

KUNST'AA GUU – KUNST'AAYAH RECONCILIATION PROTOCOL

Dated for reference _____, 2009.

BETWEEN:

HAIDA NATION, as represented by the Council of the Haida Nation (“**Haida Nation**”)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Aboriginal Relations and Reconciliation (“**British Columbia**”)

WHEREAS:

- A.** The Parties hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii, as set out below.

The Haida Nation asserts that:

Haida Gwaii is Haida lands, including the waters and resources, subject to the rights, sovereignty, ownership, jurisdiction and collective Title of the Haida Nation who will manage Haida Gwaii in accordance with its laws, policies, customs and traditions.

British Columbia asserts that:

Haida Gwaii is Crown land, subject to certain private rights or interests, and subject to the sovereignty of her Majesty the Queen and the legislative jurisdiction of the Parliament of Canada and the Legislature of the Province of British Columbia.

Notwithstanding and without prejudice to the aforesaid divergence of viewpoints, the Parties seek a more productive relationship and hereby choose a more respectful approach to co-existence by way of land and natural resource management on Haida Gwaii through shared decision-making and ultimately, a Reconciliation Agreement.

- B.** This Protocol confirms an incremental step in a process of reconciliation of Haida and Crown titles.

- C. The Parties agree to focus on shared and joint decision-making respecting lands and natural resources on Haida Gwaii and other collaborative arrangements including socio-economic matters pertaining to children and families.
- D. The Parties agree that this Protocol represents the development of a new relationship between the Parties.
- E. Under this Protocol, the Parties will operate under their respective authorities and jurisdictions.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1. “Framework Agreement” means the Framework Agreement between the Haida Nation, Canada and British Columbia respecting the negotiation of the Reconciliation Agreement;
- 1.2. “Haida Gwaii” means that portion of Haida Gwaii, also known as the Queen Charlotte Islands, identified on the map included in Schedule A, including the foreshore marine areas;
- 1.3. “Minister” means the British Columbia minister, or designate, having responsibility for a matter in relation to this Protocol;
- 1.4. "Parties" means the Haida Nation and British Columbia and “Party” means either one of them;
- 1.5. “Protocol” means this Kunst’aa guu – Kunst’aayah Reconciliation Protocol between the Haida Nation and British Columbia including the schedules attached to it; and
- 1.6. "Reconciliation Agreement" means the comprehensive agreement to be ratified at the conclusion of the negotiations under the Framework Agreement.

2. PURPOSE

- 2.1. The purpose of this Protocol is to build upon the relationship between the Parties that will guide land and natural resource management on Haida Gwaii.

3. RECONCILIATION AGREEMENT NEGOTIATIONS

- 3.1. The Parties agree to take an incremental approach to the negotiation of the Reconciliation Agreement as demonstrated by the implementation of this Protocol.
- 3.2. The negotiation of the Reconciliation Agreement will be conducted using the negotiation process outlined in the Framework Agreement.
- 3.3. The Parties acknowledge that a Reconciliation Agreement requires the participation of Canada and that both Parties will work to engage Canada's participation.
- 3.4. Notwithstanding 3.3, the Parties will, in the absence of Canada's participation, continue to engage in bilateral discussions to achieve the purposes of this Protocol.

4. SCOPE

- 4.1. This Protocol applies to Haida Gwaii.
- 4.2. The Parties agree to address the following objectives:
 - a) shared and joint decision-making;
 - b) carbon offset and resource revenue sharing;
 - c) forest tenures and other economic opportunities; and
 - d) enhancement of Haida socio-economic well being.
- 4.3. The implementation of the objectives set out in 4.2 will be in accordance with the schedules attached to this Agreement and future agreements between the Parties.

5. SOCIO-ECONOMIC WELLBEING

5.1. The Parties are committed to an approach which recognizes and strengthens the interrelationship between environmental, social well-being and economic development, which includes but is not limited to children and families. A socio-economic approach, with children and families at the centre, will be developed by the Haida Nation with the engagement and support of British Columbia. Once mutually agreed upon, this approach will be jointly implemented by the Parties.

6. SHARED DECISION-MAKING

- 6.1. The Parties are committed to working together in the interests of arriving at the best decisions regarding the management of lands and natural resources on Haida Gwaii.
- 6.2. Schedule B of this Protocol sets out the framework for shared decision-making between the Parties for land and natural resource management on Haida Gwaii, including joint decision making where the Parties have provided the appropriate authority.
- 6.3. Under this Protocol, the Parties will operate under their respective authorities and jurisdictions.
- 6.4. The Minister will recommend to the Legislature, with the target being the spring 2010 legislative session, legislation to provide the statutory framework to assist in the implementation of this Protocol.
- 6.5. The Haida Nation will recommend to the House of Assembly legislation to provide any necessary legal authority to assist in the implementation of this Protocol.
- 6.6. The Parties, subject to signing a confidentiality agreement, will review each Party's draft legislation from the perspective of meeting the terms and objectives of this Protocol.
- 6.7. In engaging in the shared and joint decision-making process set out in Schedule B, the Parties commit to make best efforts to seek consensus on matters addressed in that process.

- 6.8. The Parties intend that implementation of the decision-making framework set out in Schedule B will constitute an incremental step in the reconciliation process through which legal rights and obligations respecting land and natural resource decision-making on Haida Gwaii can be addressed.
- 6.9. The Parties will be responsible for the development, implementation, on-going review and refinements of the decision-making framework.
- 6.10. The Parties acknowledge that further refinement or amendment of Schedule B may be required from time to time to ensure that the authority, structure and functions for shared and joint decision-making meets the objectives of the Parties.
- 6.11. Further refinements to the shared and joint decision-making process and legislated authorities may be contained in the Reconciliation Agreement.

7. RESOURCE REVENUE AND CARBON OFFSET SHARING

- 7.1. The Parties agree to share carbon offsets as set out in Schedule C.
- 7.2. The Parties agree to pursue additional revenue sharing opportunities related to new major natural resource development projects that may be proposed within Haida Gwaii.

8. FOREST TENURES AND OTHER ECONOMIC OPPORTUNITIES

- 8.1. Forest tenure opportunities are set out in Schedule D.
- 8.2. The Parties agree to discuss other economic opportunities that may arise from time to time.

9. RESOURCING

- 9.1. The Parties agree that this Protocol is of mutual benefit, and the Parties agree to the principle that the cost of implementation should be jointly funded.
- 9.2. The Parties agree to implement the resourcing arrangements as set out in Schedule E.

10. AMENDMENT

10.1 This Protocol may be amended by the Parties.

10.2 Any amendments to this Protocol must be in writing and agreed to by the Parties.

11. DISPUTE RESOLUTION

11.1 The Parties are committed to resolving disputes that may arise in the implementation of this Protocol and may utilize dispute resolution mechanisms as agreed to by the Parties including mediation.

12. TERM

12.1 Subject to 13.1, the Protocol remains in effect unless it is terminated by one or both of the Parties.

12.2 The Parties will evaluate the progress and outcomes of this Protocol annually and will evaluate the status of necessary legislative amendments and implementation of the decision-making framework by July 2010, and based on this evaluation, may amend this Protocol.

13. TERMINATION

13.1 Either Party may terminate this Protocol by providing written notice to the other Party setting out the reasons for termination and the date on which it takes effect.

13.2 If a Party provides notice of termination under 13.1, the Parties will make reasonable efforts to resolve the dispute or issue, and commit to attending one meeting to explore the possibilities of resolving the issue. The Parties may seek the assistance or attendance of an independent mediator.

14. GENERAL PROVISIONS

- 14.1 This Protocol will not limit any position that either Party may take in future negotiations or legal proceedings.
- 14.2 Nothing in this Protocol fetters or limits, or shall be deemed to fetter or limit, the authority of either Party or their representatives
- 14.3 This Protocol is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act*, 1982.
- 14.4 This Protocol will be approved by:
- a) the President and Vice President of the Haida Nation signing this Protocol on behalf of the Council of the Haida Nation; and
 - b) the Premier of British Columbia signing this Protocol on behalf of British Columbia.

IN WITNESS WHEREOF the Parties hereby execute this Protocol as of the date first written above

SIGNED ON BEHALF OF THE HAIDA NATION,
as represented by the Council of the Haida Nation:

ORIGINAL SIGNED

Guujaaw,
President, Council of the Haida Nation

Witness

and

Witness

Arnie Bellis,
Vice President, Council of the Haida Nation

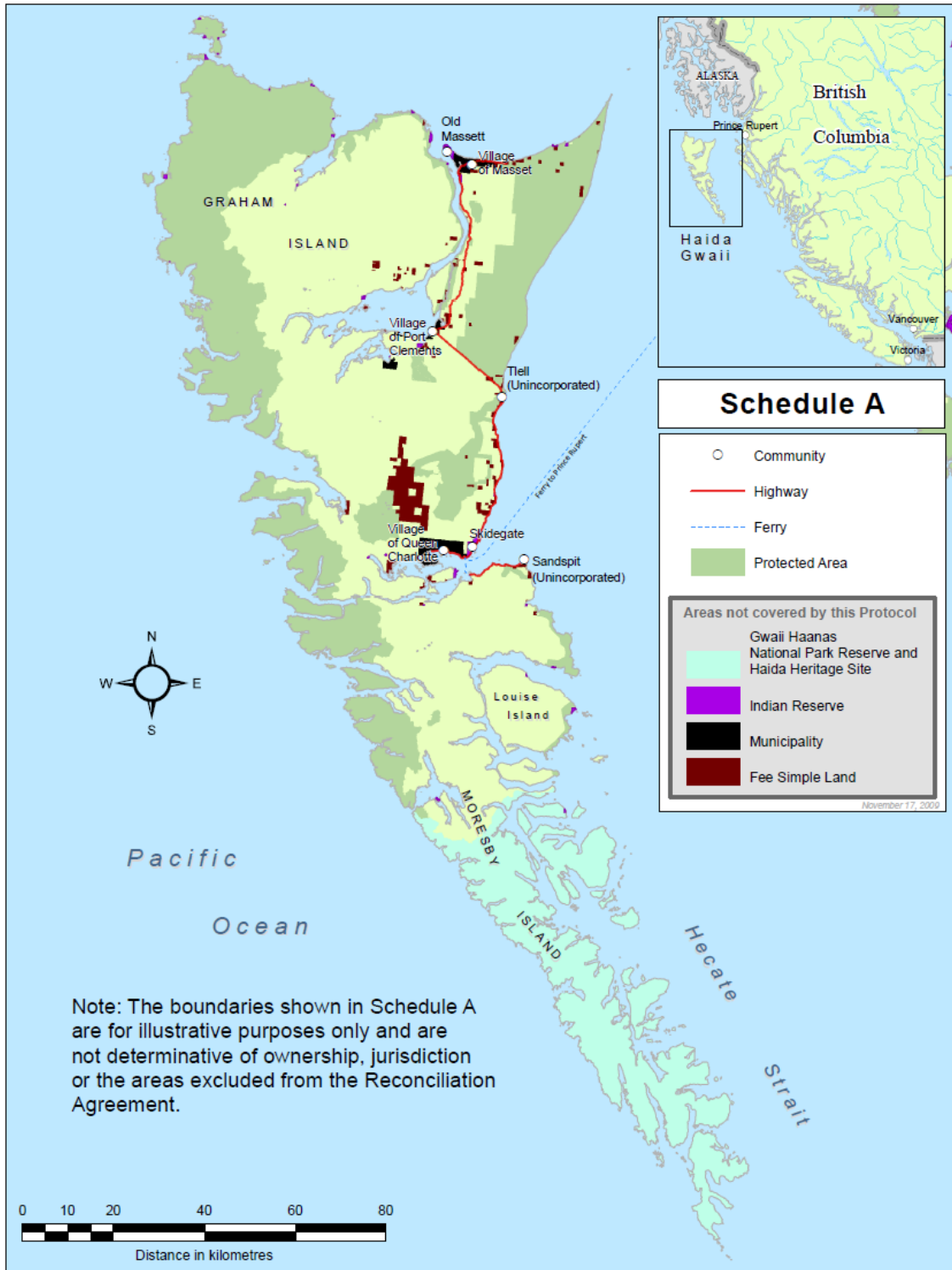
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Witness

SIGNED ON BEHALF OF HER MAJESTY
THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA, as represented by the
Premier of British Columbia:

Honourable Gordon Campbell

Witness



Schedule B: Decision-making Framework

The decision-making framework outlines a model for shared decision-making, including joint decision-making by the Haida Gwaii Management Council, for lands and natural resources that will assist the Parties in meeting their goals under the Reconciliation Protocol.

1.0 Responsibilities of the Parties

- 1.1 The Parties will be responsible for the development, implementation and on-going review of the decision-making framework, and may agree to make changes from time to time to that framework.
- 1.2 In accordance with paragraphs 6.4 and 6.5 of the Protocol, each Party will make recommendations regarding statutory amendments to enable the Haida Gwaii Management Council to exercise the authorities and functions identified in paragraph 2.2 and initially to enable the Parties to exercise joint decision-making.
- 1.3 Following the establishment of this decision-making framework, the Parties may recommend other authorities to be undertaken by the Haida Gwaii Management Council from time to time.
- 1.4 The Parties will ensure that their respective representatives in the decision-making processes will have the necessary authority to carry out their responsibilities.
- 1.5 The Parties will consider any matters that cannot be resolved at the level of the Haida Gwaii Management Council.
- 1.6 The Parties, in consultation with each other, will each appoint 2 members to the Haida Gwaii Management Council.
- 1.7 The Parties will jointly appoint the Chair of the Haida Gwaii Management Council.

2.0 The Haida Gwaii Management Council

- 2.1 The Haida Gwaii Management Council is accountable to the Parties for the decisions and actions taken pursuant to its authorities.
- 2.2 Subject to the approval of statutory amendments recommended by the Parties, the Haida Gwaii Management Council will be responsible for the following joint decisions:

- 2.2.1 Implementation and amendment of the Haida Gwaii Strategic Land Use Agreement;
 - 2.2.2 Establishment, implementation and amendment of Land Use Objectives for forest practices;
 - 2.2.3 Determination and approval of the Allowable Annual Cut for Haida Gwaii;
 - 2.2.4 Approval of management plans for protected areas;
 - 2.2.5 Developing policies and standards for the identification and conservation of heritage sites; and
 - 2.2.6 Other strategic level management matters that the Parties delegate to the Haida Gwaii Management Council.
- 2.3 The Haida Gwaii Management Council has the following additional responsibilities:
- 2.3.1 Development of a comprehensive Haida Gwaii forestry management strategy that maintains ecological integrity and supports a sustainable Haida Gwaii economy, for consideration by the Parties;
 - 2.3.2 Monitoring and review of the effectiveness of the Solutions Table;
 - 2.3.3 Identifying policy issues for consideration by the Parties; and
 - 2.3.4 Monitoring and evaluating the efficiency of its decisions at the operational level.
- 2.4 Decisions of the Haida Gwaii Management Council will be arrived at by consensus of the members, excluding the Chair.
- 2.5 Should the Council members not reach consensus, the decision will be made by a vote of the Council.
- 2.5.1 Each member, but not the chair, of the Haida Gwaii Management Council will vote on all motions of the Council where consensus has not been achieved.
 - 2.5.2 The Chair of the Haida Gwaii Management Council will vote only when a vote of the Council results in a tie vote.
- 2.6 One Haida and one British Columbia representative to the Solutions Table will support the Haida Gwaii Management Council in a technical capacity.

3.0 Technical and Operational Level

- 3.1 The decision maker for each Party is the person authorized to make decisions on particular operational matters in relation to the Protocol.

- 3.2 There will be a Solutions Table which will be comprised of representatives of the Parties.
- 3.3 The Solutions Table is responsible for technical and operational matters including, but not limited to the following:
 - 3.3.1 Application of the decisions of the Haida Gwaii Management Council at the operational level;
 - 3.3.2 The review of applications, collection of information and conducting the necessary analysis to provide informed input to decision makers in accordance with the process to streamline the review of applications developed under 4.3.4; and
 - 3.3.3 Other matters agreed to by the Parties.
- 3.4 After receiving the input of the Solutions Table the decision makers may make a decision on the relevant application.
- 3.5 The Parties commit to further refine and develop the processes for operational level decision-making on Haida Gwaii.

4.0 Implementation

- 4.1 The Parties agree that decision-making in accordance with this framework will be implemented in a phased manner to allow the Parties to develop the processes and knowledge for effective shared and joint decision-making.
- 4.2 Within 4 months of the signing of the Protocol, the Parties will complete a decision-making framework implementation plan.
- 4.3 Items to be addressed in the decision-making framework implementation plan will include:
 - 4.3.1 A work plan and schedule setting out the application of the decision-making framework;
 - 4.3.2 Terms of Reference for the Haida Gwaii Management Council;
 - 4.3.3 Terms of Reference for the Solutions Table;
 - 4.3.4 Developing criteria and designing a streamlined process for review of applications that will include a category of applications that will proceed directly to the decision makers without additional review by the Solutions Table; and
 - 4.3.5 A schedule setting out milestones for the Parties to assess the effectiveness of the decision-making framework.

4.4.4 Completion of the implementation plan will be subject to the approval of the Parties.

Schedule C: Carbon Offsets

1. **Purpose:** The Parties share the goals of:
 - a. developing environmentally credible and marketable forest carbon offsets. These offsets would be associated with the additional sequestration and resulting greenhouse gas reductions from the creation of protected areas and changes to forestry practices (“Offsets”) in the area identified in Schedule A;
 - b. researching the eligible program criteria, the appropriate offset protocol, and the requirements for offset project plans. These research findings will inform the Parties of the potential standards for qualifying carbon reductions that could be converted to marketable Offsets; and
 - c. entering into an “Offset Sharing Agreement” that would enable the Parties to share the Qualifying Offsets.

2. **Scope of Activities:** In order to build the framework for creating qualifying carbon reductions, the Parties recognize the following must be accomplished:
 - a. identification of potential offset programs that may provide credibility and economic value to the Parties such as: the B.C. *Greenhouse Gas Reductions Target Act*; the Western Climate Initiative, Environment Canada’s offset program, the Climate Action Registry, and any other offset programs that the Parties may agree upon (“Offset Programs”);
 - b. development, by August 31, 2010, of appropriate and credible models for estimating and proving long term projections of the additional carbon sequestration that will occur in the area identified in Schedule A as a result of new conservation measures and changes to forest practices;
 - c. development, by August 31, 2010, of a protocol describing the technical basis and standards for the quantification of carbon reductions from the creation of protected areas and from changes to forest management which could be applicable in the area identified in Schedule A (“Carbon Protocol”). The Carbon Protocol will reflect the standards of, and be suitable for designation under, the B.C. *Greenhouse Gas Reductions Target Act* and any other agreed-upon offset programs, such as the Western Climate Initiative and the Climate Action Registry; and
 - d. development of a process for validation or approval of a forests conservation project plan, or other documents, which:

- i. is appropriate for the B.C. *Greenhouse Gas Reductions Target Act*, and any agreed-upon Offset Programs;
 - ii. is eligible for approval for quantifying specific carbon reductions; and
 - iii. identifies who is responsible for carrying out the development, validation, and approval of a project plan or other documents and for paying the costs of these steps.
3. **Offset-Sharing Agreement:** Based on the results of completing the development work under section 2, the Parties will make best efforts to negotiate an Offsets Sharing Agreement by September 30, 2010.
 - a. The Offsets Sharing Agreement will provide to the Parties a share of the total annual reductions from sources, sinks and reservoirs in the area identified in Schedule A that result from the carrying out of the conservation and changes to forest practices in that area (“Qualifying Offsets”) for the purpose of allowing the Parties to have such offsets recognized under the chosen programs.
 - b. The Agreement will set out how the total annual share of Qualifying Offsets will be distributed based on the following priorities:
 - i. as first priority, a dedicated amount of each year’s verified Qualifying Offsets, in tonnes, agreed to by the Parties to cover the cost to the Haida Nation of implementing, managing and administering the Offset Sharing Agreement;
 - ii. as second priority, a dedicated amount of each year’s verified Qualifying Offsets, in tonnes, to be agreed to by the Parties, to cover the remaining cost to the Haida Nation in meeting its obligations, under this Protocol, including management of protected areas, after utilizing any other revenues provided under the Protocol, excluding any revenues provided under Schedule D; and
 - iii. as third priority, the Parties will each receive 50% of the remaining tonnes of each year’s verified Qualifying Offsets, from the project.
4. **Other Matters:** The Agreement will contain provisions for:
 - a. the review and monitoring of forest carbon data and models used to establish the quantum of Qualifying Offsets over the life of the Agreement;

- b. the ownership of the Qualifying Offsets or Offset rights and the legal form and transfer of Qualifying Offsets or Offset rights will be defined;
- c. the project, Offsets and agreements not creating any title or interest in land in the area identified in Schedule A;
- d. the project and ownership and legal characterization of Offsets not prejudicing positions the Parties may take on aboriginal rights and title or in Reconciliation Agreement negotiations;
- e. liability and managing risks of impermanence and reversals of Qualifying Offsets over time;
- f. the responsibilities for transaction costs associated with validation, verification, monitoring, marketing costs, and management of any Offset revenue;
- g. requirements that may enable Haida Nation participation in Pacific Carbon Trust procurement processes;
- h. periodic review of the implementation of the Agreement;
- i. dispute resolution; and
- j. any other components agreed to by the Parties.

The Parties agree to continue discussions on sharing of additional emission reduction opportunities for renewable energy and other environmental attributes that may arise from land use measures.

Schedule D: Forest Tenures

1. British Columbia reaffirms its 2005 commitment to provide a forest tenure of 120,000 cubic metres to the Haida Nation.
2. British Columbia will, subject to appropriations by the Legislature, and in accordance with the *Financial Administration Act*, provide to the Haida Nation, \$10,000,000 for the purpose of forest tenure acquisition; this funding is an incremental payment of the total benefits to the Haida Nation available through the Reconciliation Agreement.

Schedule E: Resourcing

1. British Columbia will, subject to appropriations by the Legislature, and in accordance with the *Financial Administration Act* and any workplans and budgets agreed to by the Parties provide the Haida Nation with \$600,000 per year to support the Haida Nation's implementation of this Protocol for a period of 5 years commencing April 1, 2010.
2. Upon signing of this Protocol by the Parties, British Columbia will, subject to appropriations by the Legislature, and in accordance with the *Financial Administration Act*, provide \$200,000 to the Haida Nation to commence the Haida Nation's implementation of this Protocol.
3. The Haida Nation, subject to a successful implementation of Schedule C, will use portions of the resulting revenues to support the Haida Nation's implementation costs of this Protocol.