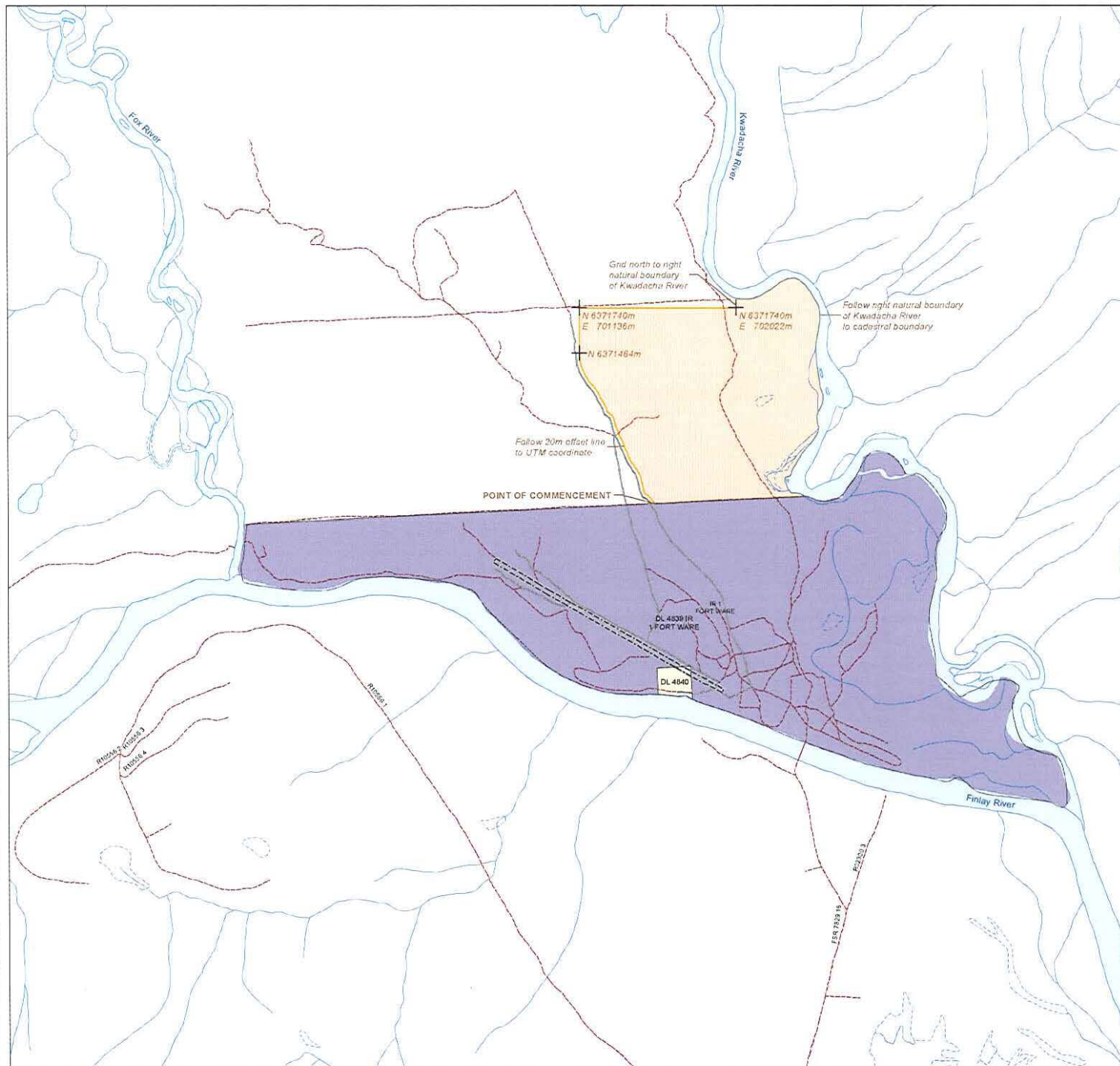


Produced by GeoBC under the Canada - BC Information Sharing Protocol
Created by Natural Resources Sector Decision Support Services,
GeoBC, RG, y
Projection/Datum: BC Albers Equal Area Conic/NAD 83
Datestamp: December 12, 2012 09:44



Figure 1-7: Schedule 1-7, Obo Lake Camp. Produced by GeoBC under the Canada - BC Information Sharing Protocol. Created by Natural Resources Sector Decision Support Services, GeoBC, RG, y. Projection/Datum: BC Albers Equal Area Conic/NAD 83. Datestamp: December 12, 2012 09:44.

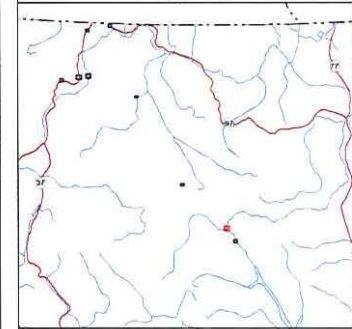
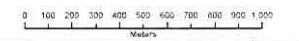
Schedule 1-8
 Fort Ware North



- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by GeoBC under the Canada - BC Information Sharing Protocol
 Created by Natural Resources Sector Decision Support Services,
 GeoBC, BC, Canada
 Projection: Datum: BC Albers Equal Area Conic/NAD 83
 Datestamp: December 12, 2012 08:44

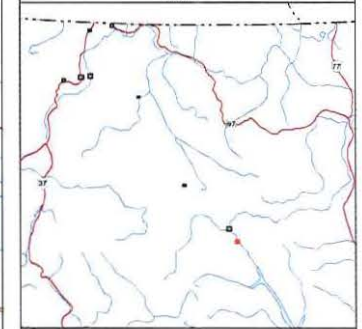
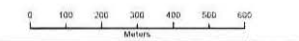


Schedule 1-9 Finbow

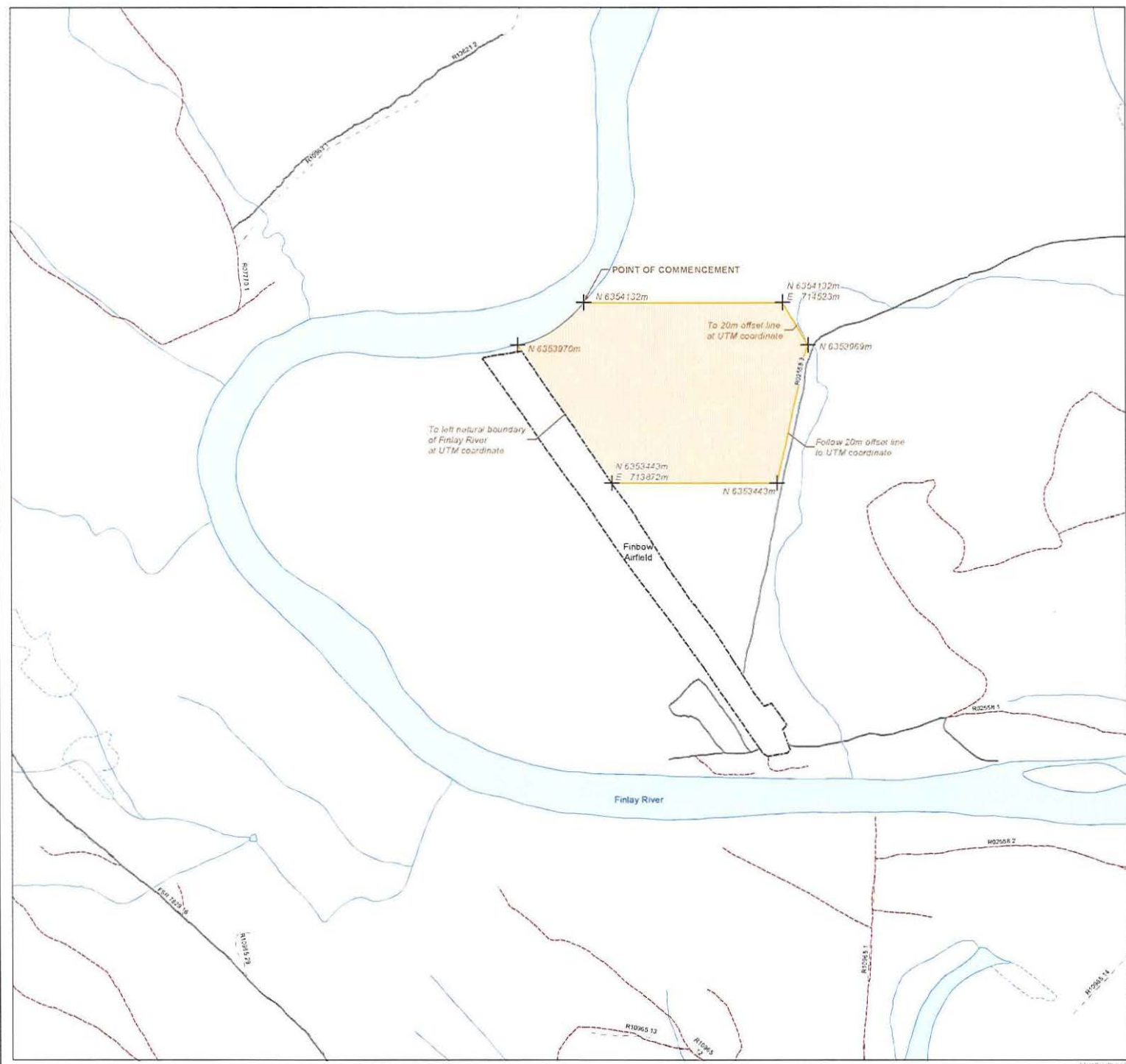
- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

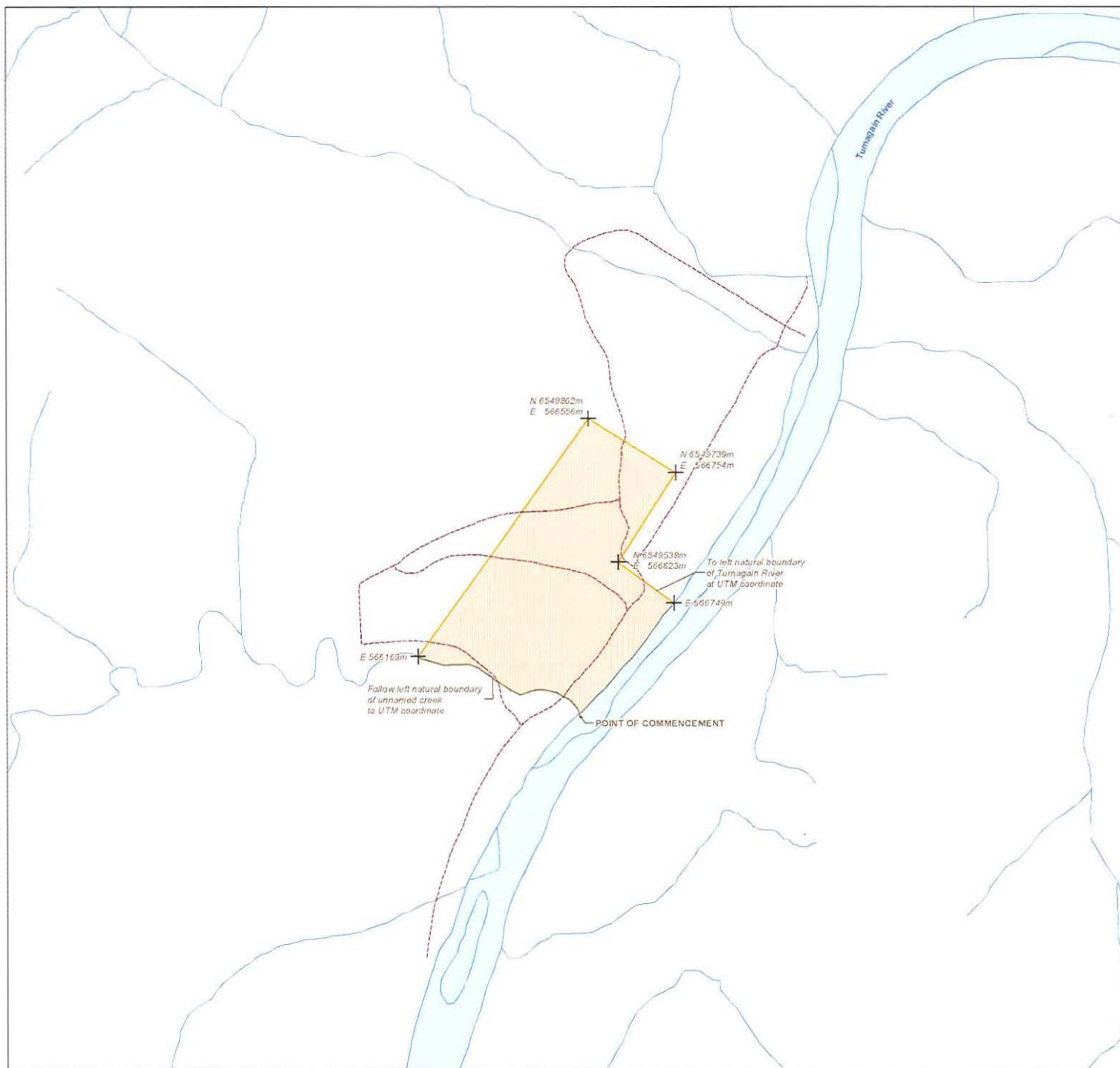
The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by: GeoBC under the Canada - BC Information Sharing Protocol
 Created by: Natural Resources, Sector Decision Support Services,
 Oritic, RC, y
 Projection: datum: BC Albers Equal Area Conic/NAAD 83
 Datestamp: December 12, 2012 08:44



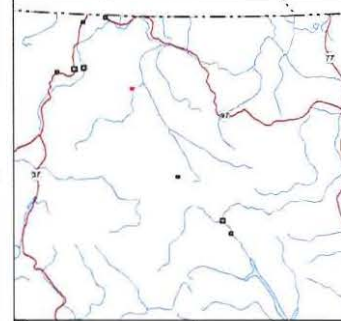
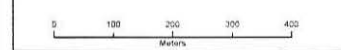


Schedule 1-10 Turnagain River

- BC Kaska Dena Lands
- Indian Reserve
- Private Land
- Primary Survey Parcel
- Subdivision Survey Parcel
- Surveyed Right of Way
- Transportation Corridor
- Paved Road
- Unpaved Road
- Airfield, Airport, Airstrip
- Forest Service Road
- Road Permit

The identified lands are tabled without prejudice for the purpose of Incremental Treaty Negotiations, and are subject to existing interests. Boundaries are based on preliminary information and are subject to change. Exceptions to the lands being tabled, including roads, may not be shown and will be confirmed prior to any transfer of title. This map is not to be used for defining Indian Reserve boundaries or for Indian Reserve legal description purposes. Depictions of Indian Reserves on this map are to be used for illustrative purposes only.

This map is representative only; the survey plan to be deposited and registered in the Land Title Office (LTO) will supersede this representative map. The official record of the boundaries and extent of the land will be that registered in the LTO as per this agreement.



Produced by: GeoBC under the Canada - BC Information Sharing Protocol
 Created by: Natural Resources Sector Decision Support Services, GeoBC, RG, jr
 Projection/Datum: BC Albers, Equal Area Conic/NAO 83
 Datestamp: December 12, 2012 08:44



Schedule "2" – Permitted Encumbrances

Schedule 2-1: Permitted Encumbrances

(For Discussion and Illustrative Purposes Only)

In respect of all the Lands:

- all interests registered on title under the *Land Title Act* as of the Closing Date;
- all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land;
- all exceptions and reservations contained in section 50(1) of the *Land Act*;
- any conditional or final water license or substituted water license issued or given under the *Water Act*, or any prior enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant;
- all subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect;
- all other liens, charges and encumbrances granted by the Province, with the prior written consent of the BC Kaska Dena prior to the Closing Date;
- the BC Kaska Dena acknowledges that all existing interest holders and interests on the Lands may not have been identified in this Schedule prior to the execution of this Agreement and that these unidentified interests continue on the Lands;
- a restrictive covenant in favour of Her Majesty the Queen in right of the Province of British Columbia to be registered against the title to this property in the form attached as Schedule 4 (Additions to Reserve Restrictive Covenant);
- BC Hydro Incremental Treaty Distribution Statutory Right-of-Way to be registered against the title to the Lands in the form attached as Schedule 3-1;

And in addition; in respect of those particular Lands identified in Schedule 1-2;

Agreement for Forest Research Plots: Growth and Yield Site 85-21-20G over Old Faddy ITA Land to be registered against the title to this property in the form attached as Schedule 3-2.



Schedule 2-2: Interests Not Registered on Title

(For Discussion and Illustrative Purposes Only)

In respect of all the Lands:

Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands shown in Schedule 1.

Schedule "3" – Instruments of Registration

Schedule 3-1: BC Hydro Incremental Treaty Distribution Statutory Right-of-Way

Schedule 3-2 : Agreement for Forest Research Plots Growth and Yield Site
85-21-20G

Schedule 3-1: BC Hydro Incremental Treaty Distribution
Statutory Right-of-Way

GENERAL INSTRUMENT – PART 1 (This area for Land Title Office use) Page 1 of 17 page(s)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
MAI REMPEL, Solicitor for British Columbia Hydro and Power Authority, 12th Floor - 333 Dunsmuir Street, Vancouver, BC, V6B 5R3, Telephone: 604-623-4132

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

[To add another row,type descrip + F3, otherwise press DELETE then F11 to move to next field.]

3. NATURE OF INTEREST: * DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
STATUTORY RIGHT OF WAY	ENTIRE INSTRUMENT	TRANSFEEE (British Columbia Hydro and Power Authority)

[To add another row,type interest + F3, otherwise press DELETE then F11 to move to next field.]

4. TERMS: Part 2 of this instrument consists of (select one only)
- (a) Filed Standard Charge Terms D.F. Number: ●
 - (b) Express Charge Terms Annexed as Part 2
 - (c) Release There is no Part 2 of this instrument

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

5. TRANSFEROR(S): *

LTD.

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, 12th Floor - 333 Dunsmuir Street, Vancouver, B.C., V6B 5R3

7. ADDITIONAL OR MODIFIED TERMS: *

N/A

GENERAL INSTRUMENT

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

Officer Signature(s)

(as to all signatures for the Transferor only)

Execution Date

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

Party(ies) Signature(s)

_____ LTD.,
by its authorized signatory(ies):

Name:

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.

CONFIDENTIAL - FOR DISCUSSION PURPOSES ONLY. This document, including proposed changes is subject to Kaska Dena Council and British Columbia approvals (including any necessary Cabinet, Treasury Board and Executive approvals.

** If space insufficient, continue executions on additional page(s) in Form D.

Officer Signature(s)

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

Execution Date

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

Party(ies) Signature(s)

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

Name:

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.

CONFIDENTIAL – FOR DISCUSSION PURPOSES ONLY This document including proposed changed is subject to Kaska Dena Council and British Columbia approvals (including any necessary Cabinet, Treasury Board and Executive approvals.

EXPRESS CHARGE TERMS
(DISTRIBUTION STATUTORY RIGHT OF WAY)

WHEREAS:

A Hydro wishes to obtain from the Grantor a statutory right of way for certain rights on, over and under the Lands, as hereinafter defined;

B The Grantor has agreed to grant to Hydro a statutory right of way in respect of the Lands; and

C The statutory right of way herein granted is necessary for the operation and maintenance of Hydro's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and of 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 In this Agreement:

- (a) “**Affiliate**” has the meaning ascribed to it in the Business Corporations Act, S.B.C. 2002, c. 57, as amended or replaced from time to time;
- (b) “**Agreement**” means the General Instrument and any attached schedule, and includes these Filed Terms;
- (c) “**Area of the Works**” means those portions of the Lands located within 6 metres of either side of the center of the alignment of the Works and includes the Right of Way Area;
- (d) “**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 are developed;
- (e) “**Excluded Right of Way Area**” 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;
- (f) “**Filed Terms**” means these filed standard charge terms;
- (g) “**General Instrument**” means the Form C General Instrument – Part 1, which refers to these Filed Terms and any other pages attached thereto;

- (h) “**Grantor**” means the person named as the transferor in Item 5 of the General Instrument;
- (i) “**Hydro**” means British Columbia Hydro and Power Authority;
- (j) “**Lands**” means the lands and premises legally described in Item 2 of the General Instrument;
- (k) “**Right of Way Area**” means those portions of the Lands more particularly described in Section 3 of this Agreement, as may be modified under this Agreement; and
- (l) “**Works**” means all things and components, using any type of technology from time to time, necessary or convenient for the purposes 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, 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.

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

2.0 Grant of Right of Way

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

- (a) use the Right of Way Area as follows:
 - (i) excavate for, construct, install, erect, abandon, replace, extend, upgrade, operate, maintain, alter, remove and repair the Works on, over, in, under, across and through the Right of Way Area; and
 - (ii) clear the Right of Way Area and keep it cleared (including pruning or removal) of any trees or growth at any time located therein;

- (b) use the Area of the Works as follows:
- (i) enter, work, pass and repass upon, on, and along the Area of the Works;
 - (ii) construct, maintain, repair, replace and use trails, roads, lanes, and bridges on the Area of the Works including, in addition, any portions reasonably required adjacent to the Area of the Works for the sake of continuity, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro in relation to this Agreement;
 - (iii) clear the Area of the Works and keep it cleared of all or any part of any obstruction, improvement or other matter which, in the reasonable opinion of Hydro, does or might interfere with or endanger the Works, disrupt service to Hydro's customers, or pose a hazard to persons or property in relation to the Works; and
 - (iv) clear the Area of the Works and keep it cleared (including pruning or removal) of all or any part of any trees or growth which do or might, in the opinion of Hydro, interfere with or endanger the Works, disrupt service to Hydro's customers, or pose a hazard to persons or property in relation to the Works;

and Hydro must compensate the owner of any obstruction, improvement or other matter removed under paragraph 2.1(b)(iii) above that was in existence before the affected Works were installed;

- (c) to enjoy further rights as follows:
- (i) Hydro may, with the prior approval of the Grantor and any party with a registered interest in the affected areas, such approval not to be unreasonably withheld, delayed or conditioned, cut trees or growth outside the Area of the Works, if in the opinion of Hydro such trees or growth might interfere with or endanger the Works (whether on or off the Lands) or pose a hazard to persons or property in relation to the Works. Hydro will, except in an emergency, give the Grantor written notice prior to exercising its rights under this Section;
 - (ii) Hydro may pass and repass over, and maintain, repair, replace and use, all trails, roads, lanes, and bridges on the Lands outside of the Area of the Works with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro in relation to this Agreement;
 - (iii) if there are no suitable trails, roads, lanes, or bridges under paragraph 2.1(c)(ii), Hydro may either:
 - (1) construct, maintain, repair, replace and pass and repass over trails, roads, lanes or bridges on the Lands; or

- (2) pass and repass over the Lands elsewhere than on trails, roads, lanes and bridges, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro 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. Notwithstanding the foregoing, Hydro does not require such approval if there is an emergency or a reasonably apprehended emergency or for the determination of electricity consumption, but will report to the Grantor the purpose and extent of the access as soon as practicable;
- (iv) to conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of Hydro, and the application of herbicides and pesticides with the consent of the Grantor, provided that Hydro will not conduct any aerial application of herbicides or pesticides on the Lands;
- (v) to install, maintain and use gates in all fences which are now or hereafter shall be on the Right of Way Area and in fences affecting access to the Area of the Works;
- (vi) to ground any structures, installation or things, by whomsoever owned, from time to time situated anywhere on the Right of Way Area or adjacent Lands where, in the reasonable opinion of Hydro, such grounding will eliminate or reduce hazards to persons or property in relation to the Works;
- (vii) Hydro may enter onto the Lands outside the Area of the Works for the purpose of undertaking works to protect any Works located within the Lands or within an Excluded Right of Way Area or to protect persons or property that may be at risk from such Works, provided that:
 - (1) Hydro will before commencing such works deliver to the Grantor for approval a written work plan describing the proposed work on the Lands;
 - (2) the Grantor will not unreasonably withhold, condition or delay approval of such work plan, and shall take into consideration the effect of the proposed work, the cost of the proposed work compared to the cost of alternate solutions and the extent of the risk of not undertaking the work. If Hydro and the Grantor cannot agree on a work plan requested by Hydro within 30 days of receipt by the Grantor of the proposed work plan, then either party may refer the disagreement to dispute resolution under Section 17.1 of this Agreement;

- (3) Hydro will pay compensation for any damage to the Lands resulting from the implementation of the work plan;
- (4) if Hydro determines in its reasonable judgment that an emergency situation exists or there are imminent safety concerns, Hydro may, without approval of the Grantor, undertake works and take such steps on the Lands 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 from the Works, and in that event Hydro will as soon as reasonably possible thereafter notify the Grantor; and
- (5) generally, do all such other acts or things as may reasonably be necessary or incidental to the business of Hydro in connection with any of the above.

3.0 Right of Way Area

3.1 The Right of Way Area consists of:

- (a) all portions of the Lands reasonably required for the following:
 - (i) those Works existing at the date of this Agreement;
 - (ii) any additional Works constructed adjacent to, along the sides of or across any roads, lanes or bridges from time to time existing on or through the Lands;
 - (iii) any additional Works that provide service to any lands adjacent to any roads, lanes, or bridges from time to time existing on or through the Lands;
 - (iv) any additional Works that provide service to any lands or customers where the landowners of any intervening parcels consent to the installation of any such Works; and
- (b) any such other portions 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.

3.2 The parties agree that the sketch plan attached to this Agreement as Schedule "A" reasonably represents the approximate location of the Works existing as of the date of this Agreement. Hydro agrees to provide the Grantor on request with an updated sketch of the Works if the Works have been extended in the previous calendar year, unless such information is available to the Grantor on line. The parties confirm that this Agreement, and all of its terms and provisions, shall apply to such new works in their entirety.

3.3 Nothing in this Section 3 is intended to affect the rights of Hydro to make arrangements directly with a person in legal possession of any lands for the construction, operation and maintenance of the Works and all matters incidental thereto.

4.0 Non-Exclusive Use

4.1 Notwithstanding anything else in this Agreement, Hydro acknowledges and agrees that:

- (a) this Agreement does not grant a fee simple interest in the Lands, but rather grants a non-exclusive use over the Area of the Works; and
- (b) subject to the rights granted to Hydro in this Agreement, the Grantor may grant to third parties other interests on the Area of the Works, provided that any such grant or other interests shall not compromise or, by action of the Grantor or the Grantee, damage, disrupt, adversely affect or interfere with the use by Hydro of the Works or Area of the Works.

5.0 Protection of the Environment

5.1 Hydro will undertake activities permitted under this Agreement having regard for the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment. Hydro will remediate in accordance with applicable provincial or federal environmental legislation any damage it may cause to the Environment.

6.0 Covenants of Hydro

6.1 Hydro covenants with the Grantor to:

- (a) 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 Right of Way Area and which Hydro is liable to pay;
- (b) 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 roads within the Area of the Works suitable for use by anyone except Hydro;
- (c) bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
- (d) if any human remains, burial pit or grave are unearthed or discovered on the Lands by Hydro, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity and take such reasonable steps and precautions to protect the site as may be directed by the Grantor;

- (e) if any archaeological material is unearthed or discovered on the Lands by Hydro, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity, and take such reasonable steps and precautions to protect the site as may be directed by the Grantor. At the request of the Grantor, Hydro will deliver such artifact to a location on the Lands as directed by the Grantor, at the expense of the Grantor if such expense is significant;
- (f) 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; and
- (g) not commit or suffer any willful or voluntary 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, acting reasonably, to exercise the rights granted under this Agreement.

7.0 New Works Constructed by Hydro

- 7.1 Prior to undertaking construction on the Lands of any new Works which are not alterations, extensions or additions to existing Works, Hydro will deliver to the Grantor, for prior approval, a sketch plan showing with reasonable accuracy the location of such proposed Works, which approval will not be unreasonably withheld, delayed or conditioned.

8.0 Relocation of Hydro Works Due to Change

- 8.1 If a material change occurs to the Lands, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area or an Excluded Right of Way Area unsuitable for any of the Works, then the Grantor will, at no cost to Hydro, consent to the relocation and replacement of such Works to a new location on the Lands, as follows:
 - (a) Hydro will, before undertaking any work, deliver a sketch plan to the Grantor indicating the contemplated relocation of the Works for approval by the Grantor, which approval will not be unreasonably withheld, delayed or conditioned;
 - (b) Hydro will take into account any likely material effect of the relocated Works on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by Hydro for the relocated Works in relation to alternative locations;
 - (c) the relocated Works will be subject to the terms and conditions of this Agreement; and
 - (d) subject to the foregoing, the cost of such relocation will be borne by Hydro.

9.0 Relocation of Hydro Works at the Request of the Grantor

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

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

10.0 Fencing

10.1 With the exception of transformer stations and equipment shelters, Hydro will not fence the Area of the Works without the prior consent of the Grantor, such consent not to be unreasonably withheld, delayed or conditioned.

11.0 Inspections

11.1 It will be lawful for the Grantor at all reasonable times to enter upon the Right of Way Area for the purposes of visually inspecting the Right of Way Area and the Works, or carrying out tests, surveys and inspections at its own expense that do not interfere with the Works. If the Grantor requires access to any Area of the Works that has been fenced off or enclosed, the Grantor will notify Hydro, who will provide such safe access as may be reasonably required by the Grantor for visual inspection.

12.0 Restoration

12.1 When a portion of the Right of Way Area is no longer required for the Works, Hydro will restore the ground surface of the affected portion of the Right of Way Area, as near as is reasonably practicable to its condition prior to the installation of the Works, including the removal of any above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts in such portion of the Right of Way Area.

12.2 Sections 12.1 and 12.2 will survive the expiration or any termination of this Agreement.

13.0 Removal of Works

13.1 If certain Works are no longer required by Hydro under this Agreement:

- (a) Hydro may, subject to the consent of the Grantor, abandon the Works and transfer to the Grantor all ownership, right and interest in the whole or part of the Works. If the consent of the Grantor is not obtained within one year after the date of the expiration of the Agreement, Hydro will remove the above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts as soon as reasonably possible in the circumstances; and
- (b) Hydro will decommission any roads constructed by Hydro pursuant to paragraph 2.1(c)(iii), which are no longer required in relation to such Works, unless otherwise requested by the Grantor.

13.2 Hydro will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then Hydro will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.

13.3 Sections 13.1, 13.2, and 13.3 will survive the expiration or any termination of this Agreement.

14.0 Covenants of the Grantor

14.1 The Grantor covenants with Hydro that:

- (a) Hydro shall and may peaceably enjoy and hold the rights granted in this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any other person lawfully claiming from or under the Grantor, provided however that nothing in this Section 14.1 shall limit the Grantor's right of inspection pursuant to Section 11.1;
- (b) the Grantor will not permit or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, pile of material, fill, obstruction, equipment, thing or inflammable substance, or plant any growth upon the Area of the Works, if any such action or thing, in the reasonable opinion of Hydro:
 - (i) may interfere with or endanger the Works or any part thereof or the installation, operation, maintenance, removal or replacement of the Works or any part thereof;
 - (ii) may obstruct access to the Works or any part thereof by those authorized by Hydro; or

- (iii) may by its operation, use, maintenance or existence on the Area of the Works create or increase any hazard to persons or property in relation to the Works;
- (c) the Grantor will not carry out blasting or aerial logging operations on or adjacent to the Area of the Works without prior written permission from Hydro, which permission will not be unreasonably withheld, conditioned or delayed; and
- (d) the Grantor will not diminish or increase the ground elevation in the Area of the Works by any method, including piling any material or creating any excavation, drain, or ditch in the Area of the Works, unless permission in writing from Hydro has first been received, which permission will not be unreasonably withheld, conditioned or delayed.

15.0 Compensation for Damages

15.1 Subject to the rights granted in this Agreement, Hydro covenants with the Grantor that if Hydro, or its respective contractors, damage any structures, buildings, fixtures, improvements, or chattels outside the Area of the Works, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, trails, bridges, or roads on the Lands, or contaminate the Lands in the exercise of vegetation management rights under paragraph 2.1(c)(iv), and such damage is not caused as a result of the Grantor's breach of the terms of this Agreement, or the negligence or willful act of the Grantor or its contractors, agents or permittees, then Hydro will:

- (a) compensate the Grantor for such damages, to the extent caused by Hydro;
- (b) compensate the Grantor for, and remediate the Lands from, such contamination, to the extent caused by Hydro; or
- (c) 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.

15.2 Compensation paid to the Grantor for merchantable timber pursuant to Section 15.1 will be in accordance with generally accepted principles of timber valuation and the parties agree that on payment, title to any timber cut on the Lands under this Agreement will vest in Hydro.

16.0 Indemnity

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

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

- (b) any act or omission on the part of Hydro in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, and the exercise of vegetation management rights pursuant to paragraph 2.1(c)(iv) herein, but only to the extent any such matter is 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.

17.0 Dispute Resolution

17.1 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
- (c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution in accordance with the British Columbia Commercial Arbitration Act. 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 Section 17.1 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.

18.0 Runs With the Land

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

19.0 Assignment

19.1 This Agreement:

- (a) may not be assigned in part or in whole or otherwise transferred without the prior written consent of the Grantor, which consent will not be unreasonably withheld, conditioned or delayed; but
 - (b) may be assigned or otherwise transferred to an Affiliate without consent.
- 19.2 Hydro's rights hereunder may be exercised by its respective employees, officers, representatives, contractors, subcontractors, agents, invitees and licensees. For greater certainty, Hydro remains fully liable for all of its obligations in this Agreement despite the exercise of such rights by such other persons.

20.0 Notice

20.1 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: _____ Ltd.
c/o _____ First Nation

_____, British Columbia

To Hydro: Manager, Properties
B.C. Hydro
12th Floor - 333 Dunsmuir Street
Vancouver, British Columbia
V6B 5R3

Fax: (604) 623-3951

20.2 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 or by courier, on the next business day;
- (b) if it was sent by fax, on the next business day; or
- (c) 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.

20.3 A change of address by any party may be given to the others in accordance with this provision.

21.0 General

21.1 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.

21.2 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.

21.3 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 permitted assigns.

- 21.4 The parties agree that this Agreement will be registered in the provincial Land Title Office. At the request of any party to this Agreement, all parties will cooperate in executing any documents or plans required to accomplish the registration of this Agreement and to preserve the substance and priority of this Agreement in relation to those portions of the Lands affected by this Agreement.
- 21.5 Hydro may grant licences respecting its rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor provided that no licence will act as a release of any of Hydro's obligations set out in this Agreement.
- 21.6 A delegate appointed by the Grantor may provide Hydro with all commentary, authorizations and approvals required pursuant to this Agreement including without limitation, all commentary, authorizations or approvals required in relation to sketch plans, access to the Area of the Works, and relocations or replacements of any Works.
- 21.7 This Agreement may not be amended except by written agreement signed by the parties to this Agreement.

22.0 Interpretation

22.1 In this Agreement:

- (a) all schedules attached to these Filed Terms or the General Instrument 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) 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; and
- (d) 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.

SCHEDULE "A"

(Sketch Plan of Works, pursuant to Section 3.2 of the Agreement)

Schedule 3-2: Agreement for Forest Research Plots
Growth and Yield Site 85-21-20G

THIS AGREEMENT is dated for reference [insert month, day, year]
BETWEEN:

[DESIGNATED COMPANY]

of P.O. Box 9
Lower Post, British Columbia
V0C 1W0

(the "Owner")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA,

as represented by the Minister of Forests, Lands and Natural Resource Operations
(the "Licensee")

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises, the covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which the Owner acknowledges, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**Commencement Date**" means month day, year;

"**Data Request**" means a request made by the Owner to the Licensee pursuant to Article 4 requiring the Licensee to deliver to the Owner the experimental forestry data collected by the Licensee in respect of the Land, which request will include the following information:

- (a) the Owners intended explicit use/purpose for the data;
- (b) the identity of those individuals or organizations who will be granted access to the data; and
- (c) the term or duration for which the data is required;

"**Land**" means that part of the land shown outlined by bold line on the schedule attached to this Agreement entitled "Legal Description Schedule";

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

"Realty Taxes" means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relates to the Land, or any of the Licensee's improvements situate thereon, including without limitation, any Improvements made by the Licensee, that the Licensee is liable to pay under applicable laws;

"Security" means the security referred to in Section 6.1, as replaced or supplemented in accordance with Section 6.4; and

"Term" means the period of time set out in Section 2.2.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions of this Agreement, the Owner hereby grants to the Licensee, its agents, contractors, subcontractors and employees a non-exclusive licence in common with the Owner to enter on and use the Land for the purpose of conducting periodic timber measurements and inspections within Forestry experimental plots or permanent sample plots to assess changes to stand structure resulting from treatments, tree growth, mortality, in growth and succession.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the thirtieth (30th) anniversary of that date, or such earlier date provided for in this Agreement.
- 2.3 Notwithstanding anything to the contrary in this Agreement, so long as:
- (a) the Licensee is not in default of any of the material terms or conditions of this Agreement; and
 - (b) the Licensee has given the Owner, not more than 180 days prior to the expiration of the Term, 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, in its sole discretion, 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 sixty (60) days from the date of receipt of the notice from the Owner to accept a 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 - COVENANTS

3.1 Licensee covenants with the Owner:

- (a) to pay, when due,
 - (i) the Realty Taxes, and
 - (ii) all charges for electricity, gas, water and other utilities supplied to the Land for use by the Licensee, or on behalf of the Licensee, or with the Licensee's permission;
 - (b) to 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 Licensee's use or occupation of the Land and the improvements situate thereon, and
 - (ii) the provisions of this Agreement;
 - (c) in respect of the use of the Land by the Licensee or anyone permitted by the Licensee to use the Land, to keep the Land in a safe, clean and sanitary condition satisfactory to the Owner, acting reasonably, and at the Owner's written request, acting reasonably, rectify any failure to comply with such a covenant by making the Land safe, clean and sanitary;
 - (d) not to 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 or annoyance to an owner or occupier of land in the vicinity of the Land;
 - (e) to use and occupy the Land only in accordance with and for the purposes set out in Section 2.1;
 - (f) not to interfere with the activities of any other person who enters on and uses 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 the Land, in accordance with Section 10.3;
 - (g) to permit the Owner, or its representatives, to enter on the Land at any time to inspect the Land;
 - (h) to indemnify and save the Owner and the Owner'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
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

- (i) any breach, violation or non-performance of a provision of this Agreement by the Licensee; and
- (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of the Licensee's occupation of the Land;

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

- (i) on the termination of this Agreement,
 - (i) decommission the Land and peaceably quit and deliver to the Owner possession of the Land;
 - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Lands by the Licensee and the Licensee is not in default of this Agreement;
 - (iii) remove from the Land any 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 that the Owner, in writing, directs or permits the Licensee to remove, and
 - (iv) restore the surface of the Land to the satisfaction of the Owner, acting reasonably;

and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the Owner, and to the extent necessary, this covenant will survive the termination of this Agreement;

- (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 THREE MILLION DOLLARS (\$3,000,000) except that so long as the Licensee is Her Majesty the Queen in Right of the Province of British Columbia or a British Columbia crown corporation, the Owner will waive the requirements of this sub-section on the delivery to the Owner of confirmation that the Licensee is self insured;
 - (k) notwithstanding sub-section (j), the Owner may from time to time notify the Licensee that the amount of insurance posted by the Licensee pursuant to that sub-section be changed and the Licensee shall, within 60 days of receiving such notice, cause the amount of insurance posted, pursuant to sub-section (j) to be changed to the amount specified by the Owner, acting reasonably, in the notice and delivery to the Owner with a written confirmation of the change, except that when the Licensee is self-insuring this section shall not apply; and
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

- (l) to deliver to the Owner from time to time, upon demand, proof of insurance required under this Agreement, receipts or other evidence of payment of any taxes or charges owing, and other monetary obligations of the Licensee required to be observed by the Licensee pursuant to this Agreement.
- 3.2 The Owner will not do or permit anything to be done on the Land that will interfere materially with the exercise of the Licensee's rights hereunder.

ARTICLE 4 – DATA USE AND SHARING

- 4.1 At any time during the Term, the Owner may deliver a Data Request to the Licensee. Upon receipt of a Data Request, the Licensee will deliver the requested data to the Owner provided that the Owner first enters into the Licensee's then current Data Use and Sharing Agreement, which agreement will include, without limitation, provisions dealing with the following:
- (a) that notwithstanding the provision of the data to the Owner, the Licensee retains all ownership rights (including copyright and all other intellectual property rights) to the data;
 - (b) the data will not be copied or used for commercial purposes;
 - (c) the data will only be used for the purpose set out in the Data Request; and
 - (d) covenants and agreements from the Owner:
 - (i) that no data, copies, or parts thereof, shall be retained after the project referenced in the Data Request is completed;
 - (ii) to not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by the Data Request unless agreed to by the Licensee;
 - (iii) to provide the Licensee with copies of all published analyses and research findings based on the data received under this Agreement; and
 - (iv) to include the following statement in the publication, presentation, or dissemination of any analysis conducted with the data files received under the applicable Data Request: "The plot data used in this analysis was provided by the Forest Sciences Program of the B.C. Ministry of Forests."

ARTICLE 5 - LIMITATIONS

- 5.1 The Licensee covenants and agrees with the Owner that:
- (a) the Owner is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

- (b) the Licensee will not remove or permit the removal of any Improvements from the Land except as expressly permitted or required under this Agreement;
- (c) any interest the Licensee may have in the Improvements ceases to exist and becomes the Owner's property upon the termination of this Agreement, except where an Improvement may be removed under Section 3.1(i)(ii) or (iii) in which case any interest the Licensee may have in the Improvement ceases to exist and becomes the Owner's property if the Improvement is not removed from the Land within the time period set out in Section 3.1(i)(ii); and
- (d) if, after the termination of this Agreement, the Owner permits the Licensee to remain in possession of the Land and the Owner accepts money from the Licensee in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee 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.

ARTICLE 6 - SECURITY

- 6.1 The sum of \$1.00 and all rights, privileges, benefits and interests accruing thereto shall be delivered by the Licensee to the Owner (herein called the "Security") to guarantee the performance of the Licensee's obligations under this licence and 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 Her Majesty the Queen in Right of the Province of British Columbia or a British Columbia crown corporation, the Owner will waive the requirement of this section. The parties agree that the amount of the Security does not constitute a liquidated damages estimate of the Owners damages if the Licensee breaches its obligations hereunder and the Owner reserves its right to claim for further damages.
 - 6.2 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.
 - 6.3 The rights of the Owner under this Article shall be deemed to continue in full force and effect notwithstanding the expiry or earlier cancellation of this Licence
 - 6.4 Notwithstanding the amount of the Security stated to be required under Section 6.1 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 6.1, this section shall not apply.
-

ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee shall not assign, mortgage or transfer this licence or sublicense any part of the Land, without the prior written consent of the Owner, which consent shall not be unreasonably withheld.
- 7.2 Notwithstanding Section 7.1, the Licensee may, without the prior written consent of the Owner assign or sublicense its interest in all or a part of the Land to a British Columbia crown corporation, other governmental agencies or departments and universities or colleges.
- 7.3 For the purpose of Section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in sub-section 2(3) of the *Business Corporations Act*) will be deemed to be a transfer of this Agreement.
- 7.4 Section 7.3 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.5 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Owner, in its sole discretion, specifically releases the Licensee from such obligation in the Owner's consent to the sublicense, assignment or transfer of this Agreement.

ARTICLE 8 - TERMINATION

- 8.1 The Licensee further covenants and agrees with the Owner that:
- (a) if the Licensee:
- (i) defaults in the payment of any money payable by the Licensee 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 Licensee under this Agreement),
- and the Licensee's default or failure continues for 60 days after the Owner gives written notice of the default or failure to the Licensee,
- (b) if the Licensee:
- (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
 - (ii) commits 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 the Licensee or/the Licensee consents to the filing of the petition
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

or a decree is entered by a court of competent jurisdiction adjudging the Licensee bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enters into an arrangement with its creditors; or
- (c) if the Licensee, in the reasonable opinion of the Owner, fails to make diligent use of the Land for the purposes set out in this Agreement and such failure continues for 60 days after receipt of written notice by the Licensee;

this Agreement will, at the Owner's option and with or without entry, terminate and the Licensee's right to use and occupy the Land will cease.

- 8.2 If the condition complained of (other than the payment of any money payable by the Licensee under this Agreement or the failure to make diligent use of the Land as set out in Section 8.1(c)) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently completes the same within a reasonable period of time. If the Licensee fails to remedy or cure such condition within such reasonable period of time then this Agreement will at the Owner's option and with or without entry, terminate and the Licensee's right to use and occupy the Land will cease.
- 8.3 The Licensee will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under Section 8.1.
- 8.4 The Licensee may deliver a written notice to the Owner cancelling this Agreement 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.

ARTICLE 9 - NOTICE

- 9.1 If notice is required or permitted under this Agreement, the notice:
 - (a) must be in writing;
 - (b) must be delivered to the address set out above, or other address as specified in writing by a party; and
 - (c) may be given in one or more of the following ways:
 - (i) delivered personally or by courier, and it will be deemed received on the next business day;
 - (ii) mailed by pre-paid post in Canada, and it will be deemed received on the eighth business day following, except in the case of mail interruption in which case actual receipt is required.
 - 9.2 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 9.1.
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

- 9.3 The delivery of all money payable to the Owner 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 10 - MISCELLANEOUS

- 10.1 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.
- 10.2 No remedy conferred upon or reserved to the Owner 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.
- 10.3 This Agreement 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 3.1 (c) of this Agreement obligating the new grantee to keep the Land in a safe, clean and sanitary condition satisfactory to the Owner.
- 10.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 10.5 Time is of the essence in this Agreement.
- 10.6 In this licence, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and the corporation.
- 10.7 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.
- 10.8 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 the licence shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.
- 10.9 This Agreement will be governed by and construed in accordance with the applicable
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

laws of Canada and the Province of British Columbia.

- 10.10 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 written agreement in writing between the parties.
- 10.11 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
 - (c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b) then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution. 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 Section 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.
- 10.12 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.
- 10.13 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then the Owner or the Licensee, 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 the Owner or the Licensee 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.
- 10.14 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 case beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its 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:
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

- (a) the Licensee gives notice to the Owner 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 its obligation; and
- (b) the Licensee diligently attempts to remove the delay.

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

SIGNED on behalf of **[DESIGNATED COMPANY]**
by a duly authorized representative

Authorized Signatory

SIGNED on behalf of **HER MAJESTY THE QUEEN**
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
by a duly authorized signatory

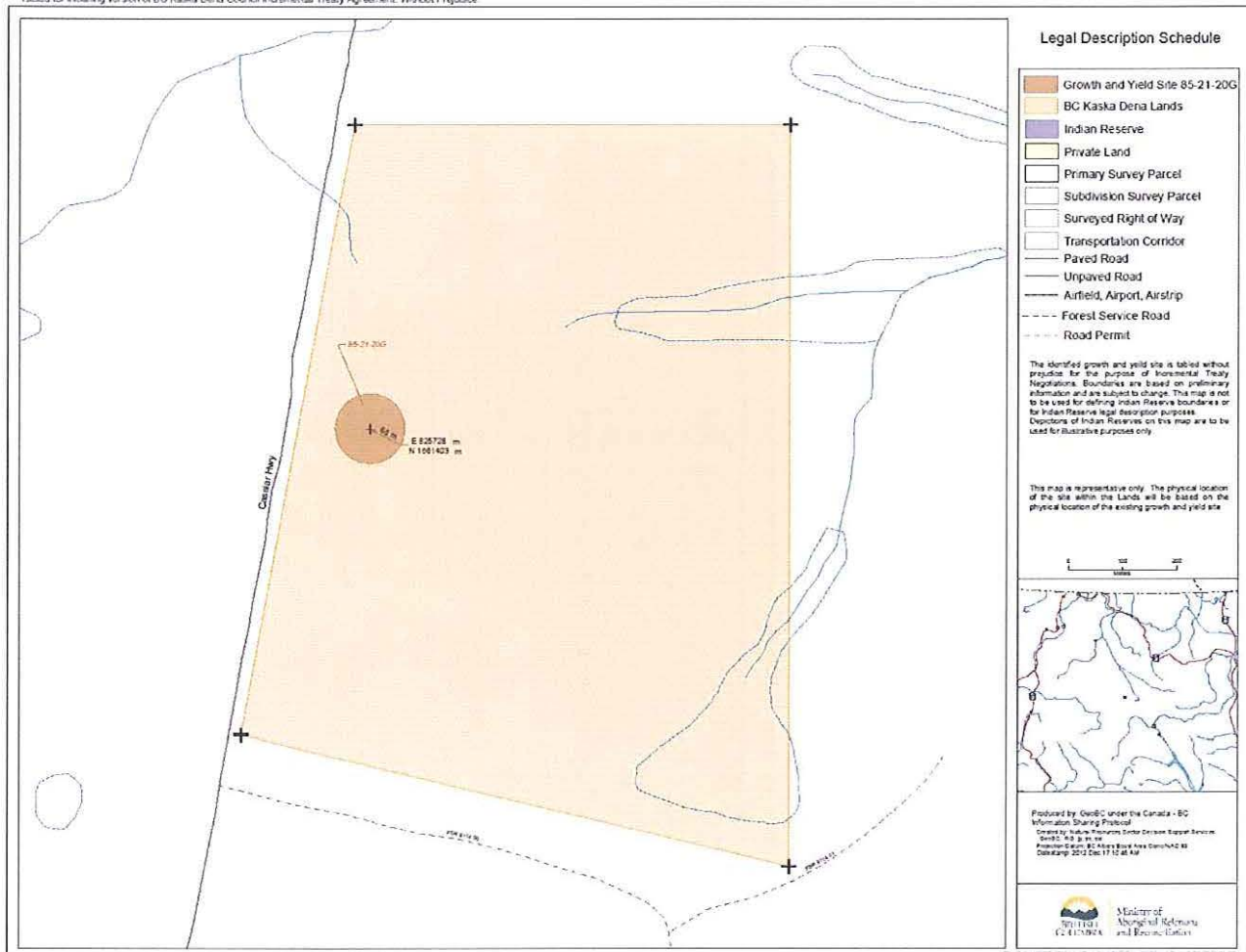
Authorized Signatory

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

Legal Description Schedule

Confidential
Tabled for inbaling version of BC Kaska Dena Council Incremental Treaty Agreement. Without Prejudice

Date: December 17 2012



END OF DOCUMENT

Schedule "4" - Addition to Reserve Restrictive Covenant

LAND TITLE ACT

FORM C

(Section 233)

Province of

British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office Use)

Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

(Signature of Solicitor or Authorized Agent)

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

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

Description	Document Reference <i>(Page and paragraph)</i>	Person Entitled to Interest
Section 219 Covenant	Entire Document	Transferee (Grantee)

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

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

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

5. TRANSFEROR(S):* (Grantor)

6. TRANSFEREE(S): (Including postal address(es) and postal code(s))* (Grantee)

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Forests, Lands, and Natural Resource Operations, Parliament Buildings, PO Box 9049, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

7. ADDITIONAL OR MODIFIED TERMS:* N/A

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

Execution Date

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

Officer
Signature(s)

Y	M	D
---	---	---

Party(ies) Signature(s)

Its authorized signatory(ies):

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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

- A. The Grantor is the registered owner of:
(the "Land");
- B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

- 1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
 - a. Reserves or special reserves as defined in the *Indian Act*; or
 - b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act*, 1867.
- 2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
- 3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- 4. The Grantor will indemnify and save harmless the Grantee from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.
- 5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other



KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.

6. This Agreement will be interpreted according to the laws of the Province of British Columbia.
7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C attached.

END OF DOCUMENT

Schedule "5" - Designated Company Agreement

This Agreement is dated for reference _____, 2013.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Aboriginal Relations and Reconciliation [address]
(the "Province")

AND:

_____, a company incorporated under the laws of British
Columbia and having its principle place of business at [address]
(the Designated Company")

(collectively referred to as the "Parties" and individually referred to as a "Party")

WHEREAS:

- A. The Province and BC Kaska Dena have entered into an agreement dated _____ (the "Incremental Treaty Agreement") pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

- B. The BC Kaska Dena and the Designated Company have agreed that, as a condition of the transfer of the Lands, the Designated Company will execute and deliver this Agreement on the terms set out below.

NOW THEREFORE the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms "Province" and "BC Kaska Dena" and any other capitalized terms used in this Agreement and defined in the Incremental Treaty Agreement will have the meaning given to those terms in the Incremental Treaty Agreement.
 2. **Environmental Condition.** The Designated Company waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
 3. **ITA Binding.** Without limiting the generality of the foregoing, the terms of the Incremental Treaty Agreement relating to the Lands which are for the benefit of the Province are legally binding on the Designated Company as if the Designated Company was a party to the Incremental Treaty Agreement, including, without limitation, 4.1, 10.1-10.3 and 10.5 of the Incremental Treaty Agreement.
 4. **Enforcement of ITA.** The Province may, in its sole discretion, enforce any term or condition of the Incremental Treaty Agreement, including any obligation, covenant or indemnity of the BC Kaska Dena, against the Designated Company or the BC Kaska Dena or both of them.
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

5. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Incremental Treaty Agreement, a copy of which is attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
 6. **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.
 7. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
 8. **No Implied Waiver.** Any waiver of:
 - a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) a default by a Party of an obligation under this Agreement,will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
 9. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province
 10. **No Admissions.** Nothing in this Agreement will be construed as an:
 - a) admission by the Province of the validity of any claim by the BC Kaska Dena to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
 - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the BC Kaska Dena; oradmission by the BC Kaska Dena that it has ever ceded, released or surrendered any of its Aboriginal rights including title.
 11. **Not a Treaty.** This Agreement does not:
 - a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); orrecognize, affirm, define, deny, limit, abrogate, derogate or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
 12. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
 13. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
 14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
 15. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.
-

KASKA DENA COUNCIL INCREMENTAL TREATY AGREEMENT

Signed by the Designated Company as of _____, 20__ by:

[Name of Company

Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA by the Minister of Aboriginal Relations and Reconciliation or the Minister's
authorized representative as of _____, 20__ :

Minister of Aboriginal Relations and Reconciliation

or the Minister's authorized representative

Signed by the Designated Company as of _____, 20__ by:

[Name of Company

Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA by the Minister of Aboriginal Relations and Reconciliation or the Minister's
authorized representative as of _____, 20__ :

Minister of Aboriginal Relations and Reconciliation

or the Minister's authorized representative

END OF DOCUMENT

Schedule "6" – HST Certificate

FORM 221(2)(b) (CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER)

Certificate as to Registration Status of Purchaser

(Paragraphs 221(2)(b) and (c))

FROM: *[the "Vendor"]*
TO: *[the "Purchaser"]*
RE: *[the "Property"]*

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF *THE EXCISE TAX ACT* (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is *[number]* and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

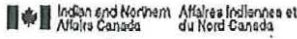
DATED *[month, day, year]*.

[Name of Corporate Vendor]

[Name of Individual Vendor]

Per: _____

Schedule "7" - Band Council Resolutions



**BAND COUNCIL RESOLUTION
RESOLUTION DE CONSEIL DE BANDE**

Chronological no. - N° consecutive
0102-13-01
File reference no. - N° de référence du dossier

NOTE: The words "from our band funds" "capital" or "revenue" whichever is the case, must appear in all resolutions requesting expenditures from band funds.
NOTA: Les mots "des fonds de notre bande" "capital" ou "revenue" selon les cas doivent paraître dans tous les résolutions portant sur des dépenses à même les fonds des bandes.

The council of the Le conseil de	Kwadacha Nation	Capital account Compte capital	\$ _____
Date of duly convened meeting Date de l'assemblée dûment convoquée	01 / 02 / 2013 DD / MM / YYYY JJ / MM / AAAA	Province British Columbia	Revenue account Compte revenu

DO HEREBY RESOLVE:
DÉCIDE PAR LES PRÉSENTES:
WHEREAS:

- A. The BC Kaska Dena assert aboriginal rights and title to the lands, water and resources within BC Kaska Dena Traditional Territory as recognized and affirmed under section 35(1) of the Constitution Act, 1982;
- B. The Kaska Dena are entitled to exercise Aboriginal Rights and Title within the Kaska Traditional Territory;
- A. The position of the BC Kaska Dena is that the BC Kaska Dena use and stewardship of the lands, water and resources within our Traditional Territory is integral to the BC Kaska Dena, and their governance and economy. The BC Kaska Dena governance of their land and resources remains a paramount responsibility and the BC Kaska Dena look to the Crown's duty to consult and accommodate as one of the ways to fulfill that responsibility.
- B. The BC Kaska Dena have a unique culture with distinct practices, customs and traditions and a distinct system of laws and governance;
- C. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations - BC Region, First Nations Summit and the Union of BC Indian Chiefs, have entered into a New Relationship;
- D. The Kaska Dena Council is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process;
- E. The Parties wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- F. This Agreement will provide the BC Kaska Dena with incremental economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship;
- G. The Kaska Dena Council Resolution passed in 2008 in Kwadacha has authorized the Kaska Dena Council ("KDC") to pursue and negotiate an incremental treaty arrangement in relation to the Kaska Traditional Territory in British Columbia, attached as Schedule A;
- H. This Agreement is intended to:
 - a. Demonstrate the commitment of the Parties to concluding a Final Agreement; and
 - b. In the spirit of the New Relationship, provide the BC Kaska Dena with land as incremental treaty benefit in advance of a Final Agreement which be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.
- I. The KDC held a Board of Directors meeting to review, advise and seek approval of this Agreement with the (Band's) appointed director in attendance; and

THEREFORE BE IT RESOLVED:
The Kwadacha Nation authorizes George Miller, the Kaska Dena Council Chairperson, to sign this Agreement in substantially the form as attached; and the Kaska Dena Council to enter into and participate in the implementation of this Agreement in accordance with its provisions, on behalf of the Kwadacha Nation.

Quorum: 3

_____ (Councillor - Conseiller)	<i>John R. Miller</i> (Chief - Chef) (Councillor - Conseiller)	_____ (Councillor - Conseiller)
_____ (Councillor - Conseiller)	<i>Diana McLeod</i> (Councillor - Conseiller)	_____ (Councillor - Conseiller)
_____ (Councillor - Conseiller)	<i>Mary Jean Poole</i> (Councillor - Conseiller)	_____ (Councillor - Conseiller)

FOR DEPARTMENTAL USE ONLY - RÉSERVÉ AU MINISTRE					
Expenditure - Dépenses	Authority (Indian Act section) - Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu	Expenditure - Dépenses	Authority (Indian Act section) - Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu
Recommending officer - Recommandé par			Recommending officer - Recommandé par		
_____ Signature Date			_____ Signature Date		
Approving Officer - Approuvé par			Approving Officer - Approuvé par		
_____ Signature Date			_____ Signature Date		



Chronological no.
File reference no.

BAND COUNCIL RESOLUTION

NOTE:

The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

The council of the		DAYLU DENA COUNCIL		Cash free balance	
Date of duly convened meeting		D	M	Y	Province
		15	01	13	BC
				Capital account	\$ _____
				Revenue account	\$ _____

WHEREAS:

- A. The BC Kaska Dena assert aboriginal rights and title to the lands, water and resources within BC Kaska Dena Traditional Territory as recognized and affirmed under section 35(1) of the Constitution Act, 1982;
- B. The Kaska Dena are entitled to exercise Aboriginal Rights and Title within the Kaska Traditional Territory;
- A. The position of the BC Kaska Dena is that the BC Kaska Dena use and stewardship of the lands, water and resources within our Traditional Territory is integral to the BC Kaska Dena, and their governance and economy. The BC Kaska Dena governance of their land and resources remains a paramount responsibility and the BC Kaska Dena look to the Crown's duty to consult and accommodate as one of the ways to fulfill that responsibility.
- B. The BC Kaska Dena have a unique culture with distinct practices, customs and traditions and a distinct system of laws and governance;
- C. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations – BC Region, First Nations Summit and the Union of BC Indian Chiefs, have entered into a New Relationship;
- D. The Kaska Dena Council is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process;

Quorum 2 of 3

_____	<i>[Signature]</i> (Chief)	_____
(Councillor)	<i>[Signature]</i> (Councillor)	(Councillor)
_____	_____	_____
(Councillor)	(Councillor)	(Councillor)
_____	_____	_____
(Councillor)	(Councillor)	(Councillor)

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act Section)	Source of funds <input type="radio"/> Capital <input type="radio"/> Revenue	Expenditure	Authority (Indian Act Section)	Source of funds <input type="radio"/> Capital <input type="radio"/> Revenue
Recommending officer			Recommending officer		
Signature		Date	Signature		Date
Approving officer - Approuvé par			Approving officer		
Signature		Date	Signature		Date



Chronological no.
File reference no.

BAND COUNCIL RESOLUTION

NOTE:

The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

The council of the		DAYLU DENA COUNCIL		Cash free balance	
Date of duly convened meeting		D	M	Y	Province
		15	01	13	BC
		Capital account		\$ _____	
		Revenue account		\$ _____	

- E. The Parties wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- F. This Agreement will provide the BC Kaska Dena with incremental economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship;
- G. The Kaska Dena Council Resolution passed in 2008 in Kwadacha has authorised the Kaska Dena Council ("KDC") to pursue and negotiate an incremental treaty arrangement in relation to the Kaska Traditional Territory in British Columbia, attached as Schedule A;
- H. This Agreement is intended to:
 - a. Demonstrate the commitment of the Parties to concluding a Final Agreement; and
 - b. In the spirit of the New Relationship, provide the BC Kaska Dena with land as incremental treaty benefit in advance of a Final Agreement which be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.
- I. The KDC held a Board of Directors meeting to review, advise and seek approval of this Agreement with the Daylu Dena Council's appointed director in attendance; and

THERE BE IT RESOLVED:

The Daylu Dena Council authorizes George Miller, Kaska Dena Council Chair, to sign this Agreement in substantially the form as attached; and the Kaska Dena Council to enter into and participate in the implementation of this Agreement in accordance with its provisions, on behalf of the Daylu Dena Council.

Quorum 2 of 3

(Councillor)

(Councillor)

(Councillor)

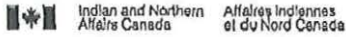
George Miller
(Chief)
Arghas Ball
(Councillor)

(Councillor)

(Councillor)

(Councillor)

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act Section)	Source of funds <input type="radio"/> Capital <input type="radio"/> Revenue	Expenditure	Authority (Indian Act Section)	Source of funds <input type="radio"/> Capital <input type="radio"/> Revenue
Recommending officer			Recommending officer		
_____ Signature			_____ Signature		
_____ Date			_____ Date		
Approving officer - Approuvé par			Approving officer		
_____ Signature			_____ Signature		
_____ Date			_____ Date		



BAND COUNCIL RESOLUTION
RÉSOLUTION DE CONSEIL DE BANDE

Chronological no. - N° consécutif
File reference no. - N° de référence du dossier

NOTE: The words "from our Band Funds" "des fonds de notre bande" "capital" or "revenue" when in use should always appear in all resolutions requesting expenditures from Band Funds.
NOTA: Les mots "des fonds de notre bande" "capital" ou "revenu" when in use doivent toujours être inclus dans toutes les résolutions portant sur des dépenses à même les fonds de bande.

		Cash free balance - Solde disponible									
The council of the Le conseil de	Dease River First Nation	Capital account Compte capital	\$ _____								
Date of duly convened meeting Date de l'assemblée dûment convoquée	<table border="1"> <tr> <td>D</td> <td>M</td> <td>Y</td> <td>Province</td> </tr> <tr> <td>1</td> <td>18</td> <td>01</td> <td>BC</td> </tr> </table>	D	M	Y	Province	1	18	01	BC	Revenue account Compte revenu	\$ _____
D	M	Y	Province								
1	18	01	BC								

DO HEREBY RESOLVE:
DÉCIDE, PAR LES PRÉSENTES:

WHEREAS:

- A. The BC Kaska Dena assert aboriginal rights and title to the lands, water and resources within BC Kaska Dena Traditional Territory as recognized and affirmed under section 35(1) of the Constitution Act, 1982;
- B. The Kaska Dena are entitled to exercise Aboriginal Rights and Title within the Kaska Traditional Territory;
- A. The position of the BC Kaska Dena is that the BC Kaska Dena use and stewardship of the lands, water and resources within our Traditional Territory is integral to the BC Kaska Dena, and their governance and economy. The BC Kaska Dena governance of their land and resources remains a paramount responsibility and the BC Kaska Dena look to the Crown's duty to consult and accommodate as one of the ways to fulfill that responsibility.
- B. The BC Kaska Dena have a unique culture with distinct practices, customs and traditions and a distinct system of laws and governance;
- C. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations - BC Region, First Nations Summit and the Union of BC Indian Chiefs, have entered into a New Relationship;
- D. The Kaska Dena Council is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process;
- E. The Parties wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- F. This Agreement will provide the BC Kaska Dena with incremental economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship;
- G. The Kaska Dena Council Resolution passed in 2008 in Kwadacha has authorized the Kaska Dena Council ("KDC") to pursue and negotiate an incremental treaty arrangement in relation to the Kaska Traditional Territory in British Columbia, attached as Schedule A;

H. This Agreement is intended to:

- a. Demonstrate the commitment of the Parties to concluding a Final Agreement; and
- b. In the spirit of the New Relationship, provide the BC Kaska Dena with land as incremental treaty benefit in advance of a Final Agreement which be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.

I. The KDC held a Board of Directors meeting to review, advise and seek approval of this Agreement with the Dease River First Nation appointed director in attendance; and

THERE BE IT RESOLVED:

The Dease River First Nation authorizes George Miller the Kaska Dena Council Chairperson to sign this Agreement in substantially the form as attached; and the Kaska Dena Council to enter into and participate in the Implementation of this Agreement in accordance with its provisions, on behalf of the Dease River First Nation.

Quorum _____

 (Councilor - Conseiller)

 (Councilor - Conseiller)

 (Councilor - Conseiller)

Pat Lorne
 (Chief - Chef)
Margaret Jellison
 (Councilor - Conseiller)
Irene Porter
 (Councilor - Conseiller)
ella Johnson
 (Councilor - Conseiller)

_____ (Councilor - Conseiller)
 _____ (Councilor - Conseiller)
 _____ (Councilor - Conseiller)

FOR DEPARTMENTAL USE ONLY - RÉSERVÉ AU MINISTÈRE					
Agency - Agence	Authority (Indian Act Section / Autorité (Article de la Loi sur les Indiens))	Source of funds / Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue / Revenu	Expenditure - Dépense	Agency (Indian Act Section / Autorité (Article de la Loi sur les Indiens))	Source of funds / Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue / Revenu
Recommending officer - Recommandé par			Recommending officer - Recommandé par		
Signature _____ Date _____			Signature _____ Date _____		
Approving officer - Approuvé par			Approving officer - Approuvé par		
Signature _____ Date _____			Signature _____ Date _____		