



# Agreement In Principle

Canada





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## CHAPTER 1 GENERAL PROVISIONS

### 1.1.0 NATURE OF THIS AGREEMENT

1.1.1 The Parties have negotiated this Agreement to form the basis for each of the Ditidaht Treaty and the Pacheedaht Treaty, and consequently:

- a. the term “Ditidaht / Pacheedaht” is used in provisions of this Agreement that will form the basis for both the Ditidaht Treaty and the Pacheedaht Treaty;
- b. the terms “Ditidaht” and “Pacheedaht” are used separately in provisions of this Agreement that will only form part of either the Ditidaht Treaty or the Pacheedaht Treaty;
- c. reference in this Agreement to Ditidaht / Pacheedaht means Ditidaht in relation to the Ditidaht Treaty and Pacheedaht in relation to the Pacheedaht Treaty; and
- d. reference in this Agreement to the Treaty means the Ditidaht Treaty in relation to Ditidaht and the Pacheedaht Treaty in relation to Pacheedaht.

1.1.2 The Parties acknowledge and agree that this Agreement is an agreement in principle, is not legally binding on any of the Parties and is without prejudice to the respective legal positions of the Parties before the Effective Date and neither this Agreement nor any related communications over the course of these negotiations will be used against any of the Parties in any court proceeding or any other forum or be construed as creating, abrogating, negating, denying, recognizing, defining, or amending any rights or obligations of any of the Parties except as expressly provided for in the Ditidaht Treaty and the Pacheedaht Treaty and only upon the Effective Date.

1.1.3 Based upon this Agreement, the Parties will begin as soon as practical to negotiate the Treaty.

### 1.2.0 NATURE OF THE TREATY

The Treaty will provide that:

1.2.1 The Treaty will be a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

- 1.2.2 Once ratified by the Parties, the Treaty is binding on and can be relied on by the Parties and all persons.
- 1.2.3 Canada will recommend to Parliament that Federal Settlement Legislation provides that the Treaty is approved, given effect, declared valid and has the force of law.
- 1.2.4 British Columbia will recommend to the Legislature that Provincial Settlement Legislation provides that the Treaty is approved, given effect, declared valid and has the force of law.

#### **1.3.0 REPRESENTATIONS AND WARRANTIES**

The Treaty will provide that:

- 1.3.1 Ditidaht / Pacheedaht represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in the Treaty, it has the authority to enter into the Treaty on behalf of all individuals who collectively comprise Ditidaht / Pacheedaht and who have or may exercise any aboriginal rights, including aboriginal title, or may make any claims to those rights.
- 1.3.2 Canada represents and warrants to Ditidaht / Pacheedaht that, in respect of the matters dealt with in the Treaty, it has the authority to enter into the Treaty within its authorities.
- 1.3.3 British Columbia represents and warrants to Ditidaht / Pacheedaht that, in respect of the matters dealt with in the Treaty, it has the authority to enter into the Treaty within its authorities.

#### **1.4.0 CONSTITUTION OF CANADA**

The Treaty will provide that:

- 1.4.1 The Treaty does not alter the Constitution of Canada, including:
  - a. the distribution of powers between Canada and British Columbia;
  - b. the identity of Ditidaht / Pacheedaht as an aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.
- 1.4.2 The Canadian Charter of Rights and Freedoms applies to Ditidaht / Pacheedaht Government in respect of all matters within its authority.

**1.5.0     CHARACTER OF DITIDAHT / PACHEEDAHT LANDS AND OTHER  
DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 1.5.1    There are no “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for Ditidaht / Pacheedaht and that there are no “reserves” as defined in the *Indian Act* for Ditidaht / Pacheedaht and, for greater certainty, that Ditidaht / Pacheedaht Lands and Other Ditidaht / Pacheedaht Lands are not “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867*, and are not “reserves” as defined in the *Indian Act*.

**1.6.0     APPLICATION OF FEDERAL AND PROVINCIAL LAW**

The Treaty will provide that:

- 1.6.1    Federal and Provincial Law apply to Ditidaht / Pacheedaht, Ditidaht / Pacheedaht Citizens, Ditidaht / Pacheedaht Government, Ditidaht / Pacheedaht Public Institutions, Ditidaht / Pacheedaht Corporations, Ditidaht / Pacheedaht Lands and Other Ditidaht / Pacheedaht Lands except as otherwise provided in the Treaty.
- 1.6.2    Nothing in the Treaty affects or limits the application of the federal *Emergencies Act*, or any successor legislation, and the federal *Emergencies Act* will continue to apply in all aspects to Ditidaht / Pacheedaht Land.

**1.7.0     APPLICATION OF THE INDIAN ACT**

The Treaty will provide that:

- 1.7.1    Except as otherwise provided in the Indian Act Transition Chapter and the Taxation Chapter, the *Indian Act* does not apply to Ditidaht / Pacheedaht, Ditidaht / Pacheedaht Citizens, Ditidaht / Pacheedaht Government, Ditidaht / Pacheedaht Public Institutions, Ditidaht / Pacheedaht Lands and Other Ditidaht / Pacheedaht Lands as of the Effective Date, except for the purposes of determining whether an individual is an “Indian”.

**1.8.0     APPLICATION OF THE SPECIES AT RISK ACT**

- 1.8.1    Before concluding the Treaty, the Parties will explore consultation and conservation arrangements relating to Species at Risk, with the understanding that the *Species at Risk Act* will continue to apply.

## **1.9.0 INTERNATIONAL LEGAL OBLIGATIONS**

The Treaty will provide that:

- 1.9.1     Ditidaht / Pacheedaht Laws and other exercises of power will be consistent with Canada's International Legal Obligations.

## **1.10.0 RELATIONSHIP OF LAWS**

The Treaty will provide that:

- 1.10.1    The Treaty prevails to the extent of an inconsistency or a Conflict with Federal or Provincial Law.
- 1.10.2    Settlement Legislation prevails over other Federal and Provincial Laws to the extent of a Conflict.
- 1.10.3    Any licence, permit or other authorization to be issued by Canada or British Columbia as a result of the Treaty will be issued under Federal or Provincial Law, as the case may be, and will not be part of the Treaty.
- 1.10.4    The Treaty prevails to the extent of an inconsistency or Conflict with any provision of a licence, permit or other authorization issued by Canada or British Columbia as a result of the Treaty.
- 1.10.5    Notwithstanding any other rule of priority in the Treaty, Federal or Provincial Law prevails over Ditidaht / Pacheedaht Law to the extent of any Conflict involving a provision of a Ditidaht / Pacheedaht Law that has a double aspect with or an incidental impact on:
- a.   any area of federal or provincial jurisdiction for which Ditidaht / Pacheedaht does not have any law making authority; or
  - b.   any area of jurisdiction for which Federal or Provincial Law prevails.
- 1.10.6    Notwithstanding any other rule of priority in the Treaty, Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance, prevails to the extent of a Conflict with Ditidaht / Pacheedaht Law.
- 1.10.7    Canada will recommend to Parliament that Federal Settlement Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to Ditidaht / Pacheedaht, Ditidaht / Pacheedaht Citizens,

Ditidaht / Pacheedaht Government, Ditidaht / Pacheedaht Public Institutions, Ditidaht / Pacheedaht Corporations, Ditidaht / Pacheedaht Lands or Other Ditidaht / Pacheedaht Lands, the Provincial Law will, subject to the Federal Settlement Legislation and any other Act of Parliament, apply in accordance with the Treaty to Ditidaht / Pacheedaht, Ditidaht / Pacheedaht Citizens, Ditidaht / Pacheedaht Government, Ditidaht / Pacheedaht Public Institutions, Ditidaht / Pacheedaht Corporations, Ditidaht / Pacheedaht Lands or Other Ditidaht / Pacheedaht Lands, as the case may be.

- 1.10.8 Unless otherwise provided in the Treaty, Ditidaht / Pacheedaht Law does not apply to Canada or British Columbia.
- 1.10.9 A Ditidaht / Pacheedaht Law that is inconsistent or in Conflict with the Treaty is of no force or effect to the extent of the inconsistency or Conflict.
- 1.10.10 For greater certainty, Ditidaht's / Pacheedaht's law making authority does not include criminal law, criminal procedure, Intellectual Property, official languages of Canada, aeronautics, navigation and shipping, or labour relations and working conditions.

#### **1.11.0 OTHER RIGHTS, BENEFITS AND PROGRAMS**

The Treaty will provide that:

- 1.11.1 Ditidaht / Pacheedaht Citizens who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits of other Canadian citizens or permanent residents of Canada applicable to them from time to time.
- 1.11.2 Subject to 1.11.3, nothing in the Treaty affects the ability of Ditidaht / Pacheedaht, Ditidaht / Pacheedaht Citizens, Ditidaht / Pacheedaht Government, Ditidaht / Pacheedaht Public Institutions or Ditidaht / Pacheedaht Corporations to participate in, or benefit from, programs established by Canada or British Columbia for aboriginal people, registered Indians or other Indians in accordance with criteria established for those programs from time to time.
- 1.11.3 Ditidaht / Pacheedaht Citizens are eligible to participate in programs established by Canada or British Columbia and to receive services from Canada or British Columbia, in accordance with criteria established for those programs or services from time to time, to the extent that Ditidaht /

Pacheedaht has not assumed responsibility for those programs or services under a Fiscal Financing Agreement or other funding agreement.

#### **1.12.0 COURT DECISIONS**

The Treaty will provide that:

- 1.12.1 Where a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines any provision of the Treaty is invalid or unenforceable:
  - a. the Parties will make best efforts to amend the Treaty to remedy or replace the provision; and
  - b. the provision will be severable from the Treaty to the extent of the invalidity or unenforceability and the remainder of the Treaty will be construed, to the extent possible, to give effect to the intent of the Parties.
- 1.12.2 No Party will challenge, or support a challenge to, the validity of any provision of the Treaty.
- 1.12.3 A breach of the Treaty by a Party will not relieve any Party from its obligations under the Treaty.

#### **1.13.0 CERTAINTY**

The Treaty will provide that:

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

- 1.13.1 The Treaty constitutes the full and final settlement in respect of any aboriginal rights, including aboriginal title, that Ditidaht / Pacheedaht may have in Canada.

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

- 1.13.2 The Treaty exhaustively sets out the Ditidaht / Pacheedaht Section 35 Rights, their attributes, the geographic extent of those rights and the limitations to those rights to which the Parties will agree, and those rights are:
  - a. any aboriginal rights, including aboriginal title, modified as a result of the Treaty and the Settlement Legislation, of Ditidaht / Pacheedaht in and to

- Ditidaht / Pacheedaht Lands, Other Ditidaht / Pacheedaht Lands and other lands and resources in Canada;
- b. the jurisdictions, authorities and rights of Ditidaht / Pacheedaht; and
  - c. the other Ditidaht / Pacheedaht Section 35 Rights.

### **Modification**

- 1.13.3 Notwithstanding the common law, as a result of the Treaty and the Settlement Legislation, any aboriginal rights, including aboriginal title of Ditidaht / Pacheedaht that may have existed anywhere before the Effective Date, including their attributes and geographic extent, will be modified, and will continue as modified, as set out in the Treaty.
- 1.13.4 For greater certainty, any Ditidaht / Pacheedaht aboriginal title that may have existed anywhere before the Effective Date, including its attributes and geographic extent, will be modified and continue as the estates in fee simple to those areas identified in the Treaty as Ditidaht / Pacheedaht Lands and Other Ditidaht / Pacheedaht Lands.

### **Purpose of Modification**

- 1.13.5 The purpose of the modification referred to in 1.13.3 will be to ensure that as of the Effective Date:
  - a. Ditidaht / Pacheedaht has, and can exercise, the Ditidaht / Pacheedaht Section 35 Rights set out in the Treaty, including the attributes and geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed;
  - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with the Treaty; and
  - c. Canada, British Columbia and all other persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, that Ditidaht / Pacheedaht may have to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent, from the Ditidaht / Pacheedaht Section 35 Rights set out in the Treaty.
- 1.13.6 Approval of this Agreement based on the modification technique does not preclude the Parties from reviewing a different certainty technique prior to

initialing the Treaty. Any agreement to a different technique may require changes to other provisions of the Treaty that may be affected.

#### **1.14.0    RELEASE OF PAST CLAIMS**

1.14.1    Ditidaht / Pacheedaht releases Canada, British Columbia and all other persons from all suits, claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that Ditidaht / Pacheedaht ever had, has or may have in the future, relating to or arising from any act or omission before the Effective Date that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of Ditidaht / Pacheedaht as it may have existed before the Effective Date.

#### **Indemnities**

1.14.2    Ditidaht / Pacheedaht indemnify and forever save harmless Canada or British Columbia, as the case may be, from any and all damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, claim, demand, action or proceeding initiated or made before or after the Effective Date, relating to or arising from:

- a. the existence of an aboriginal right, including aboriginal title, of Ditidaht / Pacheedaht that is determined to be other than, or different in attributes or geographical extent from, the Ditidaht / Pacheedaht Section 35 Rights set out in the Treaty; or
- b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of Ditidaht / Pacheedaht as it may have existed before Effective Date.

1.14.3    A Party who is the subject of a suit, claim, demand, action or proceeding that may give rise to a requirement to provide payment to that Party pursuant to an indemnity under the Treaty:

- a. will vigorously defend the suit, claim, demand, action or proceeding; and
- b. will not settle or compromise the suit, claim, demand, action or proceeding except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

## **Specific Claims**

- 1.14.4 Nothing in the Treaty precludes Ditidaht / Pacheedaht from pursuing any claims under Canada's Specific Claims Policy, in accordance with that policy, or the *Specific Claims Tribunal Act*, or in court other than any claim to which the release in 1.14.1 applies. For greater certainty, if Ditidaht / Pacheedaht pursues a specific claim in court, Canada reserves the right to plead all defenses available to it, including limitation periods, laches and lack of admissible evidence.
- 1.14.5 For greater certainty, claims referred to in 1.14.4 will not result in any land being declared to be, or being set aside as "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867*, for Ditidaht / Pacheedaht, or an Indian Reserve for the use and benefit of Ditidaht / Pacheedaht.

## **1.15.0 OTHER ABORIGINAL PEOPLES**

The Treaty will provide that:

- 1.15.1 Nothing in the Treaty affects, recognizes or provides any rights under Section 35 of the *Constitution Act, 1982* for any aboriginal people other than Ditidaht / Pacheedaht.
- 1.15.2 Where a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than Ditidaht / Pacheedaht, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of the Treaty:
  - a. that provision will operate and have effect to the extent it does not adversely affect that right; and
  - b. where the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend the Treaty to remedy or replace that provision.
- 1.15.3 Where Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with any other aboriginal people, and that treaty or land claims agreement adversely affects Ditidaht / Pacheedaht Section 35 Rights as set out in the Treaty, Canada or British Columbia, or both, as the case may be, will provide Ditidaht / Pacheedaht with additional or replacement rights or other appropriate remedies.

- 1.15.4 At the request of Ditidaht / Pacheedaht, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies contemplated by 1.15.3.
- 1.15.5 If the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies as contemplated by 1.15.4, the provision of those additional or replacement rights or remedies will be finally determined by arbitration.

## **1.16.0 PERIODIC REVIEW**

The Treaty will provide that:

- 1.16.1 The Parties recognize and acknowledge that the Treaty provides a foundation for an ongoing relationship amongst the Parties and commit to conducting Periodic Reviews.
- 1.16.2 At least 60 days before each Periodic Review Date, each Party will provide the other Parties with notice if it wishes to discuss a matter contemplated by 1.16.3 and if none of the Parties provide notice the Parties will forego engaging in a Periodic Review for that Review Period.
- 1.16.3 The purpose of each Periodic Review is to provide an opportunity for the Parties to meet and discuss:
  - a. the practicality of the harmonization of the Ditidaht / Pacheedaht legal and administrative systems, including law making authorities that are being exercised by Ditidaht / Pacheedaht under the Treaty, with those of Canada and British Columbia;
  - b. the practicality of processes established by the Parties in accordance with the Treaty; and
  - c. other matters with respect to the implementation of the provisions of the Treaty as the Parties may agree to in writing.
- 1.16.4 Unless the Parties otherwise agree, the discussion under 1.16.3 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period, and within 60 days of the end of that discussion each Party will provide the other Parties with its written response on any matter discussed during that Review Period.
- 1.16.5 Periodic Reviews and all discussions and information relating to the matter of a Periodic Review are without prejudice to the Parties' respective legal

positions, unless the Parties otherwise agree, and nothing made or done with respect to a Periodic Review, including the discussions or the Parties' responses, except for any amendments made pursuant to 1.16.7, creates any legally binding rights or obligations.

1.16.6 Except for the Parties' commitment to meet and provide written responses as set out in 1.16.4, neither a Periodic Review, nor the decisions and actions of the Parties relating in any way to Periodic Review are:

- a. subject to the process described in the Dispute Resolution Chapter; or
- b. reviewable by a court or in any other forum.

1.16.7 For greater certainty, none of the Parties is required to agree to amend the Treaty or any agreement contemplated by the Treaty as a result of a Periodic Review. Where the Parties agree to amend the Treaty, any such amendment will be made in accordance with the Amendment Chapter. Where the Parties agree to amend an agreement contemplated by the Treaty, it will be amended in accordance with its terms.

1.16.8 Each of the Parties will be responsible for their own costs relating to each Periodic Review.

## **1.17.0    INTERPRETATION**

The Treaty will provide that:

1.17.1 Except where the Treaty provides "notwithstanding any other provision of this Agreement", a provision of the General Provisions Chapter of the Treaty prevails to the extent of an inconsistency or Conflict with any other provision of the Treaty.

1.17.2 The Parties agree that they have a duty to act in good faith in the performance of the Treaty.

1.17.3 No agreement, plan, guideline or other document made or issued by a Party or Parties that is referred to in or contemplated by the Treaty, including an agreement that is reached as a result of negotiations that are required or permitted by the Treaty, is:

- a. part of the Treaty; or

- b. a treaty or land claims agreement, or recognizes or affirms aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 1.17.4 Where an authority of British Columbia referred to in the Treaty is delegated from Canada, the reference to British Columbia will be deemed to be a reference to Canada where:
- a. the delegation of that authority is revoked; or
  - b. a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid.
- 1.17.5 Where an authority of Canada referred to in the Treaty is delegated from British Columbia, the reference to Canada will be deemed to be a reference to British Columbia where:
- a. the delegation of that authority is revoked; or
  - b. a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid.
- 1.17.6 There will be no presumption that doubtful expressions, terms or provisions of the Treaty are to be resolved in favour of any Party.
- 1.17.7 Nothing in the Treaty will be construed as an admission or recognition by Canada or British Columbia as to the nature, scope or location of any aboriginal rights, including aboriginal title, of Ditidaht / Pacheedaht before the Effective Date.
- 1.17.8 In the Treaty:
- a. a reference to a statute or a regulation includes every amendment to it, every regulation made under that statute, any law enacted in substitution for it or in replacement of it;
  - b. the use of the singular includes the plural, and the use of the plural includes the singular;
  - c. headings and subheadings are for convenience only, do not form a part of the Treaty, and in no way define, limit, alter or enlarge the scope or meaning of any provision of the Treaty;

- d. a reference to a heading number or subheading number is a reference to the paragraphs under that heading or subheading, as applicable;
- e. a reference in a chapter to a “Schedule” means a schedule of that chapter;
- f. where applicable, a reference to an “Appendix” includes the authoritative version of a map or plan as set out in the Atlas;
- g. “or” is used in its inclusive sense, meaning A or B, or both A and B;
- h. “will” denotes an obligation that, unless the Treaty provides to the contrary, must be carried out as soon as practical after the Effective Date or the event that gives rise to the obligation;
- i. “may” is to be construed as permissive and empowering;
- j. “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- k. “harvest” includes an attempt to harvest and “gather” includes attempts to gather; and
- l. “provincial” refers to the province of British Columbia.

- 1.17.9 The Treaty will be made in English and French, and both versions of the Treaty are equally authoritative, in accordance with the *Official Languages Act*.
- 1.17.10 Notwithstanding 1.13.2, the Treaty is not binding on territories or provinces other than British Columbia on matters within their jurisdiction without their consent.
- 1.17.11 For greater certainty, nothing in the Treaty is intended to affect any aboriginal rights that Ditidaht / Pacheedaht may have in a foreign state.

## 1.18.0 **CONSULTATION**

- 1.18.1 The Treaty will provide that neither Canada nor British Columbia has any obligation to consult with Ditidaht / Pacheedaht except:

- a. as provided for in the Treaty;
- b. as may be provided for in Federal or Provincial Law;
- c. as may be provided for in an agreement with Ditidaht / Pacheedaht other than the Treaty; and

- d. as may be required at common law in relation to an infringement of a Ditidaht / Pacheedaht Section 35 Right.
- 1.18.2 The Treaty will provide that nothing in the Treaty, nor any action or authority taken, exercised or carried out by Canada or British Columbia in accordance with the Treaty, will be interpreted to be an infringement of a Ditidaht / Pacheedaht Section 35 Right.
- 1.18.3 Approval of this Agreement, based on the current consultation framework and definition, does not preclude the Parties from reviewing a different consultation framework and definition prior to initialing the Treaty. This review may include consideration of specific consultation processes or arrangements to meet the federal or provincial Crown's consultation obligations in respect of a particular type of Crown conduct contemplated by the Treaty. Any agreement to a different consultation framework and definition may require changes to other provisions of the Treaty that may be affected.

#### **1.19.0 INFORMATION AND PRIVACY**

The Treaty will provide that:

- 1.19.1 For the purposes of federal and provincial access to information and privacy legislation, information that Ditidaht / Pacheedaht provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
- 1.19.2 Where Ditidaht / Pacheedaht requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province, but Canada and British Columbia are not required to disclose to Ditidaht / Pacheedaht information that is only available to a particular province or particular provinces or that is not available to any province.
- 1.19.3 The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information in accordance with any applicable legislation, including federal and provincial access to information and privacy legislation.
- 1.19.4 Canada or British Columbia may provide information to Ditidaht / Pacheedaht in confidence if Ditidaht / Pacheedaht has made a law or Ditidaht / Pacheedaht has entered into an agreement with Canada or British Columbia,

as the case may be, under which the confidentiality of the information will be protected.

**1.19.5 Notwithstanding any other provision of the Treaty:**

- a. Canada and British Columbia are not required to disclose any information that they are required to or authorized to withhold under any Federal or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
- b. Where Federal or Provincial Law allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied; and
- c. the Parties are not required to disclose any information that may be withheld under a privilege at law.

**1.20.0 OBLIGATION TO NEGOTIATE**

The Treaty will provide that:

- 1.20.1 Whenever the Parties are obliged under any provision of the Treaty to negotiate and attempt to reach agreement, all Parties will participate in the negotiations, unless the Parties otherwise agree.
- 1.20.2 Whenever the Treaty provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as described in the Dispute Resolution Chapter, but the Parties, or any of them, are not obliged to proceed to Stage Three of the Dispute Resolution Chapter unless in a particular case, they are required to do so under 24.8.1.

**1.21.0 ENTIRE AGREEMENT**

The Treaty will provide that:

- 1.21.1 The Treaty is the entire agreement among the Parties in respect of the subject matter of the Treaty and, except as described in the Treaty, there is no representation, warranty, collateral agreement, condition, right or obligation affecting the Treaty.
- 1.21.2 The schedules and appendices to the Treaty, including, for greater certainty, the authoritative version of the maps and plans set out in the Atlas, form part of the Treaty.

**1.22.0 NO IMPLIED WAIVER**

The Treaty will provide that:

1.22.1 Any waiver of:

- a. a provision of the Treaty;
- b. the performance by a Party of an obligation under the Treaty; or
- c. a default by a Party of an obligation under the Treaty,

will be in writing and signed by the Party or Parties giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

**1.23.0 ASSIGNMENT**

The Treaty will provide that:

1.23.1 Unless otherwise agreed to by the Parties, the Treaty may not be assigned, either in whole or in part, by any Party.

**1.24.0 ENUREMENT**

The Treaty will provide that:

1.24.1 The Treaty enures to the benefit of and is binding upon the Parties and their respective permitted assigns.

**1.25.0 NOTICE**

The Treaty will provide that:

1.25.1 In 1.25.2 to 1.25.6, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.

1.25.2 Unless otherwise described in the Treaty, a communication between or among the Parties under the Treaty will be in writing and will be:

- a. delivered personally or by courier;
- b. transmitted by fax or electronic mail;
- c. mailed by any method for which confirmation of delivery is provided; or
- d. by such other means agreed to by the Parties.

- 1.25.3 A communication will be considered to have been given, made or delivered, and received:
- a. if delivered personally or by courier, on the next business day after the business day on which it was received by the addressee or a representative of the addressee;
  - b. if transmitted by fax or electronic mail and the sender receives confirmation of the transmission, on the business day next following the day on which confirmation was transmitted; or
  - c. if delivered by any method for which confirmation of delivery is provided, when receipt is acknowledged by the addressee.
- 1.25.4 The Parties may agree to give, make or deliver a communication by means other than those provided in 1.25.2.
- 1.25.5 The Parties will provide to each other addresses for delivery of communications under the Treaty and, subject to 1.25.6, will deliver a communication to the address provided by each Party.
- 1.25.6 Where no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered to, mailed to the address or transmitted to the fax number of, the intended recipient as set out below:

For: Canada

Attention: Minister of Crown-Indigenous Relations

House of Commons  
Room 583, Confederation Building  
Ottawa, Ontario  
K1A 0A6

Fax Number: (819) 953-4941

For: British Columbia

Attention: Minister of Indigenous Relations and Reconciliation

Room 310, Parliament Buildings  
PO Box 9052 Stn Prov Govt  
Victoria, British Columbia

V8W 9E2

Fax Number: (250) 356-6595

For: Ditidaht Nation

Attention: Chief Councillor

PO Box 340  
Port Alberni, British Columbia  
V9Y 7M8

Fax Number: (250) 745-3332

For: Pacheedaht Nation

Attention: Chief Councillor

General Delivery  
Port Renfrew, British Columbia  
V0S 1K0

Fax Number: (250) 647-5561

## CHAPTER 2 AMENDMENT

### 2.1.0 GENERAL

The Treaty will provide that:

- 2.1.1 Any Party may propose an amendment to the Treaty.
- 2.1.2 Before proceeding with an amendment to the Treaty under 2.1.1, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.
- 2.1.3 Except as provided for in 2.1.9 and 2.1.12, amendments to the Treaty under 2.1.1 require the consent of all Parties.
- 2.1.4 Where the Parties agree to amend the Treaty, they will determine the form and wording of the amendment, including additions, substitutions and deletions.
- 2.1.5 The Parties will provide consent to an amendment to the Treaty in the following manner:
  - a. Canada by order of the Governor-in-Council;
  - b. British Columbia by resolution of the Legislative Assembly of British Columbia; and
  - c. Ditidaht / Pacheedaht by a resolution adopted by at least two-thirds of the elected members of the Ditidaht / Pacheedaht Government.
- 2.1.6 Where federal or provincial legislation is required to give effect to an amendment to the Treaty, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.
- 2.1.7 Unless the Parties agree otherwise, an amendment to the Treaty takes effect once consent requirements under 2.1.5 are completed and any legislation required under 2.1.6, if applicable, has been brought into force.
- 2.1.8 Each Party will give notice to the other Parties when consent in accordance with 2.1.5 has been given and when any legislation referred to in 2.1.6, if applicable, has been brought into force.
- 2.1.9 Where the Treaty provides that the Parties will amend the Treaty upon the happening of an event:

- a. the requirements for consent referred to in 2.1.3 and 2.1.5 will not apply;
  - b. 2.1.7 will not apply;
  - c. as soon as practical of the happening of the event:
    - i. the Parties will take all steps necessary to conclude and give effect to the amendment including those steps referred to in 2.1.4 and, if applicable, 2.1.6; and
    - ii. each Party will provide notice to the other Parties when it has completed all of its respective requirements to conclude and give effect to the amendment; and
  - d. the amendment will take effect on the date agreed by the Parties, but if no date is agreed to, on the date that the last Party provides notice to the other Parties that it has completed all of its requirements to conclude and give effect to the amendment.
- 2.1.10 The Parties will take the necessary steps to implement an amendment to the Treaty as soon as practical after the amendment takes effect.
- 2.1.11 Amendments to the Treaty will be:
- a. published by Canada in the Canada Gazette;
  - b. published by British Columbia in the British Columbia Gazette; and
  - c. deposited by Ditidaht / Pacheedaht in the Ditidaht / Pacheedaht registry of laws as contemplated under the Treaty.
- 2.1.12 Notwithstanding 2.1.2 to 2.1.9:
- a. where the Treaty provides that:
    - i. any of the Parties will negotiate and attempt to reach agreement in respect of a matter that will result in an amendment to the Treaty, including a change to a schedule or an appendix, and
    - ii. if agreement is not reached, the matter will be finally determined by arbitration in accordance with the Dispute Resolution Chapter, and
  - b. those Parties have reached an agreement or the matter has been finally determined by arbitration;

the Treaty will be deemed to be amended on the date that the agreement or the decision of the arbitrator, as the case may be, takes effect.

2.1.13 In respect of amendments contemplated by 2.1.12 the applicable Parties will:

- a. provide notice to any Party that is not a party to the agreement reached or of any arbitrator's decision, as the case may be, referred to in 2.1.12; and
- b. agree on the form and wording of the amendment, including additions, substitutions and deletions.

2.1.14 In the case of an arbitrator's decision referred to in 2.1.12, if the Parties are unable to agree, the form and wording of the deemed amendment will be finally determined by the arbitrator.

## **2.2.0 ADDITIONAL PROVISIONS**

2.2.1 Before concluding the Treaty, the Parties will explore options for revising the amendment provisions of this chapter to include additional processes for amending the Treaty.

## CHAPTER 3 LANDS

### 3.1.0 GENERAL

3.1.1 The Treaty will provide that on the Effective Date, Ditidaht / Pacheedaht Lands consist of all lands set out in an appendix to the Treaty, including Subsurface Resources.

### 3.2.0 DITIDAHT LANDS

3.2.1 The Treaty will provide that on the Effective Date, Ditidaht Lands will consist of all lands set out in an appendix to the Ditidaht Treaty comprising:

- a. approximately 6,106.32 hectares as set out in Appendix A, including:
  - i. 751.32 hectares, more or less, of Former Ditidaht Indian Reserves;
  - ii. 1,453 hectares, more or less, in accordance with 3.2.3, of Ditidaht PRNPR Lands, excluding the foreshore; and
  - iii. 3,956 hectares, more or less, of former provincial Crown land.

3.2.2 In addition to the lands set out in 3.2.1, before concluding the Treaty, the Parties will discuss the inclusion of former private fee simple lands held by Ditidaht at the Effective Date as Ditidaht Lands.

3.2.3 Before concluding the Treaty, Canada and Ditidaht will negotiate the terms under which the Ditidaht PRNPR Lands may be included as Ditidaht Lands on the Effective Date, including:

- a. the financial contribution from Ditidaht for the acquisition of the Ditidaht PRNPR Lands;
- b. a 20 meter wide Right of Way for the West Coast Trail through the Ditidaht PRNPR Lands and through the Former Ditidaht Indian Reserves for as long as it is used for National Park purposes, at no cost, consistent with the existing West Coast Trail and West Coast Trail MOU; and
- c. the terms and applicable arrangements of any agreement between Canada and Ditidaht, including the side agreement contemplated by 22.12.1, addressing:

- i. any existing recovery strategies or action plans for identified species *under the Species at Risk Act*;
- ii. the commitment by Ditidaht to make reasonable efforts to ensure management and use of the Ditidaht PRNPR Lands in a manner that is reasonably compatible with ongoing management objectives of Pacific Rim National Park Reserve and which ensures access to, and hiker enjoyment of, the West Coast Trail; and
- iii. consultation between Canada and Ditidaht in relation to any uses of their respective lands that may have potential adverse impacts on Pacific Rim National Park Reserve, the West Coast Trail and Ditidaht Lands.

3.2.4 Before concluding the Treaty, Canada and Ditidaht will discuss potential dispositions of Timber Rights by Canada to Ditidaht and the consideration for such dispositions.

### **3.3.0 PACHEEDAHT LANDS**

3.3.1 The Treaty will provide that on the Effective Date, Pacheedaht Lands will consist of all lands set out in an appendix to the Pacheedaht Treaty compromising:

- a. approximately 1,896.9 hectares as set out in Appendix B, including:
  - i. 175.9 hectares, more or less, of Former Pacheedaht Indian Reserves;
  - ii. 128 hectares, more or less, in accordance with 3.3.3, of Pacheedaht PRNPR Lands; and
  - iii. 1,593 hectares, more or less, of former provincial Crown land.

3.3.2 In addition to the lands set out in 3.3.1, before concluding the Treaty, the Parties will discuss the inclusion of former private fee simple lands held by Pacheedaht at the Effective Date as Pacheedaht Lands.

3.3.3 Before concluding the Treaty, Canada and Pacheedaht will negotiate the terms under which the Pacheedaht PRNPR Lands may be included as Pacheedaht Lands on the Effective Date, including:

- a. the financial contribution from Pacheedaht for the acquisition of the Pacheedaht PRNPR Lands;
- b. the terms and applicable arrangements of any agreement between Canada and Pacheedaht, including the side agreement contemplated by 22.12.1, addressing consultation between Canada and Pacheedaht in relation to any uses of their respective lands that may have potential adverse impacts on Pacific Rim National Park Reserve, the West Coast Trail, and Pacheedaht Lands.

### **3.4.0      OWNERSHIP OF DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 3.4.1      On the Effective Date, Ditidaht / Pacheedaht owns Ditidaht / Pacheedaht Lands in fee simple, being the largest estate known in law, and, as the fee simple owner, has the right to use and enjoyment of Ditidaht / Pacheedaht Lands.
- 3.4.2      Ditidaht / Pacheedaht fee simple ownership of Ditidaht / Pacheedaht Lands is not subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act* or any comparable limitation under Federal or Provincial Law.
- 3.4.3      All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in respect of Ditidaht / Pacheedaht Lands.
- 3.4.4      If, at any time, any interest in Ditidaht / Pacheedaht Lands finally escheats to the Crown, the Crown will transfer, at no cost and without fee, that interest to the Ditidaht / Pacheedaht.

#### **Creation and Disposition of Ditidaht / Pacheedaht Lands**

- 3.4.5      Ditidaht / Pacheedaht may, in accordance with the Treaty and Ditidaht / Pacheedaht Law, dispose of its fee simple estate or any lesser estate in any parcel of Ditidaht / Pacheedaht Lands without the consent of Canada or British Columbia.
- 3.4.6      Where Ditidaht / Pacheedaht disposes of its fee simple interest in a parcel of Ditidaht / Pacheedaht Lands, that parcel does not cease to be Ditidaht / Pacheedaht Lands, except as provided in 3.14.18, as may be agreed upon

between British Columbia and Ditidaht / Pacheedaht in accordance with 3.12.2, or with the consent of Canada and British Columbia under 3.4.8.

- 3.4.7 Where Ditidaht / Pacheedaht wishes to dispose of a fee simple estate in a parcel of its Ditidaht / Pacheedaht Lands, it will, prior to the disposition, register indefeasible title to that parcel under the *Land Title Act* and in accordance with the Treaty.
- 3.4.8 Ditidaht / Pacheedaht may remove a parcel of land from Ditidaht / Pacheedaht Lands with the consent of Canada and British Columbia.
- 3.4.9 In considering whether to consent to the removal of a parcel of land from Ditidaht / Pacheedaht Lands, Canada and British Columbia may consider:
- a. necessary jurisdictional, administrative and servicing arrangements;
  - b. the views of any affected Local Governments and neighbouring First Nations;
  - c. whether the removal of the land will have an impact on fiscal arrangements negotiated between Ditidaht / Pacheedaht and Canada or British Columbia;
  - d. whether the removal of the land will have any legal or financial implications for Canada or British Columbia; or
  - e. any other matter that Canada or British Columbia consider relevant.
- 3.4.10 If Canada and British Columbia consent to the removal of a parcel of land from Ditidaht / Pacheedaht Lands under 3.4.8, then on Ditidaht's / Pacheedaht's receipt of Canada and British Columbia's notice of consent:
- a. Ditidaht / Pacheedaht will register the parcel of land in the Land Title Office, if it is not registered;
  - b. the parcel will cease to be Ditidaht / Pacheedaht Lands; and
  - c. the applicable appendix will be amended in accordance with the process set out in 2.1.9.

### **3.5.0      SUBMERGED LANDS**

The Treaty will provide that:

- 3.5.1 Subject to 3.5.2 and 3.5.3, Submerged Lands do not form part of Ditidaht / Pacheedaht Lands and nothing in the Treaty affects British Columbia's ownership of Submerged Lands.
- 3.5.2 Submerged Lands which are part of Former Ditidaht Indian Reserves and Ditidaht PRNPR Lands form part of the Ditidaht Lands.
- 3.5.3 Submerged Lands which are part of Former Pacheedaht Indian Reserves form part of the Pacheedaht Lands.
- 3.5.4 Ditidaht / Pacheedaht ownership of Submerged Lands does not include:
  - a. property rights in fish;
  - b. the exclusive right to fish; or
  - c. the right to allocate fish.
- 3.5.5 British Columbia will not authorize any use, disposition, or transfer of administration and control in Submerged Lands identified in an appendix to the Treaty which are wholly contained within Ditidaht / Pacheedaht Lands without the consent of Ditidaht / Pacheedaht, which consent will not be unreasonably withheld.
- 3.5.6 3.5.5 does not affect the riparian rights of the upland owners of Ditidaht / Pacheedaht Lands adjacent to Submerged Lands.
- 3.5.7 Before the Effective Date, Ditidaht / Pacheedaht and British Columbia will discuss a foreshore agreement which would provide Ditidaht / Pacheedaht with law making authority over Submerged Lands adjacent to or wholly contained within Ditidaht / Pacheedaht Lands.

### **3.6.0 ACCRECTIONS TO DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 3.6.1 Ditidaht / Pacheedaht will own lawful accretions to Ditidaht / Pacheedaht Lands.
- 3.6.2 Where Ditidaht / Pacheedaht provides to Canada and British Columbia a certificate issued by the Surveyor General of British Columbia confirming that there has been lawful accretion to Ditidaht / Pacheedaht Lands, upon receipt of the certificate by Canada and British Columbia, the accreted land will

become Ditidaht / Pacheedaht Lands and the appropriate appendix will be amended in accordance with the process set out in the 2.1.9.

### **3.7.0 EXTERIOR BOUNDARY SURVEYS**

The Treaty will provide that:

- 3.7.1 Before the Effective Date, the Parties will determine the need for any exterior boundary surveys of Ditidaht / Pacheedaht Lands, and the timing, order and priority of any such surveys.
- 3.7.2 Canada and British Columbia will, as agreed between them, pay the costs of any exterior boundary surveys of Ditidaht / Pacheedaht Lands.

### **3.8.0 INTERESTS ON DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 3.8.1 On the Effective Date, title to Ditidaht / Pacheedaht Lands is free and clear of all interests, except for those interests on:
  - a. Former Ditidaht Indian Reserves / Former Pacheedaht Indian Reserves which will be replaced on the Effective Date, including:
    - i. certificates of possession;
    - ii. any residential leases or subleases; and
    - iii. any utility permits, encroachment agreements or other similar interests;
    - iv. the Timber Rights, subject to the outcome of discussions under 3.2.4; and
    - v. any Rights of Way or similar interests;
  - b. former provincial Crown land which will be replaced on the Effective Date;
  - c. Ditidaht / Pacheedaht Lands which will continue in accordance with Provincial Law and with their terms and conditions on the Effective Date, modified where appropriate to reflect ownership of the lands by Ditidaht / Pacheedaht; and

- d. Ditidaht / Pacheedaht Lands that will be created on the Effective Date, including the Right of Way for the West Coast Trail through the Ditidaht PRNPR Lands and through the Former Ditidaht Indian Reserves.
- 3.8.2 Subject to 3.8.1, every interest that, before the Effective Date, encumbered or applied to Ditidaht / Pacheedaht Lands ceases to exist.
- 3.8.3 On the Effective Date, Ditidaht / Pacheedaht will execute documents to:
  - a. grant or issue a replacement interest to each person referred to in 3.8.1.a and 3.8.1.b; and
  - b. create and grant or issue a new interest to each person referred to in 3.8.1.d.
- 3.8.4 For the purposes of 3.8.1.a.i, an individual to whom Ditidaht / Pacheedaht issues an interest in accordance with 3.8.3 has substantially the same right to possess the described parcel of Ditidaht / Pacheedaht Lands as the individual had as the holder of the certificate of possession under the *Indian Act* immediately before the Effective Date, modified to reflect the law making authority of Ditidaht / Pacheedaht over such lands and ownership of such lands by Ditidaht / Pacheedaht in accordance with this Agreement.
- 3.8.5 A document referred to in 3.8.3 will be in the applicable form and will include any modifications agreed upon in writing before the Effective Date by Ditidaht / Pacheedaht and the person entitled to the interest.
- 3.8.6 A document referred to in 3.8.3 is deemed to have legal effect on the Effective Date as though it had been prepared, executed and delivered by Ditidaht / Pacheedaht and by the applicable person on that date.
- 3.8.7 After the Effective Date, Ditidaht / Pacheedaht will deliver the applicable document:
  - a. to each person entitled to the document referred to in 3.8.3; or
  - b. to any other person who, before the Effective Date, was identified by the Parties as the person who should instead receive the replacement interest for any reason including death, any form of transfer, error or operation of law.
- 3.8.8 For the purposes of 3.8.7.b, the Parties will amend the applicable appendix in accordance with 2.1.9 to reflect the correction.

- 3.8.9 Where, following the Effective Date, Canada or British Columbia notifies Ditidaht / Pacheedaht that an interest granted in accordance with 3.8.3:
- a. is in the name of a person who was not entitled to the interest on the Effective Date; or
  - b. contains a clerical error or a wrong description of a material fact,
- the appropriate Parties will take reasonable measures to rectify the error.
- 3.8.10 Any right of way of the nature described in Section 218 of the *Land Title Act* that is granted by Ditidaht / Pacheedaht under the Treaty is legally binding and enforceable notwithstanding that the Ditidaht / Pacheedaht Lands to which the right of way relates are not subject to the *Land Title Act*.
- 3.8.11 If, after the Effective Date, BC Hydro and Power Authority or Telus Communications Inc. is requested by Ditidaht / Pacheedaht to construct facilities for the provision of electrical or telecommunications services on Ditidaht / Pacheedaht Lands, Ditidaht / Pacheedaht will grant or issue to BC Hydro and Power Authority and Telus Communications Inc. an Interest for such facilities on terms substantially the same as the distribution Right of Way set out in the Treaty.

### **3.9.0 INDEMNITY AND CONFIRMATION**

The Treaty will provide that:

- 3.9.1 British Columbia will indemnify and forever save harmless Ditidaht / Pacheedaht from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Ditidaht / Pacheedaht may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of:
- a. the omission from 3.8.1 of the name of a person who, on the day before the Effective Date, had an interest in Ditidaht / Pacheedaht Lands that had been granted by British Columbia; or
  - b. the incorrect naming of a person in 3.8.1 as a person entitled to an interest, where another person was actually entitled, on the day before the Effective Date, to the interest in Ditidaht / Pacheedaht Lands that had been granted by British Columbia.

- 3.9.2 For greater certainty, Ditidaht / Pacheedaht does not release Canada from any damages, losses, liability or costs that Canada may otherwise be liable for before the Effective Date in relation to:
- a. the omission in 3.8.1.a of the name of an individual who, immediately before the Effective Date, had an interest in or certificate of possession in respect of a Former Ditidaht Indian Reserve / Former Pacheedaht Indian Reserve; or
  - b. the incorrect naming of an individual in 3.8.1.a as an individual entitled to an interest or certificate of possession where another individual was actually entitled, immediately before the Effective Date, to the interest or the certificate of possession in respect of a Former Ditidaht Indian Reserve / Former Pacheedaht Indian Reserve that had been granted by Canada.

### **3.10.0 SITE REMEDIATION ON DITIDAHT / PACHEEDAHT LANDS**

- 3.10.1 The Treaty will provide that transfer of the Former Ditidaht Indian Reserves / Former Pacheedaht Indian Reserves to Ditidaht / Pacheedaht in accordance with the Treaty will not, in and of itself, result in British Columbia being liable in respect of any contamination as defined in the *Environmental Management Act* of such lands.
- 3.10.2 Before concluding the Treaty, the Parties will address issues related to contaminated sites and site remediation specific to the Doobah Cedar Lands transferred in fee simple to Ditidaht.
- 3.10.3 Nothing in the Treaty precludes Ditidaht / Pacheedaht from recovering from British Columbia or any other person who may be determined to be a responsible person under the *Environmental Management Act*, the costs incurred in the inspection or remediation of any contaminated sites as defined in the *Environmental Management Act* on former provincial Crown lands.

### **3.11.0 ADDITIONS TO DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

#### **General**

- 3.11.1 At any time after the Effective Date and with the agreement of Canada and British Columbia, Ditidaht / Pacheedaht may add parcels of land to Ditidaht / Pacheedaht Lands which are:
- a. owned in fee simple by Ditidaht / Pacheedaht or a Ditidaht / Pacheedaht Citizen, Ditidaht / Pacheedaht Public Institution or Ditidaht / Pacheedaht Corporation and such owner provides written consent; and
  - b. within the Ditidaht / Pacheedaht Area.
- 3.11.2 In addition to the requirements under 3.11.1:
- a. Canada will consider a request to add the parcel to Ditidaht / Pacheedaht Lands if the parcel is in an area free from overlap with another First Nation or, if within an area of overlap with another First Nation, that other First Nation provides written consent;
  - b. British Columbia will consider a request to add the parcel to Ditidaht / Pacheedaht Lands if the parcel is in an area outside of the boundaries of a municipality incorporated under the *Local Government Act* or, if within the boundaries of a municipality, that municipality provides written consent; and
  - c. Canada and British Columbia, acting reasonably, may take into account other matters that Canada or British Columbia consider relevant.
- 3.11.3 Ditidaht / Pacheedaht will own the Subsurface Resources on lands that are added to Ditidaht / Pacheedaht Lands if:
- a. the fee simple title includes ownership of the Subsurface Resources; or
  - b. British Columbia owns the Subsurface Resources.
- 3.11.4 Canada and British Columbia will notify Ditidaht / Pacheedaht once a decision has been made under 3.11.1 and, if Canada and British Columbia agree to the addition of the parcel to Ditidaht / Pacheedaht Lands, the Parties will amend the appropriate appendix in accordance with 2.1.9 to reflect the addition of the land to Ditidaht / Pacheedaht Lands.

### **Pre-Approved Additions**

- 3.11.5 Before concluding the Treaty the Parties will negotiate pre-approved additions to Ditidaht / Pacheedaht Lands.

### **Continuation of Interests**

- 3.11.6 A parcel of land added to Ditidaht / Pacheedaht Lands in accordance with 3.11.1 and 3.11.5 continues to be subject to any interest existing immediately before the parcel of land becomes Ditidaht / Pacheedaht Lands, unless the holder of such interest otherwise agrees in writing.
- 3.11.7 For greater certainty, Ditidaht / Pacheedaht ownership of Subsurface Resources is subject to any Subsurface Tenures existing immediately before the acquisition of the parcel of land by Ditidaht / Pacheedaht and those Subsurface Tenures continue to be administered by British Columbia in accordance with the Subsurface Resources Chapter.

### **Other Matters**

- 3.11.8 Unless otherwise agreed by the Parties, nothing in 3.11.1 obligates Canada or British Columbia to pay any costs associated with the survey, registration and transfer of any parcel of land added to Ditidaht / Pacheedaht Lands.
- 3.11.9 For greater certainty, Canada is not required to assume financial or other obligations in respect of any addition to Ditidaht / Pacheedaht Lands made in accordance with 3.11.1 and 3.11.6.

### **3.12.0 PROVINCIAL EXPROPRIATION OF DITIDAHT / PACHEEDAHT LANDS**

- 3.12.1 The Treaty will provide that British Columbia and Ditidaht / Pacheedaht agree that as a general principle Ditidaht / Pacheedaht Lands will not be expropriated.
- 3.12.2 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will finalize the application and procedural requirements for proposed expropriations of Ditidaht / Pacheedaht Lands by a Provincial Expropriating Authority, including timeframes and informational requirements.
- 3.12.3 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will discuss the inclusion of a cap on expropriation of Ditidaht / Pacheedaht Lands.

### **3.13.0 CONSULTATION FOR FEDERAL EXPROPRIATION**

- 3.13.1 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will explore options, either in the context of a review contemplated by 1.18.3 or otherwise, for addressing Ditidaht / Pacheedaht interests in having specific pre-expropriation consultation processes and arrangements.

### **3.14.0 FEDERAL EXPROPRIATION OF DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 3.14.1 Canada and Ditidaht / Pacheedaht agree that as a general principle, Ditidaht / Pacheedaht Lands will not be subject to expropriation, except as set out in this chapter.
- 3.14.2 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will discuss the application of certain Treaty provisions related to federal expropriation of Ditidaht / Pacheedaht Lands that are not held by:
  - a. a Ditidaht / Pacheedaht Citizen;
  - b. a Ditidaht / Pacheedaht Corporation;
  - c. the Ditidaht / Pacheedaht Government; or
  - d. a Ditidaht / Pacheedaht Public Institution.
- 3.14.3 Notwithstanding 3.14.29, any interest in Ditidaht / Pacheedaht Lands may be expropriated by a Federal Expropriating Authority in accordance with Federal Law and with the consent of the Governor-in-Council, and in accordance with the provisions of this chapter.
- 3.14.4 The Governor-in-Council may consent to an expropriation of an interest in Ditidaht / Pacheedaht Lands if the expropriation is justifiable in accordance with 3.14.6 and necessary for a public purpose.
- 3.14.5 For greater certainty, for the purposes of 3.14.4, an expropriation is necessary for a public purpose if it is authorized by Federal Law.
- 3.14.6 For the purposes of 3.14.4, an expropriation is justifiable where the Governor-in-Council is satisfied that the following requirements have been met:
  - a. no other reasonably feasible alternative land to acquire that is not Ditidaht / Pacheedaht Lands;
  - b. reasonable efforts have been made by the Federal Expropriating Authority to acquire the interest in Ditidaht / Pacheedaht Lands through agreement with Ditidaht / Pacheedaht;

- c. the most limited interest in Ditidaht / Pacheedaht Lands necessary for the purpose for which the interest in land is sought is expropriated; and
  - d. information relevant to the expropriation, other than documents that would be protected from disclosure pursuant to Federal Law, has been provided to Ditidaht / Pacheedaht.
- 3.14.7 Prior to the Governor-in-Council issuing an order consenting to the expropriation of an interest in Ditidaht / Pacheedaht Land, the Federal Expropriating Authority will provide to Ditidaht / Pacheedaht, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements set out in 3.14.6.
- 3.14.8 Where Ditidaht / Pacheedaht objects to a proposed expropriation of an interest in Ditidaht / Pacheedaht Lands, it may, within 60 days after the report has been provided to Ditidaht / Pacheedaht in accordance with 3.14.7, by providing notice in writing to the Federal Expropriating Authority, refer the matter for review of the steps taken to satisfy the requirements set out in 3.14.6 directly to neutral evaluation under Stage Two of the Dispute Resolution Chapter.
- 3.14.9 The Federal Expropriating Authority may not seek Governor-in-Council consent to the expropriation of an interest in Ditidaht / Pacheedaht Land before the expiration of the period referred to in 3.14.8 or, if Ditidaht / Pacheedaht has referred the matter to a neutral evaluator in accordance with 3.14.8, before the neutral evaluator has delivered an opinion on the matter, such opinion to be rendered within 60 days of the referral being made or within such additional time as the parties may agree.
- 3.14.10 Without limiting the generality of the Dispute Resolution Chapter, the opinion of the neutral evaluator under 3.14.9:
- a. is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and Ditidaht / Pacheedaht in court or in any other forum;
  - b. will not be admissible in any legal proceedings, unless otherwise required by law; and
  - c. is not binding on the Governor-in-Council under 3.14.4 and 3.14.6.
- 3.14.11 Where a fee simple interest in a parcel of Ditidaht / Pacheedaht Land is expropriated by a Federal Expropriating Authority, the Federal Expropriating

Authority will make reasonable efforts to identify replacement land within the Ditidaht / Pacheedaht Area, being either Crown land or land available on a willing-seller willing-buyer basis, of equivalent or greater size and comparable value, including in respect of cultural interests of Ditidaht / Pacheedaht, and, if acceptable to Ditidaht / Pacheedaht, to acquire and offer the replacement land to Ditidaht / Pacheedaht as partial or full compensation for the expropriation. If the Federal Expropriating Authority and Ditidaht / Pacheedaht are unable to agree on the provision of replacement land as compensation, the Federal Expropriating Authority will provide Ditidaht / Pacheedaht with other compensation in accordance with the Treaty.

- 3.14.12 Subject to 3.14.15, if the replacement land identified by the Federal Expropriating Authority would result in the total size of Ditidaht / Pacheedaht Land being less than at the Effective Date and Ditidaht / Pacheedaht does not agree that the replacement land is of comparable value to the interest in Ditidaht / Pacheedaht Land being expropriated, Ditidaht / Pacheedaht may refer the issue of whether the replacement land is of comparable value to the interest in Ditidaht / Pacheedaht Land being expropriated to be finally determined by arbitration under the Dispute Resolution Chapter.
- 3.14.13 The total value of compensation for an interest in Ditidaht / Pacheedaht Land expropriated by a Federal Expropriating Authority pursuant to this chapter will be determined by taking into account the following factors:
- a. the market value of the expropriated interest or of the Ditidaht / Pacheedaht Land in which an interest has been expropriated;
  - b. the replacement value of any improvement to the Ditidaht / Pacheedaht Land in which an interest has been expropriated;
  - c. any expenses or losses resulting from the disturbance directly attributable to the expropriation;
  - d. any reduction in the value of any interest in Ditidaht / Pacheedaht Land that is not expropriated which directly relates to the expropriation;
  - e. any adverse effect on any cultural or other special value of Ditidaht / Pacheedaht Land in which an interest has been expropriated to Ditidaht / Pacheedaht, provided that:
    - i. the cultural or other special value is only applied to an interest in Ditidaht / Pacheedaht Land recognized in law and held by Ditidaht / Pacheedaht, and

- ii. there will be no increase in the total value of compensation on account of any Aboriginal rights, title or interest; and
  - f. the value of any special economic advantage arising out of or incidental to the occupation or use of the Ditidaht / Pacheedaht Land by Ditidaht / Pacheedaht to the extent that the value is not otherwise compensated.
- 3.14.14 Subject to 3.14.15, if the total value of compensation cannot be agreed upon between the Federal Expropriating Authority and Ditidaht / Pacheedaht, or where there is disagreement on whether the combination of replacement land and cash is equal to the total value of compensation, the Federal Expropriating Authority or Ditidaht / Pacheedaht may refer the issue of the total value of compensation for dispute resolution under the Dispute Resolution Chapter.
- 3.14.15 A dispute on the valuation of replacement land under 3.14.12, or on the total value of compensation under 3.14.14, or on the terms and conditions of the return of land under 3.14.26, will not delay the expropriation.
- 3.14.16 Any claim or encumbrance in respect of the interest expropriated by a Federal Expropriating Authority may only be made or discharged against the amount of compensation payable under 3.14.13.
- 3.14.17 Interest is payable on compensation from the effective date of an expropriation at the interest rate payable in accordance with Federal Law.
- 3.14.18 Where a Federal Expropriating Authority expropriates or otherwise acquires a fee simple interest in a parcel of Ditidaht / Pacheedaht Land, the land will no longer be Ditidaht / Pacheedaht Land when the expropriation takes effect and the applicable appendix will be amended in accordance with the process set out in 2.1.9.
- 3.14.19 Where a Federal Expropriating Authority expropriates less than a fee simple interest in a parcel of Ditidaht / Pacheedaht Land:
- a. the parcel of land retains its status as Ditidaht / Pacheedaht Land;
  - b. the parcel of land remains subject to Ditidaht / Pacheedaht Laws that are otherwise applicable, except to the extent that such laws interfere with the use of the parcel of land for which the expropriation took place; and

- c. Ditidaht / Pacheedaht may continue to use and occupy the parcel of land, except to the extent the use or occupation is inconsistent with the expropriation in the view of the Federal Expropriating Authority.
- 3.14.20 Canada and British Columbia will consent to replacement land, transferred by a Federal Expropriating Authority to Ditidaht / Pacheedaht as part of the compensation in accordance with 3.14.11 being added to Ditidaht / Pacheedaht Land where:
- a. the replacement land is located in an area that does not overlap with an area over which another First Nation claims a legal interest or which is subject to treaty negotiations with another First Nation, except where the other First Nation in those cases consents to the addition; and
  - b. the addition of replacement land to Ditidaht / Pacheedaht will not result in Canada or British Columbia being required to assume financial or other obligations.
- 3.14.21 Where an expropriated interest in a parcel of Ditidaht / Pacheedaht Land is no longer required for the purpose for which it was expropriated, the federal department, agency or other entity, or its successors or assigns, who holds the expropriated interest, will ensure that the interest in land is returned to Ditidaht / Pacheedaht on the terms and conditions negotiated in accordance with 3.14.26.
- 3.14.22 Where a fee simple interest in a parcel of land is returned to Ditidaht / Pacheedaht in accordance with 3.14.21, the parcel of land will become Ditidaht / Pacheedaht Land on the date of the transfer of the fee simple interest in the parcel of land to Ditidaht / Pacheedaht.
- 3.14.23 If a parcel of Ditidaht / Pacheedaht Land is no longer Ditidaht / Pacheedaht Land under 3.14.18, or where replacement lands are added to Ditidaht / Pacheedaht Land under 3.14.20 or where land is returned to Ditidaht / Pacheedaht under 3.14.21, the relevant appendix to the Treaty will be amended in accordance with the process set out in the General Provisions Chapter.
- 3.14.24 The consent of the Governor-in-Council is not required to give effect to a reversion under 3.14.21, and the federal department, agency or other entity who holds the expropriated interest will determine the disposition of any improvements made to the land in a manner consistent with the agreement reached pursuant to 3.14.26 or the outcome of an arbitration under 3.14.27.

- 3.14.25 Ditidaht / Pacheedaht agrees that the return of an interest in Ditidaht / Pacheedaht Land in accordance with 3.14.21 will not result in Canada or British Columbia assuming financial or other obligations, unless agreed to in writing at the time of the expropriation.
- 3.14.26 At the time of the expropriation, Ditidaht / Pacheedaht and the Federal Expropriation Authority will negotiate the terms and conditions of the return of an expropriated interest in Ditidaht / Pacheedaht Land, including:
- a. requirements relating to financial considerations based on market value principles;
  - b. the condition of the land to be returned; and
  - c. the process for resolving any disputes around the implementation of these terms and conditions.
- 3.14.27 Where the terms and conditions of the return of an expropriated interest in Ditidaht / Pacheedaht Land cannot be agreed upon by Ditidaht / Pacheedaht and the Federal Expropriating Authority at the time of the expropriation, either Ditidaht / Pacheedaht or the Federal Expropriating Authority may refer the issue to be finally determined by arbitration under the Dispute Resolution Chapter.
- 3.14.28 Except as otherwise provided in 3.14.8, 3.14.12 and 3.14.27, no conflict or dispute between the Parties respecting the interpretation, application or implementation of this chapter will go to dispute resolution under the Dispute Resolution Chapter.
- 3.14.29 For greater certainty, and subject to 3.14.30, except to the extent that the provisions of this chapter modify the application of Federal Law relating to expropriation to an expropriation of Ditidaht / Pacheedaht Land, all Federal Law relating to expropriation applies to an expropriation of Ditidaht / Pacheedaht Land under this chapter.
- 3.14.30 Without limiting the generality of 1.10.1, in the event of an inconsistency between the Treaty and the federal *Expropriation Act* or other Federal Law relating to the expropriation, the provisions of the Treaty will prevail to the extent of the inconsistency.

### **3.15.0    LAW MAKING**

The Treaty will provide that:

- 3.15.1    Ditidaht / Pacheedaht may make laws in respect of:
- a. the use of the Ditidaht / Pacheedaht Lands including management, planning, zoning and development;
  - b. the creation, allocation, ownership and disposition of estates or interests in Ditidaht / Pacheedaht Lands including:
    - i. fee simple estates or any lesser estate or interest;
    - ii. mortgages;
    - iii. leases, licences, permits, easements and Rights of Way, including Rights of Way and covenants similar to those in sections 218 and 219 of the *Land Title Act*, and
    - iv. any conditions, provisos, restrictions, including restrictions on alienation, exceptions or reservations on such estates or interests;
  - c. the establishment and operation of a Ditidaht / Pacheedaht land title or land registry system for the Ditidaht / Pacheedaht Lands that are not registered in the Land Title Office;
  - d. expropriation for public purposes and public works by Ditidaht / Pacheedaht of estates or interests in the Ditidaht / Pacheedaht Lands other than:
    - i. estates or interests granted or continued on the Effective Date, or replaced after the Effective Date unless specifically provided for otherwise in the Treaty;
    - ii. estates or interests expropriated by a Federal Expropriating authority or a Provincial Expropriating authority or otherwise acquired by Canada or British Columbia; and
    - iii. any other interests upon which the Parties have agreed in the Treaty,
- if Ditidaht / Pacheedaht provides fair compensation to the owner of the estate or interest and expropriation is of the smallest estate or interest necessary for the public purpose or public work.
- 3.15.2    Notwithstanding 3.15.1.d.i, Ditidaht / Pacheedaht may expropriate for public purposes and public works a fee simple estate or a lesser interest in a fee

simple estate granted under 3.8.1.a.i where Ditidaht / Pacheedaht provides fair compensation to the owner of the interest and the expropriation is for the smallest interest necessary for the public purpose or public work.

- 3.15.3 Subject to 4.6.4, Ditidaht / Pacheedaht Law under 3.15.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 3.15.4 For purposes of 3.15.1.a, Ditidaht / Pacheedaht may establish administrative procedures for evaluating proposed developments on Ditidaht / Pacheedaht Lands, including the environmental effects of the developments.
- 3.15.5 For the purposes of 3.15.1.b, Ditidaht / Pacheedaht may make laws with respect to estates or interests in Ditidaht / Pacheedaht Lands that are:
  - a. not recognized under Federal or Provincial Law; or
  - b. recognized under Federal or Provincial Law provided that they are consistent with Federal or Provincial Law with respect to those estates or interests.
- 3.15.6 For greater certainty, a Ditidaht / Pacheedaht Law under 3.15.1.b.iv in respect of a fee simple estate granted under 3.8.3.a is not inconsistent with common law principles.

### **3.16.0 OTHER LAND RELATED MATTERS**

#### **Doobah Cedar Lands**

- 3.16.1 The Doobah Cedar Lands will form part of Ditidaht Lands on the Effective Date if, before the conclusion of the Treaty, Canada, British Columbia and Ditidaht have reached agreement on provisions to protect the Doobah Cedar Lands.

#### **Windsurfer Camp Lands**

- 3.16.2 The Windsurfer Camp Lands will form part of Ditidaht Lands on the Effective Date subject to the conditions that Ditidaht:
  - a. will permit public access to the Windsurfer Camp Lands in accordance with the Access Chapter; and
  - b. will not designate Windsurfer Camp Lands as Ditidaht Private Lands within the meaning of the Treaty without the consent of British Columbia.

### **Gus Bay and Daykins Bay Lands**

3.16.3 Before concluding the Treaty, British Columbia and Ditidaht will discuss with Canada if a restrictive covenant on the Gus Bay and Daykins Bay Lands is required and, if required, the terms and conditions of the restrictive covenant.

### **Old Growth and Wildlife Management**

3.16.4 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will determine if there is a shared interest in protecting existing old growth management areas and wildlife habitat areas on lands that have been identified as potential Ditidaht / Pacheedaht Lands and, where there is, the values that will be protected.

### **Recreation Sites**

3.16.5 Before concluding the Treaty, British Columbia and Pacheedaht will discuss:

- a. options for an agreement outlining how camping opportunities and recreation values will be maintained at the Fairy Lake recreation site; and
- b. the inclusion as Pacheedaht Land of the portion of the Lizard Lake recreation site that was not included in the land and cash proposal dated October 23, 2018.

### **Pacheedaht Sawmill Site**

3.16.6 British Columbia and Pacheedaht understand that the Pacheedaht sawmill site may be contaminated and will, before the conclusion of the Treaty, conduct further research to determine the suitability of transferring the lands to Pacheedaht as Pacheedaht Lands.

## CHAPTER 4 LAND TITLE

### 4.1.0 FEDERAL TITLE REGISTRATION

The Treaty will provide that:

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

### 4.2.0 REGISTRATION OF INDEFEASIBLE TITLE AND INTEREST ON EFFECTIVE DATE

The Treaty will provide that:

#### 4.2.1 On the Effective Date:

- a. indefeasible title in the name of Ditidaht / Pacheedaht to those parcels of Ditidaht / Pacheedaht Lands set out in an appendix to the Treaty;
- b. an indefeasible title in the name of Ditidaht / Pacheedaht to Other Ditidaht / Pacheedaht Lands set out in an appendix to the Treaty; and
- c. the interests referred to in the Treaty, unless that interest holder has agreed in writing that the interest does not need to be granted;

will be transferred, registered or will remain registered in the Land Title Office in accordance with the Treaty and the requirements of the *Land Title Act*.

### 4.3.0 REGISTRATION OF INDEFEASIBLE TITLE AND INTEREST AFTER EFFECTIVE DATE

The Treaty will provide that:

- 4.3.1 After the Effective Date, indefeasible title in the name of Ditidaht / Pacheedaht to those parcels of Ditidaht / Pacheedaht Lands described in the Treaty that were not registered on the Effective Date will be surveyed and registered in accordance with a protocol agreed to by Ditidaht / Pacheedaht and British Columbia.

### 4.4.0 PRIORITY OF REGISTRATION OF INTERESTS

- 4.4.1 The Treaty will identify the order of priority for the registration of the instruments and rights of way applicable to a parcel of land registered under 4.2.1 and 4.3.1.
- 4.4.2 Upon the request of the Parties and with the appointee's agreement, each holder of an interest referred to in 4.4.1 may irrevocably appoint Ditidaht / Pacheedaht, Canada or British Columbia, as applicable, as its agent for the purpose of making such changes to the instruments, whether executed or not, as may be necessary in order to ensure that the instruments are in registrable form.

#### **4.5.0 LAND TITLE FEES**

The Treaty will provide that:

- 4.5.1 Canada and Ditidaht / Pacheedaht are exempt from registration and survey fees in accordance with section 34 of Schedule 1 of the *Land Title Act* and section 109.1 of the *Land Act* as in effect on the date of initialing of the Treaty and in respect of:
  - a. the first registration of indefeasible title to, or first registration of the first transfer of any lands which are transferred by British Columbia to Ditidaht / Pacheedaht where British Columbia is returning an expropriated interest to Ditidaht / Pacheedaht in accordance with the process set out in the Lands Chapter; or
  - b. the first registration of indefeasible title to, or first registration of the first transfer of any lands which are transferred by Canada to Ditidaht / Pacheedaht under 3.14.21.

#### **4.6.0 APPLICATION OF THE LAND TITLE SYSTEM**

The Treaty will provide that:

- 4.6.1 The *Land Title Act* applies to all parcels of Ditidaht / Pacheedaht Lands:
  - a. registered on the Effective Date under this Agreement; or
  - b. for which Ditidaht / Pacheedaht applies for registration under that Act in accordance with the Treaty, from the time of application and until the application has been withdrawn or rejected, or the indefeasible title is cancelled.

- 4.6.2 The *Land Title Act* does not apply to a parcel of Ditidaht / Pacheedaht Lands for which:
- a. no application has been made under that Act in accordance with the Treaty for the registration of an indefeasible title;
  - b. an application has been made under that Act in accordance with the Treaty for the registration of an indefeasible title and that application has been withdrawn or rejected; or
  - c. the indefeasible title under that Act has been cancelled in accordance with the Treaty.
- 4.6.3 No title adverse to, or in derogation of, the title of the registered owner of a parcel of Ditidaht / Pacheedaht Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply in respect of Ditidaht / Pacheedaht Lands.
- 4.6.4 Notwithstanding 3.15.3, where the *Land Title Act* applies to a parcel of Ditidaht / Pacheedaht Lands, that Act prevails to the extent of a Conflict with Ditidaht / Pacheedaht Law under 3.15.1 in respect of that parcel.
- 4.6.5 When the *Land Title Act* applies to Ditidaht / Pacheedaht Lands:
- a. the jurisdiction of Ditidaht / Pacheedaht is not diminished, except to the extent set out in this Agreement;
  - b. the powers, rights, privileges, capacities, duties and obligations of Ditidaht / Pacheedaht under this Agreement in respect of Ditidaht / Pacheedaht Lands under that Act are analogous to those of the Crown in relation to Crown land or a Local Government in relation to Local Government lands under that Act; and
  - c. the status and treatment of Ditidaht / Pacheedaht Lands under that Act are analogous to that of municipal lands or rural area, as the case may be, under that Act.

**4.7.0 APPLICATION FOR REGISTRATION OF INDEFEASIBLE TITLE AND INTERESTS**

The Treaty will provide:

- 4.7.1     Ditidaht / Pacheedaht and no other person, may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of Ditidaht / Pacheedaht Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of Ditidaht / Pacheedaht or on behalf of another person.

## CHAPTER 5 SUBSURFACE RESOURCES

### 5.1.0 GENERAL

The Treaty will provide that:

- 5.1.1 Ditidaht / Pacheedaht owns all Subsurface Resources on or beneath the surface of Ditidaht / Pacheedaht Lands.
- 5.1.2 Subject to 5.2.8, Ditidaht / Pacheedaht, as an owner of Subsurface Resources, has the authority to set, collect and receive fees, rents, royalties and other charges, except taxes, for exploration, development, extraction and production of Subsurface Resources owned by Ditidaht / Pacheedaht.
- 5.1.3 Ditidaht / Pacheedaht and British Columbia may enter into agreements for management and administration by British Columbia of new tenures granted by Ditidaht / Pacheedaht for Subsurface Resources owned by Ditidaht / Pacheedaht.
- 5.1.4 For greater certainty, nothing in the Treaty confers authority on Ditidaht / Pacheedaht to make laws in respect of the exploration for, development, production, use or application of, nuclear energy and atomic energy or the production, possession or use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment and prescribed information.
- 5.1.5 Nothing in the Treaty confers authority on Ditidaht / Pacheedaht to make laws in respect of:
  - a. spacing and target areas related to Petroleum and Natural Gas and Geothermal Resources, or conservation or allocation of Petroleum and Natural Gas and Geothermal Resources among parties having interests in the same reservoir;
  - b. Subsurface Tenures and Subsurface Resources subject to Subsurface Tenures; or
  - c. occupational health and safety and labour standards, in respect of Subsurface Resource exploration, development, production, extraction and site reclamation.
- 5.1.6 Notwithstanding 3.15.3, Federal or Provincial Law regarding Subsurface Resources prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 3.15.1.

## 5.2.0 SUBSURFACE TENURES

The Treaty will provide that:

- 5.2.1 For greater certainty, Ditidaht / Pacheedaht ownership of Subsurface Resources described in 5.1.1 is subject to the applicable Subsurface Tenures listed in an appendix to the Treaty.
- 5.2.2 The Subsurface Tenures:
  - a. continue in accordance with Provincial Law and the Treaty; and
  - b. are administered by British Columbia in accordance with Provincial Law and the Treaty as if the Subsurface Resources were vested in or reserved to British Columbia.
- 5.2.3 In administering the Subsurface Resources subject to Subsurface Tenures, British Columbia may grant, as necessary, any related extensions, renewals, continuations or replacements and issue any further rights as the Subsurface Resources subject to Subsurface Tenures are developed.
- 5.2.4 British Columbia will monitor the Subsurface Tenures on the lands which, on the Effective Date, will become Ditidaht / Pacheedaht Lands and, before the Treaty is concluded, will advise Ditidaht / Pacheedaht of any change in the status of the Subsurface Tenures, and should any Subsurface Tenure remain on the ground, discuss with Ditidaht / Pacheedaht any requirement for Consultation before granting a *Mines Act* permit.
- 5.2.5 British Columbia acknowledges that as part of the discussion under 5.2.4, Ditidaht / Pacheedaht intends to raise the requirement for Ditidaht / Pacheedaht consent for the development of existing Subsurface Tenures on Ditidaht / Pacheedaht Land.
- 5.2.6 British Columbia will:
  - a. ensure that any rents or royalties applicable to Subsurface Resources subject to Subsurface Tenures that British Columbia would have been entitled to receive after the Effective Date if those Subsurface Resources were owned by British Columbia, and any interest earned on those rents and royalties, will be paid to Ditidaht / Pacheedaht; and
  - b. retain any fees, charges or other payments for administrative purposes applicable to Subsurface Resources subject to Subsurface Tenures under Provincial Law.

- 5.2.7 British Columbia will notify Ditidaht / Pacheedaht before changing or eliminating any rents or royalties applicable to the Subsurface Resources subject to Subsurface Tenures.
- 5.2.8 Ditidaht / Pacheedaht does not have the authority to establish fees, rents, royalties, or other charges, in relation to the exploration, development, extraction or production of Subsurface Resources subject to Subsurface Tenures.
- 5.2.9 Ditidaht / Pacheedaht Lands are treated as private lands under Provincial Law respecting Subsurface Resources subject to Subsurface Tenures for the purposes of determining access rights and compensation rights associated with any proposed entrance, occupation or use of the surface by holders of Subsurface Tenures.
- 5.2.10 For greater certainty, any disagreements between holders of Subsurface Tenures and owners of Ditidaht / Pacheedaht Lands respecting entrance, occupation or use of an area of Ditidaht / Pacheedaht Lands may be resolved under Provincial Law.
- 5.2.11 Where a Subsurface Tenure listed in the appendix to the Treaty is forfeited, cancelled or expires and is not restored under Provincial Law, the Subsurface Resources and the Ditidaht / Pacheedaht Lands are no longer subject to that Subsurface Tenure.

## CHAPTER 6 ACCESS

### 6.1.0 DITIDAHT'S / PACHEEDAHT'S RIGHTS AND OBLIGATIONS

The Treaty will provide that:

#### 6.1.1 Except as modified by the Treaty:

- a. Ditidaht / Pacheedaht, as owner of Ditidaht / Pacheedaht Lands, has the same rights and obligations with respect to public access to Ditidaht / Pacheedaht Lands as other owners of estates in fee simple have with respect to public access to their land; and
- b. with respect to unoccupied Ditidaht / Pacheedaht Public Lands, Ditidaht / Pacheedaht has liabilities comparable to those of the provincial Crown with respect to unoccupied provincial Crown land.

#### 6.1.2 Ditidaht / Pacheedaht has reasonable access to provincial Crown lands to allow for the exercise of Ditidaht's / Pacheedaht's Section 35 Rights, including use of resources for purposes incidental to the normal exercise of those rights, provided that such access and incidental use of resources are in accordance with Federal or Provincial Law.

### 6.2.0 DESIGNATION OF DITIDAHT / PACHEEDAHT PRIVATE LANDS

The Treaty will provide that:

#### 6.2.1 On the Effective Date, the Ditidaht / Pacheedaht Lands identified for illustrative purposes as "Subject Lands" in an appendix to the Treaty are designated as Ditidaht / Pacheedaht Private Lands.

#### 6.2.2 Ditidaht / Pacheedaht may designate portions of its Ditidaht / Pacheedaht Lands as Ditidaht / Pacheedaht Private Lands where:

- a. Ditidaht / Pacheedaht has granted an interest comparable to an interest granted by British Columbia on provincial Crown lands that excludes public access; or
- b. the Ditidaht / Pacheedaht Lands are used for commercial, cultural, resource development or other uses that are incompatible with public access.

6.2.3 Where Ditidaht / Pacheedaht intends to designate its Ditidaht / Pacheedaht Lands as Ditidaht / Pacheedaht Private Lands in accordance with 6.2.2, Ditidaht / Pacheedaht will:

- a. provide reasonable notice to Canada, British Columbia, and the public of the proposed designation; and
- b. consider any views advanced by Canada, British Columbia, or the public in respect of the proposed designation.

6.2.4 Where Ditidaht / Pacheedaht intends to change the locations or boundaries of Ditidaht / Pacheedaht Private Land, it will:

- a. provide reasonable notice to Canada, British Columbia, and the public of the proposed changes; and
- b. consider any views advanced by Canada, British Columbia, or the public in respect of the proposed changes.

6.2.5 Where the designation of Ditidaht / Pacheedaht Public Lands as Ditidaht / Pacheedaht Private Lands has the effect of preventing public access to an area or location to which there is a public right of access under Federal or Provincial Law such as navigable waters or Crown roads, Ditidaht / Pacheedaht will provide reasonable alternative means of public access to that area or location.

6.2.6 For greater certainty, 6.2.5 will not apply where British Columbia and Ditidaht / Pacheedaht agree that a reasonable alternative means of public access to an area or location to which a public right of access under Federal or Provincial Law across provincial Crown land already exists.

6.2.7 Ditidaht / Pacheedaht Lands described as Ditidaht / Pacheedaht Public Lands in an appendix to the Treaty may not be designated by Ditidaht / Pacheedaht as Ditidaht / Pacheedaht Private Lands without the consent of British Columbia.

### **6.3.0 PUBLIC ACCESS**

The Treaty will provide that:

6.3.1 Ditidaht / Pacheedaht will allow reasonable public access on Ditidaht / Pacheedaht Public Lands for temporary recreational uses and temporary non-commercial purposes, including reasonable opportunities for the public to hunt and fish on Ditidaht / Pacheedaht Public Lands.

- 6.3.2 Any hunting or fishing on Ditidaht / Pacheedaht Public Lands by the public will be in accordance with Federal and Provincial Law.
- 6.3.3 Public access to Ditidaht / Pacheedaht Public Lands does not include:
- a. harvesting or extracting resources unless authorized by Ditidaht / Pacheedaht or as in accordance with the Treaty;
  - b. causing damage to Ditidaht / Pacheedaht Lands or resources on Ditidaht / Pacheedaht Lands;
  - c. causing nuisance or mischief; or
  - d. interfering with other uses authorized by Ditidaht / Pacheedaht or interfering with the ability of Ditidaht / Pacheedaht to authorize uses or dispose of Ditidaht / Pacheedaht Lands.
- 6.3.4 For greater certainty, public access contemplated by 6.3.1 will be in accordance with applicable Ditidaht / Pacheedaht Law regulating public access to Ditidaht / Pacheedaht Lands.
- 6.3.5 The Treaty does not affect the public right of navigation.

#### **DITIDAHT / PACHEEDAHT PUBLIC ACCESS PERMITS**

The Treaty will provide that:

- 6.4.1 For the purpose of monitoring and regulating public access under 6.3.1, Ditidaht / Pacheedaht may require persons other than Ditidaht / Pacheedaht Citizens to obtain a permit or licence or to sign a waiver.
- 6.4.2 Ditidaht / Pacheedaht will make any permits, licences or waivers which may be required under 6.4.1 reasonably available at a reasonable fee, taking into account the administrative and other costs of monitoring and regulating public access.
- 6.5.0 **NOTICE OF TERMS AND CONDITIONS IN RESPECT OF PUBLIC ACCESS**

The Treaty will provide that:

- 6.5.1 Ditidaht / Pacheedaht will take reasonable measures to notify the public of the terms and conditions respecting public access on Ditidaht / Pacheedaht Public Lands, including any requirements under 6.4.1.

## **6.6.0      LAW MAKING**

The Treaty will provide that:

- 6.6.1      Ditidaht / Pacheedaht may make laws regulating public access on Ditidaht / Pacheedaht Lands for the purpose of:
- a. prevention of harvesting or extracting of resources owned by Ditidaht / Pacheedaht; and
  - b. protection of Ditidaht / Pacheedaht Heritage Sites.
- 6.6.2      Ditidaht / Pacheedaht Law under 6.6.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 6.6.3      Ditidaht / Pacheedaht may make laws regulating public access on Ditidaht / Pacheedaht Lands for the purpose of:
- a. public safety;
  - b. prevention of nuisance or damage, including forest fire prevention; and
  - c. protection of sensitive habitat.
- 6.6.4      Federal or Provincial Law prevails to the extent of a Conflict with Ditidaht / Pacheedaht Law under 6.6.3.
- 6.6.5      Ditidaht / Pacheedaht will notify Canada and British Columbia in respect of a proposed Ditidaht / Pacheedaht Law that would significantly affect public access on Ditidaht / Pacheedaht Public Lands.

## **6.7.0      CROWN ACCESS TO DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 6.7.1      Agents, employees, contractors, subcontractors and other representatives of Canada, British Columbia, Local Governments, Public Utilities, NAV Canada and any successor entity, members of the Canadian Armed Forces and members of foreign armed forces authorized by Canada and working with the Canadian Armed Forces, and peace officers or investigators appointed under Federal or Provincial Law, may, in accordance with Federal or Provincial Law, enter, cross and stay temporarily on Ditidaht / Pacheedaht Lands at no cost to:
- a. deliver and manage programs and services;

- b. carry out inspections;
  - c. enforce laws;
  - d. carry out the terms of the Treaty;
  - e. respond to emergencies and natural disasters; and
  - f. carry out other duties under Federal and Provincial Law.
- 6.7.2 Any access under 6.7.1 will be in accordance with Federal or Provincial Law, including the payment of compensation for any damage to Ditidaht / Pacheedaht Lands where required by Federal or Provincial Law.
- 6.7.3 The Treaty does not affect the ability of individuals acting in an official capacity pursuant to lawful authority to have access to Ditidaht / Pacheedaht Lands.
- 6.7.4 The Treaty does not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security in accordance with Federal Law.
- 6.7.5 Where, at any time, a Railway runs through or adjacent to Ditidaht / Pacheedaht Lands, 6.7.1 shall be read to also apply to agents, employees, contractors and other representatives of a Railway.

#### **6.8.0 DITIDAHT / PACHEEDAHT ACCESS TO CROWN LANDS**

The Treaty will provide that:

- 6.8.1 Agents, employees, and contractors of Ditidaht / Pacheedaht may, in accordance with Federal and Provincial Law and the terms of any uses authorized by the Crown, enter, cross and stay temporarily on lands off Ditidaht / Pacheedaht Land, at no cost to:
- a. deliver and manage programs and services;
  - b. carry out inspections;
  - c. enforce laws;
  - d. respond to emergencies and natural disasters; and
  - e. carry out the terms of the Treaty.
- 6.8.2 Any person exercising a right of access in accordance with 6.8.1 will act in accordance with Federal or Provincial Law, including the payment of

compensation for any damage to provincial Crown lands if required by Federal or Provincial Law.

- 6.8.3 If an authorized use or disposition of provincial Crown land would deny Ditidaht / Pacheedaht reasonable access to Ditidaht / Pacheedaht Lands, British Columbia will provide Ditidaht / Pacheedaht with reasonable alternative means of access to Ditidaht / Pacheedaht Lands and such alternative access will not result in Ditidaht / Pacheedaht incurring any additional cost or liability as a result of the use of that alternative access.

**6.9.0 ACCESS TO TENURES ON AND ADJACENT TO DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 6.9.1 Ditidaht / Pacheedaht will allow reasonable access on or across Ditidaht / Pacheedaht Lands, at no cost, to the interests listed in an appendix to the Treaty, consistent with the terms and conditions of those interests.

**6.10.0 ACCESS TO ESTATES IN FEE SIMPLE**

The Treaty will provide that:

- 6.10.1 Ditidaht / Pacheedaht will allow reasonable access on or across Ditidaht / Pacheedaht Lands, at no cost, to fee simple estates listed in an appendix to the Treaty, consistent with terms and conditions of those interests.
- 6.10.2 For greater certainty, nothing in 6.9.1 and 6.10.1 obligates Ditidaht / Pacheedaht to pay any costs associated with access to a tenure or fee simple estate referred to in 6.9.1 or 6.10.1.

## **CHAPTER 7 ROADS AND CROWN CORRIDORS**

### **7.1.0 CROWN CORRIDORS**

The Treaty will provide that:

- 7.1.1 Crown Corridors identified in an appendix to the Treaty are owned by British Columbia and will be excluded from Ditidaht / Pacheedaht Lands.
- 7.1.2 British Columbia will consult with Ditidaht / Pacheedaht regarding new uses or major road construction within Crown Corridors adjacent to Ditidaht / Pacheedaht Lands.

### **7.2.0 ENTRY ON LANDS**

The Treaty will provide that:

- 7.2.1 In addition to the provisions of the Access Chapter, British Columbia, a Public Utility, a Railway, or a Local Government, and its respective employees, agents, contractors or representatives may enter, cross and stay temporarily on Ditidaht / Pacheedaht Lands, at no cost, for the purpose of undertaking works, including:
  - a. constructing drainage works;
  - b. carrying out repairs;
  - c. maintaining slope stability;
  - d. removing dangerous Timber or other hazards; or
  - e. carrying out vegetation management,

where this is necessary for constructing, operating, maintaining, repairing, replacing, removing or protecting Crown Corridors, Public Utilities, Railways or Local Government works that are located on or adjacent to Ditidaht / Pacheedaht Lands.

- 7.2.2 Unless otherwise agreed to by Ditidaht / Pacheedaht, Timber removed from Ditidaht / Pacheedaht Lands in accordance with 7.2.1 remains the property of Ditidaht / Pacheedaht.
- 7.2.3 Before commencing any work referred to in 7.2.1, British Columbia, a Public Utility, a Railway or a Local Government will:

- a. provide notice to Ditidaht / Pacheedaht of its intention to carry out work;
  - b. where requested by Ditidaht / Pacheedaht, deliver a work plan to Ditidaht / Pacheedaht describing the effect and extent of the proposed work on those Ditidaht / Pacheedaht Lands for approval, which approval will not be unreasonably withheld; and
  - c. in the event that Ditidaht / Pacheedaht raises concerns regarding the timing of the work to be carried out, the Parties will seek to address those concerns prior to entering on Ditidaht / Pacheedaht Lands.
- 7.2.4 Where, within 30 days of the delivery of a work plan delivered in accordance with 7.2.3, Ditidaht / Pacheedaht does not approve the content of the work plan, either British Columbia or Ditidaht / Pacheedaht may refer the Disagreement to be finally determined by arbitration in accordance with the Dispute Resolution Chapter without having to proceed through Stages One and Two.
- 7.2.5 Notwithstanding any other provision of the Treaty, British Columbia, a Public Utility or a Local Government may undertake works and take steps on Ditidaht / Pacheedaht Lands that are urgently required in order to protect works constructed on Crown Corridors or municipal roads, or to protect individuals or vehicles using Crown Corridors or municipal roads.
- 7.2.6 British Columbia, a Public Utility, a Railway or a Local Government will notify Ditidaht / Pacheedaht that it has undertaken works on Ditidaht / Pacheedaht Lands in accordance with 7.2.5.
- 7.2.7 In undertaking works referred to in 7.2.1, British Columbia, a Public Utility, a Railway or a Local Government and its respective employees, agents, contractors or representatives undertaking the work will minimize the damage to and time spent on Ditidaht / Pacheedaht Lands, and will pay compensation for any interference with or damage to Ditidaht / Pacheedaht Lands that results from the works.
- 7.2.8 British Columbia or Ditidaht / Pacheedaht may refer a Disagreement in respect of compensation to be paid in accordance with 7.2.7 to be finally determined by arbitration in accordance with the Dispute Resolution Chapter without having to proceed through Stages One and Two.
- 7.2.9 7.2.7 is subject to the terms of any grant issued by Ditidaht / Pacheedaht to British Columbia, a Public Utility, a Railway or a Local Government.

7.2.10 For greater certainty, nothing in 7.2.7 obligates Ditidaht / Pacheedaht to pay any costs when British Columbia, a Public Utility, a Railway or a Local Government and the employees, agents, contractors or representatives of any of them enter on, cross over and stay temporarily on, Ditidaht / Pacheedaht Lands, including Ditidaht / Pacheedaht Roads, for the purpose of undertaking works.

### **7.3.0 PUBLIC UTILITIES**

The Treaty will provide that:

- 7.3.1 Ditidaht / Pacheedaht will issue grants to Public Utilities identified in an appendix to the Treaty on Ditidaht / Pacheedaht Lands.
- 7.3.2 With the prior written approval of Ditidaht / Pacheedaht, a Public Utility may extend or locate and install new works on Ditidaht / Pacheedaht Lands on substantially the same terms and conditions as contained in an appendix to the Treaty where extended or new works are necessary to meet demand for service on or off Ditidaht / Pacheedaht Lands.
- 7.3.3 Ditidaht / Pacheedaht will not unreasonably withhold approval for works referred to in 7.3.2.
- 7.3.4 Nothing in 7.3.2 requires a Public Utility to obtain the approval of Ditidaht / Pacheedaht for usual service extensions or connections to Public Utility works or to deliver and manage service to customers of a Public Utility.
- 7.3.5 Ditidaht / Pacheedaht Laws will not apply to the regulation of the business of a Public Utility, or the planning, development, construction, repair, maintenance, operation or decommissioning of a Public Utility's authorized works.
- 7.3.6 Without affecting the generality of 7.3.5, Ditidaht / Pacheedaht Laws and Ditidaht's / Pacheedaht's use or occupation of Ditidaht / Pacheedaht Lands will not impair or frustrate:
  - a. a Public Utility's authorized use or occupation of a Public Utility Right of Way or the Public Utility's works located on a Public Utility Right of Way; or
  - b. a Public Utility's authorized use or occupation of Ditidaht / Pacheedaht Lands or the Public Utility's works located on Ditidaht / Pacheedaht Lands.

- 7.3.7 Public Utility Rights of Way established after the Effective Date on or adjacent to Ditidaht / Pacheedaht Lands will be subject to the provisions of the Treaty.
- 7.3.8 Where a Public Utility is a Provincial Expropriating Authority, the Public Utility will have the right to use and occupy the expropriated interest or estate on substantially the same terms and conditions as contained in an appendix to the Treaty.

#### **7.4.0 CROWN CORRIDORS NO LONGER REQUIRED**

The Treaty will provide that:

- 7.4.1 Where a Crown Corridor adjacent to Ditidaht / Pacheedaht Lands is closed and no longer required for road, highway or Public Utility purposes, British Columbia will provide Ditidaht / Pacheedaht with a right of first refusal to obtain, at no cost, that portion of the land, including Subsurface Resources if owned by British Columbia.
- 7.4.2 The Parties acknowledge the importance to Ditidaht of a public highway access between Lake Cowichan and Nitinah Lake and agree to discuss at Ditidaht's request any proposals Ditidaht may have regarding such access.
- 7.4.3 Upon Ditidaht / Pacheedaht acquiring land under 7.4.1, Ditidaht / Pacheedaht may request the addition of the land to Ditidaht / Pacheedaht Land in accordance with the Lands Chapter.

#### **7.5.0 REALIGNMENT OF CROWN CORRIDORS**

The Treaty will provide that:

- 7.5.1 British Columbia may request that a portion of a Crown Corridor be realigned onto Ditidaht / Pacheedaht Lands and if:
- a. the new alignment is reasonably suitable for use as a Crown Corridor;
  - b. British Columbia pays all reasonable costs associated with decommissioning that portion of the Crown Corridor; and
  - c. British Columbia and Ditidaht / Pacheedaht reach agreement on the value of the land exchange,

then Ditidaht / Pacheedaht will not unreasonably refuse to provide its consent to the realignment.

- 7.5.2 Where Ditidaht / Pacheedaht requires a portion of a Crown Corridor for another purpose, Ditidaht / Pacheedaht may request that a portion of a Crown Corridor be realigned, and if:
- a. the new alignment is reasonably suitable for use as a corridor of a comparable standard considering construction, maintenance, operation, and costs;
  - b. British Columbia and Ditidaht / Pacheedaht reach agreement on the value of the land exchange; and
  - c. Ditidaht / Pacheedaht pays all reasonable costs, including costs of design, planning, supervision, land, and construction,

then British Columbia will not unreasonably refuse to undertake the realignment.

- 7.5.3 Where a Crown Corridor is realigned as a result of a consent provided by Ditidaht / Pacheedaht or British Columbia in accordance with 7.5.1 or 7.5.2:
- a. any portion of a Crown Corridor transferred to Ditidaht / Pacheedaht will cease to be a Crown Corridor and will become Ditidaht / Pacheedaht Lands; and
  - b. any Ditidaht / Pacheedaht Lands transferred to British Columbia will cease to be Ditidaht / Pacheedaht Lands and will become a Crown Corridor,

and, upon any such transfer, the applicable appendices in the Treaty will be amended in accordance with the Amendment Chapter to reflect the relocation of the Crown Corridor, and the change in the status of the lands will occur when the amendment takes effect.

## 7.6.0 ROADS

The Treaty will provide that:

- 7.6.1 Ditidaht / Pacheedaht Roads are part of Ditidaht / Pacheedaht Lands.
- 7.6.2 Ditidaht / Pacheedaht Roads are administered, controlled and maintained by Ditidaht / Pacheedaht.
- 7.6.3 Ditidaht / Pacheedaht is responsible for the maintenance and repair of Ditidaht / Pacheedaht Roads.

7.6.4 Subject to the terms of the Treaty, Ditidaht / Pacheedaht Roads are open to the public unless designated otherwise by Ditidaht / Pacheedaht.

## **7.7.0 CONSULTATION REGARDING TRAFFIC REGULATION**

The Treaty will provide that:

7.7.1 Upon Ditidaht's / Pacheedaht's request, British Columbia will consult with Ditidaht / Pacheedaht in respect of the regulation of traffic and transportation on a Provincial Road adjacent to a developed area on Ditidaht / Pacheedaht Lands.

## **7.8.0 ACCESS AND SAFETY REGULATION**

The Treaty will provide that:

7.8.1 Nothing in the Treaty limits the authority of British Columbia to regulate all matters relating to:

- a. the location and design of intersecting Ditidaht / Pacheedaht Roads giving access to Crown Corridors from Ditidaht / Pacheedaht Lands, including:
  - i. regulating or requiring signs, signals, or other traffic control devices;
  - ii. regulating or requiring merging lanes, on ramps and off ramps; or
  - iii. requiring contributions to the cost of the matters referred to in 7.8.1.a.i and 7.8.1.a.ii; and
- b. the height and location of structures on Ditidaht / Pacheedaht Lands immediately adjacent to Crown Corridors, but only to the extent reasonably required to protect the safety of the users of Crown Corridors.

7.8.2 British Columbia will provide Ditidaht / Pacheedaht with any licence, permit or approval required under Provincial Law to join or cross a Provincial Road with a Ditidaht / Pacheedaht Road if:

- a. the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and

- b. the intersecting Ditidaht / Pacheedaht Road complies with standards established under Provincial Law for equivalent Provincial Roads.
- 7.8.3     Ditidaht / Pacheedaht will consult with British Columbia on any access or public safety issue associated with land use decisions relating to the development of Ditidaht / Pacheedaht Lands adjacent to Crown Corridors.

## CHAPTER 8 WATER

### 8.1.0 GENERAL

- 8.1.1 The Treaty will provide that on the Effective Date, British Columbia will establish in favour of Ditidaht / Pacheedaht:
- a. a water reservation for those streams set out in the Treaty; and
  - b. a volume of groundwater for those aquifers located under Ditidaht / Pacheedaht Lands set out in the Treaty.
- 8.1.2 The Treaty will provide that where British Columbia and Ditidaht / Pacheedaht fail to agree on a water reservation or volume of groundwater before the Effective Date, the dispute will, after the Effective Date, be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stages One and Two.
- 8.1.3 The Treaty will address the terms of water use, including the purposes for which water may be used and the relationship of laws.
- 8.1.4 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will discuss consultation requirements related to provincial decisions which may reduce the supply of water to water sources to which Ditidaht / Pacheedaht water reservations apply.

## CHAPTER 9 FORESTRY

### 9.1.0 FOREST RESOURCES ON DITIDAHT / PACHEEDAHT LANDS

- 9.1.1 The Treaty will provide that Ditidaht / Pacheedaht owns the Forest Resources on Ditidaht / Pacheedaht Lands.
- 9.1.2 The Treaty will provide that Ditidaht / Pacheedaht, as owner, has exclusive authority to determine, collect and administer any fees, rents or other charges, except taxes, relating to the harvesting of Forest Resources on Ditidaht / Pacheedaht Lands.
- 9.1.3 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will negotiate a right for Ditidaht / Pacheedaht to harvest Crown Timber for Domestic Purposes in accordance with the Treaty and a domestic Timber harvest agreement.

### 9.2.0 LAW MAKING

The Treaty will provide that:

- 9.2.1 Ditidaht / Pacheedaht may make laws in respect of Forest Resources, Forest Practices and Range Practices on Ditidaht / Pacheedaht Lands.
- 9.2.2 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 9.2.1.

### 9.3.0 MANUFACTURE AND EXPORT OF TIMBER RESOURCES

The Treaty will provide that:

- 9.3.1 Timber Resources harvested from Ditidaht / Pacheedaht Lands are not subject to any requirement under Provincial Law for use or manufacturing in British Columbia.
- 9.3.2 Ditidaht / Pacheedaht, or a person authorized by Ditidaht / Pacheedaht, may export Logs harvested from Ditidaht / Pacheedaht Lands in accordance with Federal Law and policy.

### 9.4.0 TIMBER MARKING AND SCALING

The Treaty will provide that:

- 9.4.1 Nothing in the Treaty confers authority on Ditidaht / Pacheedaht to make laws applicable to Timber marks, Timber marking or Timber scaling.

#### **9.5.0 FOREST AND RANGE HEALTH**

The Treaty will provide that:

- 9.5.1 Where Canada or British Columbia becomes aware of insects, diseases, invasive plants, animals or abiotic factors on federal or provincial Crown lands that may threaten the health of Forest Resources on Ditidaht / Pacheedaht Lands, Canada or British Columbia, as the case may be, will notify Ditidaht / Pacheedaht.
- 9.5.2 Where Ditidaht / Pacheedaht becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Ditidaht / Pacheedaht Lands that may threaten the health of Forest Resources on federal or provincial Crown lands, it will notify Canada or British Columbia, as the case may be.
- 9.5.3 Following notification under 9.5.1 or 9.5.2, the applicable Parties will use reasonable efforts to reach agreement on an appropriate response to address the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources on Ditidaht / Pacheedaht Lands or federal or provincial Crown lands.
- 9.5.4 For greater, certainty nothing in the Treaty limits the application of Federal or Provincial Law in relation to the health of Forest Resources.

#### **9.6.0 WILDFIRE SUPPRESSION AND CONTROL ON DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

- 9.6.1 On the Effective Date the Parties will enter into a Wildfire Suppression Agreement that will set out how the Parties will share the costs incurred by British Columbia for wildfire control on Ditidaht / Pacheedaht Lands for wildfires that originate on Ditidaht / Pacheedaht Lands.
- 9.6.2 Subject to the terms of the Wildfire Suppression Agreement, and subject to 9.6.3 and 9.6.7, Provincial Law in respect of the protection of resources from wildfire and wildfire prevention and control applies to Ditidaht / Pacheedaht Lands as private lands.

- 9.6.3 Subject to the limitations on the scope of Ditidaht's / Pacheedaht's responsibility to pay wildfire control costs set out in the Wildfire Suppression Agreement, Ditidaht / Pacheedaht is responsible for one third of the costs incurred by British Columbia for wildfire control on Ditidaht / Pacheedaht Lands for wildfires that originate on such lands.
- 9.6.4 If Ditidaht / Pacheedaht caused or contributed to the start or spread of any wildfire due to its own negligence or willful misconduct, Ditidaht's / Pacheedaht's responsibility for costs is not limited by 9.6.3.
- 9.6.5 Ditidaht / Pacheedaht will not be responsible under 9.6.3 for wildfire control costs incurred by British Columbia on Ditidaht / Pacheedaht Lands if Canada or British Columbia caused or contributed to the start or spread of that wildfire due to the willful misconduct of Canada or British Columbia.
- 9.6.6 For greater certainty, the responsibility of Ditidaht / Pacheedaht under 9.6.3 for the costs incurred by British Columbia for wildfire control does not include the responsibility for any costs associated with wildfire control off Ditidaht / Pacheedaht Lands.
- 9.6.7 British Columbia will respond to a wildfire originating on Ditidaht / Pacheedaht Lands on the same priority basis as for provincial Crown lands and in accordance with any priorities as set by the Minister.
- 9.6.8 For the purpose of 9.6.1:
- a. unless terminated at the written request of Ditidaht / Pacheedaht, the Wildfire Suppression Agreement remains in effect between Ditidaht / Pacheedaht and British Columbia, on the same terms, subject to those terms that Ditidaht / Pacheedaht and British Columbia negotiate on a periodic basis; and
  - b. Canada's participation in the Wildfire Suppression Agreement is limited to assuming a share of costs under the Wildfire Suppression Agreement for a period of 10 years commencing on the Effective Date.
- 9.6.9 Subject to any cost-sharing arrangement which may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided pursuant to land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time in respect of Canada's continuing participation in the Wildfire Suppression Agreement following the 10 year period referred to in 9.6.8.b.

- 9.6.10 Nothing in 9.6.1 or 9.6.3 limits the ability of any Party to pursue legal action against third parties.
- 9.6.11 At the request of Ditidaht / Pacheedaht, or in accordance with Provincial Law, British Columbia may enter onto Ditidaht / Pacheedaht Lands and assist in the provision of, or carry out, wildfire control.

## **9.7.0      THIRD PARTY RIGHTS AND FULFILLMENT OF OBLIGATIONS**

The Treaty will provide that:

- 9.7.1 British Columbia will ensure that on the Effective Date, any portion of:
- a. any agreement under the *Forest Act* or *Range Act*, and
  - b. any plan, permit or authorization associated with any agreement under the *Forest Act* or *Range Act*,
- that applies on Ditidaht / Pacheedaht Lands ceases to be valid.
- 9.7.2 Except for those obligations described in an appendix to the Treaty, British Columbia will ensure that on the Effective Date, or as soon as practical, all obligations on Ditidaht / Pacheedaht Lands in respect of Forest Practices and Range Practices will be fulfilled in accordance with Provincial Law.
- 9.7.3 Ditidaht / Pacheedaht will provide access to Ditidaht / Pacheedaht Lands, at no cost, to British Columbia and to any interest holder whose rights to Forest Resources cease to be valid in accordance with 9.7.1, and to their respective employees, agents, contractors, successors or assigns, in order to fulfill the obligations referred to in 9.7.2.

## **9.8.0      FOREST RESEARCH PLOTS**

The Treaty will provide that:

- 9.8.1 On the Effective Date, Ditidaht / Pacheedaht will grant to British Columbia licences in the applicable form in an appendix to the Treaty, to enter onto Ditidaht / Pacheedaht Lands for the purpose of conducting forestry related studies, tests and experiments, for those research installations and growth and yield sites respectively identified for illustrative purposes as “Research Installations” and “Growth and Yield Sites” in an appendix to the Treaty.

## **9.9.0      INFORMATION SHARING**

The Treaty will provide that:

- 9.9.1 British Columbia and Ditidaht / Pacheedaht agree to share information with respect to Forest Practices and Range Practices on Ditidaht / Pacheedaht Lands and on provincial Crown land immediately adjacent to Ditidaht / Pacheedaht Lands from time to time.

## CHAPTER 10 **GATHERING**

### 10.1.0 **GENERAL**

The Treaty will provide that:

- 10.1.1 Ditidaht / Pacheedaht has the right to gather Plants on provincial Crown land for Domestic Purposes in the Ditidaht / Pacheedaht Plant Gathering Area, throughout the year, in accordance with the Treaty. For greater certainty, this includes the right to gather Plants for the purpose of making household goods and apparel.
- 10.1.2 The Ditidaht / Pacheedaht Right to Gather Plants is limited by measures necessary for conservation, public health or public safety.
- 10.1.3 For greater certainty, Provincial Protected Areas within the Ditidaht / Pacheedaht Area are included in the Ditidaht / Pacheedaht Plant Gathering Area.
- 10.1.4 The Ditidaht / Pacheedaht Right to Gather Plants may not be alienated.
- 10.1.5 Ditidaht / Pacheedaht Citizens may exercise the Ditidaht / Pacheedaht Right to Gather Plants except as otherwise provided under Ditidaht / Pacheedaht Law.
- 10.1.6 Ditidaht / Pacheedaht Citizens are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the exercise of the Ditidaht / Pacheedaht Right to Gather Plants.
- 10.1.7 The Treaty does not preclude Ditidaht / Pacheedaht Citizens from gathering elsewhere in Canada in accordance with Federal or Provincial Law.
- 10.1.8 The Treaty does not alter Federal or Provincial Law in respect to property in Plants.
- 10.1.9 The Minister retains the authority for managing and conserving Plants and Plant habitat.
- 10.2.0 **ENGAGEMENT SIDE AGREEMENT AND STEWARDSHIP**
- 10.2.1 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will negotiate a government to government Engagement Side Agreement to take effect on Effective Date, which will establish a collaborative process to

evaluate potential impacts on Ditidaht / Pacheedaht Section 35 Rights by authorized uses or dispositions of provincial Crown land which may occur within the Ditidaht / Pacheedaht Plant Gathering Area.

- 10.2.2 Before concluding the Treaty, the Parties will discuss the role of Ditidaht / Pacheedaht in stewardship, enhancement and restoration initiatives to facilitate the exercise of the Ditidaht / Pacheedaht Right to Gather Plants within the Ditidaht / Pacheedaht Plant Gathering Area.

### **10.3.0 REASONABLE OPPORTUNITY**

The Treaty will provide that:

- 10.3.1 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of the gathering of Plants under the Ditidaht / Pacheedaht Right to Gather Plants, provided that British Columbia ensures that those authorized uses or dispositions do not deny Ditidaht / Pacheedaht the reasonable opportunity to gather Plants under the Ditidaht / Pacheedaht Right to Gather Plants.
- 10.3.2 The Ditidaht / Pacheedaht Right to Gather Plants will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with 10.3.1.
- 10.3.3 Ditidaht / Pacheedaht Citizens may use resources on provincial Crown land within the Ditidaht / Pacheedaht Plant Gathering Area for purposes reasonably incidental to the exercise of the Ditidaht / Pacheedaht Right to Gather Plants, subject to Federal and Provincial Law.

### **10.4.0 LAW MAKING**

The Treaty will provide that:

- 10.4.1 Ditidaht / Pacheedaht may make laws in respect of the Ditidaht / Pacheedaht Right to Gather Plants that are consistent with the Treaty and any conservation measures established by the Minister with respect to:
- a. the designation of Ditidaht / Pacheedaht Citizens to gather Plants;
  - b. the methods, timing and location of gathering Plants, under the Ditidaht / Pacheedaht Right to Gather Plants;

- c. the distribution among Ditidaht / Pacheedaht Citizens of gathered Plants;
  - d. the Trade and Barter of Plants gathered under 10.7.1; and
  - e. the administration of documentation to identify Ditidaht / Pacheedaht Citizens as gatherers.
- 10.4.2 Ditidaht / Pacheedaht Law under 10.4.1 prevails to the extent of a Conflict with Federal or Provincial Law.
- 10.4.3 Ditidaht / Pacheedaht will make laws to require Ditidaht / Pacheedaht Citizens gathering under the Ditidaht / Pacheedaht Right to Gather Plants to comply with any conservation measures established by the Minister or any applicable Provincial Protected Area management plan that affect the Ditidaht / Pacheedaht Right to Gather Plants.
- 10.4.4 A Ditidaht / Pacheedaht Law made in accordance with 10.4.3 may be enforced by person authorized to enforce Provincial Law or Ditidaht / Pacheedaht Law in respect of Plants in British Columbia.

#### **10.5.0 DESIGNATED HARVESTER**

The Treaty will provide that:

- 10.5.1 Ditidaht / Pacheedaht may designate individuals other than Ditidaht / Pacheedaht Citizens to exercise the Ditidaht / Pacheedaht Right to Gather Plants on behalf of a Ditidaht / Pacheedaht Citizen who is unable to exercise the Ditidaht / Pacheedaht Right to Gather Plants.
- 10.5.2 The designated individual must not pay any remuneration to Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Citizen.
- 10.5.3 The designated individual must:
- a. be the spouse or a child or a grandchild of the Ditidaht / Pacheedaht Citizen;
  - b. have provided to Ditidaht / Pacheedaht, a signed agreement to provide gathered Plants to Ditidaht / Pacheedaht Citizens for Domestic Purposes;

- c. carry on his or her person and present to an authorized person upon request, any documentation issued by Ditidaht / Pacheedaht as evidence of the designation; and
- d. gather Plants in accordance with the Treaty.

10.5.4 Each year, if requested by the Minister, Ditidaht / Pacheedaht will provide to the Minister a list of all individuals who are authorized under 10.5.1.

## **10.6.0 DOCUMENTATION**

The Treaty will provide that:

10.6.1 Where documentation is required for gathering under Federal or Provincial Law, Ditidaht / Pacheedaht will issue documentation to identify:

- a. Ditidaht / Pacheedaht Citizens who are authorized by Ditidaht / Pacheedaht to exercise the right to gather or transport Plants under the Ditidaht / Pacheedaht Right to Gather Plants;
- b. any individual designated to gather under 10.5.1; and
- c. any person who transports Plants gathered under the Ditidaht / Pacheedaht Right to Gather Plants and who is not themselves the gatherer.

10.6.2 Ditidaht / Pacheedaht Citizens who gather or transport Plants under the Ditidaht / Pacheedaht Right to Gather Plants will be required to carry documentation issued by Ditidaht / Pacheedaht and to produce that documentation on request by an authorized individual, if documentation is required under Federal or Provincial Law.

10.6.3 Documentation issued by Ditidaht / Pacheedaht under 10.6.1 will:

- a. be in the English language, which will be the authoritative version, and at the discretion of Ditidaht / Pacheedaht, in the Ditidaht / Pacheedaht language;
- b. include the name and identifying information of the Ditidaht / Pacheedaht Citizen;
- c. meet any other requirements to which Ditidaht / Pacheedaht and British Columbia may agree; and

- d. in the case of transporters who are not themselves the gatherer, documentation will also include:
    - i. the name and sufficient information to identify the gatherer for whom the transporter is transporting the Plants;
    - ii. the date and place of receipt of the Plants; and
    - iii. the name and sufficient information to identify the person to whom the Plants will be delivered.
- 10.6.4 For the purposes of 10.6.3.d, Ditidaht / Pacheedaht may provide the transporter with a form which lists the required information and which may be completed by the person who gathered the Plants.
- 10.6.5 If documentation is required, 10.6.1 will be deemed to meet the requirements under Federal and Provincial Law relating to the documentation of:
- a. Ditidaht / Pacheedaht Citizens and designated gatherers who are authorized by Ditidaht / Pacheedaht to exercise the Ditidaht / Pacheedaht Right to Gather Plants; and
  - b. persons who transport Plants gathered under the Ditidaht Pacheedaht Right to Gather Plants and who are not themselves the gatherer.
- 10.7.0 **TRADE AND BARTER AND SALE**
- 10.7.1 The Treaty will provide that Ditidaht / Pacheedaht has the right to Trade and Barter Plants and household goods and apparel made from Plants gathered under the Ditidaht / Pacheedaht Right to Gather Plants:
- a. among themselves; or
  - b. with other aboriginal people of Canada.
- 10.7.2 Before concluding the Treaty, the Parties will discuss a right to Trade and Barter Plants in Canada with aboriginal people other than those referred to in 10.7.1 with whom Ditidaht / Pacheedaht traditionally traded and who are not aboriginal people within the meaning of Section 35 of the *Constitution Act, 1982*.
- 10.7.3 The Treaty will provide that the Ditidaht / Pacheedaht right to Trade and Barter under 10.7.1 is held by Ditidaht / Pacheedaht and the Ditidaht / Pacheedaht right to Trade and Barter may not be alienated.

- 10.7.4 The Treaty will provide that Ditidaht / Pacheedaht Citizens may exercise the right to Trade and Barter under 10.7.1, except as otherwise provided under Ditidaht / Pacheedaht Law.
- 10.7.5 The Treaty will provide that any sale of Plants gathered, or objects made from the Plants gathered, under the Ditidaht / Pacheedaht Right to Gather Plants will be in accordance with any Federal and Provincial Law that permits sale.

## **10.8.0 TRANSPORT AND EXPORT**

The Treaty will provide that:

- 10.8.1 Ditidaht / Pacheedaht Citizens may, in accordance with Federal and Provincial Law, transport and export Plants gathered under the Ditidaht / Pacheedaht Right to Gather Plants.

## **10.9.0 CONSERVATION MEASURES**

The Treaty will provide that:

- 10.9.1 The Minister will consult with Ditidaht / Pacheedaht regarding the need for the establishment, variance or cancellation of a conservation measure, including the adverse impact on the Ditidaht / Pacheedaht Right to Gather Plants, proposed by the Minister or Ditidaht / Pacheedaht in respect of a Plant species within the Ditidaht / Pacheedaht Plant Gathering Area. Such consultation will include any information provided by Ditidaht / Pacheedaht including any recommendations that may be developed pursuant to the Engagement Side Agreement contemplated by 10.2.1.
- 10.9.2 When considering the establishment, variance or cancellation of a conservation measure pursuant to 10.9.1, the Minister will also take into account:
  - a. the conservation risk to the Plant species;
  - b. the population of the Plant species;
  - c. the necessity for and the nature of the proposed establishment, variance or cancellation of a conservation measure; and
  - d. any measure proposed by Ditidaht / Pacheedaht to minimize the impact of the conservation measure on the Ditidaht / Pacheedaht Right to Gather Plants.

- 10.9.3 If the Minister considers a conservation measure, the Minister will consult with Ditidaht / Pacheedaht regarding its participation or role in the development and implementation of the establishment, variance or cancellation of the conservation measure.
- 10.9.4 Prior to approving a conservation measure, the Minister will respond to any information or concerns raised by Ditidaht / Pacheedaht, including any measures taken to minimize the impact of the conservation measure on the Ditidaht / Pacheedaht Right to Gather Plans, if practical.
- 10.9.5 Once the Minister has adopted the conservation measure, the Minister will provide to Ditidaht / Pacheedaht:
  - a. a copy of any approved establishment, variance or cancellation of a conservation measure in respect of a Plant species within the Ditidaht / Pacheedaht Plant Gathering Area; and
  - b. at the request of Ditidaht / Pacheedaht, written reasons for the adoption of that establishment, variance or cancellation of a conservation including any measures taken to minimize the impact of the conservation measure on the Ditidaht/ Pacheedaht Right to Gather Plants, if practical.

## CHAPTER 11 **FISHERIES**

### 11.1.0 **GENERAL**

- 11.1.1 In Treaty negotiations, the Parties will address fisheries matters and review other parts of the Treaty that may be affected, and make any necessary changes, and the Treaty will reflect the agreement of the Parties.
- 11.1.2 For greater certainty, this Agreement is not intended to affect any aboriginal fishing rights that Ditidaht / Pacheedaht may have.

## CHAPTER 12 WILDLIFE

### 12.1.0 GENERAL

The Treaty will provide that:

- 12.1.1 Ditidaht / Pacheedaht has the right to harvest Wildlife for Domestic Purposes in the Wildlife Harvesting Area, throughout the year, in accordance with the Treaty.
- 12.1.2 The Ditidaht / Pacheedaht Right to Harvest Wildlife is limited by measures necessary for conservation, public health or public safety.
- 12.1.3 For greater certainty, Provincial Protected Areas within the Wildlife Harvesting Area are included in the Ditidaht / Pacheedaht Wildlife Harvesting Area.
- 12.1.4 The Ditidaht / Pacheedaht Right to Harvest Wildlife may not be alienated.
- 12.1.5 Ditidaht / Pacheedaht Citizens may exercise the Ditidaht / Pacheedaht Right to Harvest Wildlife, except as otherwise provided under a Ditidaht / Pacheedaht Law.
- 12.1.6 The Minister retains authority for managing and conserving Wildlife and Wildlife habitat.
- 12.1.7 The Treaty does not alter Federal or Provincial Law with respect to property in Wildlife.

### 12.2.0 HARVESTING OUTSIDE THE WILDLIFE HARVESTING AREA

- 12.2.1 The Treaty will provide that the Treaty does not preclude Ditidaht / Pacheedaht Citizens from harvesting Wildlife outside of the Ditidaht / Pacheedaht Wildlife Harvesting Area throughout Canada in accordance with:
  - a. Federal or Provincial Law; or
  - b. Federal or Provincial Law and:
    - i. any agreements between Ditidaht / Pacheedaht and other aboriginal people; or

- ii. any arrangements between other aboriginal people and Canada or British Columbia.

12.2.2 Before concluding the Treaty, the Parties will discuss:

- a. the circumstances, conditions and details under which Ditidaht / Pacheedaht may permit other aboriginal people to harvest Wildlife under the Ditidaht / Pacheedaht Right to Harvest Wildlife within the Wildlife Harvesting Area;
- b. the circumstances, conditions and details under which Ditidaht / Pacheedaht may enter into agreements with other aboriginal people to harvest wildlife within their traditional territories or treaty harvest areas; and
- c. the impact of a and b above on any wildlife allocations and/or conservation issues or concerns.

#### **12.3.0 LICENCES AND FEES**

The Treaty will provide that:

- 12.3.1 Subject to 12.3.2, Ditidaht / Pacheedaht Citizens are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the exercise of the Ditidaht / Pacheedaht Right to Harvest Wildlife.
- 12.3.2 Nothing in the Treaty affects Canada's ability to require any Ditidaht / Pacheedaht Citizen to obtain licences, authorizations or registration certificates for the use and possession of firearms under Federal or Provincial Law, including in respect of its application to aboriginal peoples of Canada.

#### **12.4.0 ENGAGEMENT SIDE AGREEMENT**

- 12.4.1 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will negotiate a government to government Engagement Side Agreement to take effect on the Effective Date, which will establish a collaborative process to evaluate potential impacts on Ditidaht / Pacheedaht Section 35 Rights by authorized uses or dispositions of provincial Crown land, which may occur within the Ditidaht / Pacheedaht Wildlife Harvesting Area as established under the Treaty.

#### **12.5.0 REASONABLE OPPORTUNITY**

The Treaty will provide that:

- 12.5.1 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Wildlife under the Ditidaht / Pacheedaht Right to Harvest Wildlife, provided that British Columbia ensures that those authorized uses or dispositions do not deny Ditidaht / Pacheedaht the reasonable opportunity to harvest Wildlife under the Ditidaht / Pacheedaht Right to Harvest Wildlife.
- 12.5.2 The Ditidaht / Pacheedaht Right to Harvest Wildlife will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with 12.5.1.
- 12.5.3 The Treaty does not preclude Ditidaht / Pacheedaht from entering into an agreement with the Minister of National Defence on a case-by-case basis, which agreement will provide for access and harvesting in accordance with that agreement and Federal or Provincial Law.
- 12.5.4 The Ditidaht / Pacheedaht Right to Harvest Wildlife may be carried out on fee simple lands within the Wildlife Harvesting Area that are not Ditidaht / Pacheedaht Lands, subject to Federal and Provincial Law with respect to access to fee simple lands.
- 12.5.5 Ditidaht / Pacheedaht Citizens may use resources on provincial Crown land within the Wildlife Harvesting Area for purposes reasonably incidental to the exercise of the Ditidaht / Pacheedaht Right to Harvest Wildlife, subject to Federal and Provincial Law.

## **12.6.0 LAW MAKING AUTHORITY**

The Treaty will provide that:

- 12.6.1 Ditidaht / Pacheedaht may make laws to regulate the Ditidaht / Pacheedaht Right to Harvest Wildlife that are consistent with the Treaty and any conservation measures established by the Minister with respect to:
  - a. the administration of documentation to identify Ditidaht / Pacheedaht Citizens as harvesters of Wildlife;
  - b. the conditions for designation of Ditidaht / Pacheedaht Citizens who may exercise the Ditidaht / Pacheedaht Right to Harvest Wildlife;

- c. the methods, timing and location of harvesting of Wildlife, under the Ditidaht / Pacheedaht Right to Harvest Wildlife;
  - d. the distribution of harvested Wildlife among the Ditidaht / Pacheedaht Citizens; and
  - e. Trade and Barter of Wildlife under 12.11.1.
- 12.6.2 In the event of a Conflict between a Ditidaht / Pacheedaht Law made under 12.6.1 and a Federal or Provincial Law, the Ditidaht / Pacheedaht Law will prevail to the extent of the Conflict.
- 12.6.3 Ditidaht / Pacheedaht will make laws to require all Ditidaht / Pacheedaht harvesters to comply with any conservation measures established by the Minister in accordance with the Treaty that affect the Ditidaht / Pacheedaht Right to Harvest Wildlife.
- 12.6.4 Ditidaht / Pacheedaht will make laws to require all Ditidaht / Pacheedaht Citizens who harvest Wildlife under the Treaty, or transport Wildlife harvested under the Treaty, to carry documentation issued by Ditidaht / Pacheedaht and produce that documentation on request by an authorized individual.

## **12.7.0 DESIGNATED HARVESTER**

The Treaty will provide that:

- 12.7.1 Ditidaht / Pacheedaht may designate individuals other than Ditidaht / Pacheedaht Citizens to exercise the Ditidaht / Pacheedaht Right to Harvest Wildlife on behalf of a Ditidaht / Pacheedaht Citizen who is unable to exercise the Ditidaht / Pacheedaht Right to Harvest Wildlife.
- 12.7.2 The designated individual must not pay any remuneration to Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Citizen.
- 12.7.3 The designated individual must:
- a. possess a hunting licence that under Provincial Law may only be issued to a “resident” as defined in the *Wildlife Act*; or
  - b. be a British Columbia “resident” as defined in the *Wildlife Act* and be exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia.

- 12.7.4 The designated individual must:
- a. be qualified to operate a firearm under Federal or Provincial Law;
  - b. be the spouse or a child or a grandchild of the Ditidaht / Pacheedaht Citizen;
  - c. have provided to Ditidaht / Pacheedaht, a signed agreement to provide harvested Wildlife to Ditidaht / Pacheedaht Citizens for Domestic Purposes;
  - d. carry on his or her person and present to an authorized person upon request, any documentation issued by Ditidaht / Pacheedaht as evidence of the designation; and
  - e. harvest Wildlife in accordance with the Treaty.
- 12.7.5 Each year, if requested by the Minister, Ditidaht / Pacheedaht will provide to the Minister a list of all individuals who are designated under 12.7.1.
- 12.8.0 DOCUMENTATION**
- The Treaty will provide that:
- 12.8.1 Ditidaht / Pacheedaht will issue documentation to identify:
- a. Ditidaht / Pacheedaht Citizens who are authorized by Ditidaht / Pacheedaht to exercise the Ditidaht / Pacheedaht Right to Harvest Wildlife;
  - b. any individual designated to harvest under 12.7.1; and
  - c. any individual who transports Wildlife carcasses harvested under the Ditidaht / Pacheedaht Right to Harvest Wildlife and who is not themselves the harvester.
- 12.8.2 Documentation issued under 12.8.1 will:
- a. be in the English language, which will be the authoritative version, and, at the discretion of Ditidaht / Pacheedaht, also in the Ditidaht / Pacheedaht language;
  - b. state that it has been issued by Ditidaht / Pacheedaht;
  - c. meet any other requirement under Ditidaht / Pacheedaht Law;

- d. include the person's name and sufficient information to identify the person; and
  - e. in the case of transporters who are not themselves the harvester, documentation will also include:
    - i. the harvester's name and sufficient information to identify the harvester for whom the transporter is transporting the Wildlife carcass;
    - ii. the date and place of receipt of the Wildlife carcass;
    - iii. the name and sufficient information to identify the person to whom the Wildlife carcass will be delivered; and
    - iv. the species and sex of the Wildlife carcass, if it is a big game animal.
- 12.8.3 For the purposes of 12.8.2.e Ditidaht / Pacheedaht may provide the transporter with a form which lists the required information and which may be completed by the person who harvested the Wildlife.
- 12.8.4 Documentation issued under 12.8.1 will be deemed to meet the requirements under Federal and Provincial Law relating to the documentation of:
- a. Ditidaht / Pacheedaht Citizens and designated harvesters who are authorized by the Ditidaht / Pacheedaht to exercise the Ditidaht / Pacheedaht Right to Harvest Wildlife; and
  - b. individuals who transport Wildlife carcasses harvested under the Ditidaht Pacheedaht Right to Harvest Wildlife and who are not themselves the harvester.
- 12.8.5 Without limiting the generality of the foregoing, all other federal and provincial requirements relating to the transportation of Wildlife carcasses, including the leaving of identifying parts of Wildlife, will apply.

## **12.9.0 CONSERVATION MEASURES FOR WILDLIFE SPECIES**

The Treaty will provide that:

- 12.9.1 The Minister will consult with Ditidaht / Pacheedaht regarding the need for the establishment, variance or cancellation of a conservation measure, including the adverse impact on the Ditidaht / Pacheedaht Right to Harvest

Wildlife, proposed by the Minister or Ditidaht / Pacheedaht, in respect of a Wildlife species within the Wildlife Harvesting Area. Such consultation will include any information provided by Ditidaht / Pacheedaht including any recommendations that may be developed pursuant to the Engagement Side Agreement contemplated by 12.4.1.

- 12.9.2 When considering the establishment, variance or cancellation of a conservation measure pursuant to 12.9.1, the Minister will also take into account:
- a. the conservation risk to the Wildlife species;
  - b. the population of the Wildlife species:
    - i. within the Wildlife Harvesting Area; and
    - ii. within its normal range or area of movement outside the Wildlife Harvesting Area;
  - c. the necessity for and the nature of the proposed establishment, variance or cancellation of a conservation measure; and
  - d. any measure proposed by Ditidaht / Pacheedaht to minimize the impact of the conservation measure on the Ditidaht / Pacheedaht Right to Harvest Wildlife.
- 12.9.3 Where the Minister considers a conservation measure, the Minister will consult with Ditidaht / Pacheedaht regarding its participation or role in the development and implementation of the establishment, variance or cancellation of a conservation measure.
- 12.9.4 Prior to approving a conservation measure, the Minister will respond to any information or concerns raised by Ditidaht / Pacheedaht, including any measures taken to minimize the impact of the conservation measure on the Ditidaht / Pacheedaht Right to Harvest Wildlife, if practical.
- 12.9.5 Once the Minister has adopted the conservation measure, the Minister will provide to Ditidaht / Pacheedaht:
- a. a copy of any approved establishment, variance or cancellation of a conservation measure in respect of a Wildlife species within the Wildlife Harvesting Area;

- b. at the request of Ditidaht / Pacheedaht, written reasons for the adoption of that establishment, variance or cancellation of a conservation measure including any measures taken to minimize the impact of the conservation measure on the Ditidaht / Pacheedaht Right to Harvest Wildlife, if practical.
- 12.9.6 Where the Minister determines that establishing or varying an Allocation for Ditidaht / Pacheedaht is the necessary conservation measure, British Columbia and Ditidaht / Pacheedaht will negotiate and attempt to reach agreement on that Allocation.
- 12.9.7 Where British Columbia and Ditidaht / Pacheedaht fail to agree on an Allocation under 12.9.6, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.
- 12.9.8 Subject to an appendix of the Treaty relating to dispute resolution and the authority of the arbitral tribunal to determine the admissibility, relevance, materiality and weight of any evidence, in determining the Allocation under 12.9.6, the arbitrator must take into account all information provided by Ditidaht / Pacheedaht and British Columbia including, without limitation, any information provided in relation to 12.9.1 above.

## **12.10.0 WILDLIFE ADVISORY MANAGEMENT PROCESSES**

The Treaty will provide that:

- 12.10.1 Ditidaht / Pacheedaht has the right to participate in any public Wildlife advisory committee that may be established by British Columbia that may affect the Wildlife Harvesting Area.
- 12.10.2 If a public Wildlife advisory committee is established by British Columbia for an area that includes any portion of the Wildlife Harvesting Area, the Minister may request recommendations from the Wildlife advisory committee before determining whether a Wildlife species will be or continue to be subject to a conservation measure.
- 12.10.3 Any public Wildlife advisory committee process established in 12.10.1 or carrying out any work in 12.10.2 will not supplant the consultation requirements set out in the Treaty, unless Ditidaht / Pacheedaht otherwise agrees in writing.

## **12.11.0 TRADE AND BARTER AND SALE**

The Treaty will provide that:

- 12.11.1 Ditidaht / Pacheedaht has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Wildlife or Wildlife parts, including meat and furs, harvested under the Ditidaht / Pacheedaht Right to Harvest Wildlife.
- 12.11.2 Before concluding the Treaty, the Parties will discuss a right to Trade and Barter Wildlife and Wildlife parts in Canada with aboriginal people other than those referred to in 12.11.1 with whom Ditidaht / Pacheedaht traditionally traded and who are not aboriginal people within the meaning of Section 35 of the *Constitution Act, 1982*.
- 12.11.3 A Ditidaht / Pacheedaht right to Trade and Barter described in 12.11.1 may be exercised by a Ditidaht / Pacheedaht Citizen except as otherwise provided in a Ditidaht / Pacheedaht Law under 12.6.1.e.
- 12.11.4 For greater certainty:
  - a. Trade and Barter does not include sale; and
  - b. Traded and Bartered Wildlife or Wildlife parts, including meat, may not be sold, except in accordance with any Federal or Provincial Law that permits the sale.
- 12.11.5 The right to Trade and Barter may not be alienated.
- 12.11.6 Any sale of Wildlife, Wildlife parts, including meat and furs harvested under the Ditidaht / Pacheedaht Right to Harvest Wildlife will be in accordance with any Federal or Provincial Law that permits sale.

## **12.12.0 TRANSPORT AND EXPORT**

The Treaty will provide that:

- 12.12.1 Within Canada, Ditidaht / Pacheedaht Citizens may, throughout the year, transport Wildlife or Wildlife parts, including meat and fur, harvested under the Ditidaht / Pacheedaht Right to Harvest Wildlife, in accordance with:
  - a. Federal or Provincial Law; and
  - b. Ditidaht / Pacheedaht Law under 12.6.4.

- 12.12.2 Any export outside of Canada, of Wildlife or Wildlife parts, including meat or fur, harvested under the Ditidaht / Pacheedaht Right to Harvest Wildlife will be in accordance with Federal and Provincial Law.

#### **12.13.0 ENFORCEMENT**

The Treaty will provide that:

- 12.13.1 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will discuss enforcement agreements in respect of Wildlife.
- 12.13.2 Ditidaht / Pacheedaht Law under 12.6.4 may be enforced by individuals authorized to enforce Provincial Law or Ditidaht / Pacheedaht Law in respect of Wildlife in British Columbia.

#### **12.14.0 COMMERCIAL TRAPPING**

The Treaty will provide that:

- 12.14.1 Commercial registered trap lines wholly or partially on Ditidaht / Pacheedaht Lands that exist as of the Effective Date and are set out in an appendix to the Treaty are retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
- 12.14.2 British Columbia will consult with Ditidaht / Pacheedaht before approving any proposed transfer or new commercial trap line within the Wildlife Harvesting Area.
- 12.14.3 Ditidaht / Pacheedaht will not unreasonably restrict access on Ditidaht / Pacheedaht Public Lands by any person who holds a commercial registered trap line as set out in an appendix to the Treaty, or any renewal or replacement thereof, or by any individual who has written permission from a commercial registered trap line holder to trap within the commercial registered trap line area for the purpose of carrying out commercial trapping activities.
- 12.14.4 If a commercial registered trap line set out in an appendix to the Treaty becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration to that portion of the commercial registered trap line located on Ditidaht / Pacheedaht Lands without the consent of Ditidaht / Pacheedaht.

- 12.14.5 If the holder of a commercial registered trap line set out in an appendix to the Treaty agrees to transfer the commercial registered trap line to Ditidaht / Pacheedaht, British Columbia will consent to and register the transfer.
- 12.14.6 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will discuss opportunities to transfer, without charge, any vacant commercial trap lines within the exclusive harvest area of the Wildlife Harvesting Area.

#### **12.15.0 GUIDING**

The Treaty will provide that:

- 12.15.1 Guide outfitter licences and guide outfitter certificates that are set out in an appendix to the Treaty are retained by the individuals who hold those interests. The privileges conferred by those interests may be transferred or renewed in accordance with Provincial Law.
- 12.15.2 British Columbia will consult with Ditidaht / Pacheedaht before approving any proposed renewals, transfers, changes in boundaries, or any new guide outfitter certificates, in any guide outfitter area that applies to any portion of the Wildlife Harvesting Area.
- 12.15.3 Ditidaht / Pacheedaht will not unreasonably restrict access to Ditidaht / Pacheedaht Public Lands for the purpose of carrying out guiding activities by:
  - a. any individual who holds a guide outfitter licence or guide outfitter certificate set out in an appendix to the Treaty or any renewal or replacement by transfer, and
  - b. the respective employees, agents, and other representatives of a person described in 12.15.3.a.
- 12.15.4 British Columbia will not issue any new guide outfitter licence and certificate that applies to any portion of Ditidaht / Pacheedaht Lands not included in a guide outfitter licence or guide outfitter certificate on Effective Date without the consent of Ditidaht / Pacheedaht.
- 12.15.5 Where a guide outfitter licence or certificate exercisable in an area that is wholly or partially within Ditidaht / Pacheedaht Lands ceases, by reason of non-renewal or operation of law, including by exercise of administrative discretion, British Columbia will not issue a guide outfitter licence and certificate on that portion included in Ditidaht / Pacheedaht Lands without the consent of Ditidaht / Pacheedaht.

- 12.15.6 Angling guide licences that exist as of the Effective Date and are set out in an appendix to the Treaty will be retained by the individuals who hold those interests and may be transferred or renewed in accordance with Provincial Law.
- 12.15.7 Ditidaht / Pacheedaht will not unreasonably restrict access to Ditidaht / Pacheedaht Public Lands by any individual who holds an angling guide licence that exists on the Effective Date as set out in an appendix to the Treaty, or any renewal or replacement thereof, and their respective employees, agents and other representatives for the purpose of carrying out angling guiding activities.
- 12.15.8 If an angling guide licence on a portion of a watercourse within Ditidaht / Pacheedaht Lands becomes vacant by reason of abandonment or operation of law, British Columbia will not issue a new angling guide licence in respect of the portion of the watercourse located within Ditidaht / Pacheedaht Lands without the consent of the Ditidaht / Pacheedaht.
- 12.15.9 Access under 12.14.1, 12.15.1 and 12.15.6 does not include:
  - a. access to Ditidaht / Pacheedaht Private Land as described in 6.2.1 and 6.2.2;
  - b. harvesting or extracting resources other than those activities listed in an appendix to the Treaty, unless authorized by Ditidaht / Pacheedaht or as in accordance with the Treaty;
  - c. causing damage to Ditidaht / Pacheedaht Lands or resources on Ditidaht / Pacheedaht Lands;
  - d. causing nuisance; or
  - e. interfering with other uses authorized by Ditidaht / Pacheedaht or interfering with the ability of the Ditidaht / Pacheedaht to authorize uses or dispose of Ditidaht / Pacheedaht Land.
- 12.15.10 Ditidaht / Pacheedaht Law under 6.6.1.b and 6.6.3 will apply to access contemplated by 12.14.1, 12.15.1 and 12.15.6.
- 12.15.11 Ditidaht / Pacheedaht will take reasonable measures to notify the holders of interests listed in an appendix to the Treaty, of the terms and conditions respecting access to Ditidaht / Pacheedaht Public Lands.

## CHAPTER 13 MIGRATORY BIRDS

### 13.1.0 GENERAL

The Treaty will provide that:

- 13.1.1 Ditidaht / Pacheedaht will have the right to harvest Migratory Birds for Domestic Purposes in the Ditidaht / Pacheedaht Migratory Birds Harvest Area, throughout the year, in accordance with the Treaty.
- 13.1.2 The Ditidaht / Pacheedaht Right to Harvest Migratory Birds is limited by measures necessary for conservation, public health or public safety.
- 13.1.3 The Ditidaht / Pacheedaht Right to Harvest Migratory Birds may not be alienated.
- 13.1.4 Ditidaht / Pacheedaht Citizens may exercise the Ditidaht / Pacheedaht Right to Harvest Migratory Birds, except as otherwise provided under a Ditidaht / Pacheedaht Law.
- 13.1.5 The Minister retains authority for managing and conserving Migratory Birds and Migratory Bird habitat.
- 13.1.6 The Treaty does not alter Federal or Provincial Law with respect to property in Migratory Birds.
- 13.1.7 Ditidaht / Pacheedaht may enter into an agreement with a federal department or agency to authorize the harvest of Migratory Birds by Ditidaht / Pacheedaht or Ditidaht / Pacheedaht Citizens on land owned by that federal department or agency, in accordance with Federal or Provincial Law.
- 13.1.8 The Ditidaht / Pacheedaht Right to Harvest Migratory Birds may be carried out on fee simple lands within the Ditidaht / Pacheedaht Migratory Birds Harvesting Area that are not Ditidaht / Pacheedaht Lands, subject to Federal and Provincial Law with respect to access to fee simple lands.
- 13.1.9 Ditidaht / Pacheedaht Citizens may use resources on provincial Crown land within the Ditidaht / Pacheedaht Migratory Birds Harvest Area for purposes reasonably incidental to the exercise of the Ditidaht / Pacheedaht Right to Harvest Migratory Birds, subject to Federal and Provincial Law.
- 13.2.0 **HARVESTING OUTSIDE THE MIGRATORY BIRDS HARVEST AREA**

The Treaty will provide that:

- 13.2.1 The Treaty does not preclude Ditidaht / Pacheedaht Citizens from harvesting Migratory Birds outside of the Ditidaht / Pacheedaht Migratory Birds Harvesting Area throughout Canada in accordance with:
- a. Federal or Provincial Law; or
  - b. Federal or Provincial Law and:
    - i. any agreements between Ditidaht / Pacheedaht and other aboriginal people; or
    - ii. any arrangements between other aboriginal people and Canada or British Columbia.

### **13.3.0 LICENCES AND FEES**

The Treaty will provide that:

- 13.3.1 Subject to 13.3.2, Ditidaht / Pacheedaht Citizens are not required to have federal or provincial licences or pay any fees or royalties to Canada or British Columbia relating to the exercise of the Ditidaht / Pacheedaht Right to Harvest Migratory Birds.
- 13.3.2 Nothing in the Treaty affects Canada's ability to require a Ditidaht / Pacheedaht Citizen to obtain licences or permits for the use and possession of firearms under Federal or Provincial Law, including in respect to its application to aboriginal peoples of Canada.

### **13.4.0 REASONABLE OPPORTUNITY**

The Treaty will provide that

- 13.4.1 British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Migratory Birds under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds, provided that British Columbia ensures that those authorized uses or dispositions do not deny Ditidaht / Pacheedaht the reasonable opportunity to harvest Migratory Birds under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds.
- 13.4.2 The Ditidaht / Pacheedaht Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with authorized uses or dispositions of

provincial Crown land existing as of the Effective Date or authorized in accordance with 13.4.1.

### **13.5.0 ENGAGEMENT SIDE AGREEMENT**

13.5.1 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will negotiate a government to government Engagement Side Agreement to take effect on the Effective Date, which will establish a collaborative process to evaluate potential impacts on Ditidaht / Pacheedaht Section 35 Rights by authorized uses or dispositions of provincial Crown land, which may occur within the Ditidaht / Pacheedaht Migratory Bird Harvesting Area.

### **13.6.0 LAW MAKING AUTHORITY**

The Treaty will provide that:

13.6.1 Ditidaht / Pacheedaht may make laws in respect of the Ditidaht / Pacheedaht Right to Harvest Migratory Birds for:

- a. the distribution of harvested Migratory Birds among Ditidaht / Pacheedaht Citizens;
- b. the designation of Ditidaht / Pacheedaht Citizens who may exercise the Ditidaht / Pacheedaht Right to Harvest Migratory Birds;
- c. the methods, timing and location of harvesting of Migratory Birds under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds;
- d. the administration of documentation to identify Ditidaht / Pacheedaht Citizens as harvesters of Migratory Birds;
- e. Trade and Barter of Migratory Birds under 13.10.1; and
- f. the sale of inedible by-products, including down, of harvested Migratory Birds under 13.10.5.

13.6.2 In the event of a Conflict between a Ditidaht / Pacheedaht Law made under 13.6.1 and a Federal or Provincial Law, the Ditidaht / Pacheedaht Law will prevail to the extent of the Conflict.

13.6.3 Ditidaht / Pacheedaht may make laws in respect of the Ditidaht / Pacheedaht Right to Harvest Migratory Birds for:

- a. the management of Migratory Birds on Ditidaht / Pacheedaht Lands; and

- b. the sale of Migratory Birds, other than their inedible byproducts, if permitted by Federal and Provincial Law.
- 13.6.4 Ditidaht / Pacheedaht will make laws to require all Ditidaht / Pacheedaht Citizens who harvest Migratory Birds under the Treaty, or transport Migratory Birds harvested under the Treaty, to carry documentation issued by Ditidaht / Pacheedaht and produce that documentation on request by an authorized individual.
- 13.6.5 Federal or Provincial Law prevails to the extent of a Conflict with Ditidaht / Pacheedaht Law under 13.6.3 and 13.6.4.
- 13.7.0 DESIGNATED HARVESTERS**
- The Treaty will provide that:
- 13.7.1 Ditidaht / Pacheedaht may designate individuals other than Ditidaht / Pacheedaht Citizens to exercise the Ditidaht / Pacheedaht Right to Harvest Migratory Birds on behalf of a Ditidaht / Pacheedaht Citizen who is unable to exercise the Ditidaht / Pacheedaht Right to Harvest Migratory Birds.
  - 13.7.2 The term of the designation will be for a maximum of one year from the date the designation was authorized by Ditidaht / Pacheedaht, subject to renewal.
  - 13.7.3 A Ditidaht / Pacheedaht Citizen may have only one designated harvester at a time.
  - 13.7.4 Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government, or a Ditidaht / Pacheedaht Citizen must not accept any payment of any kind or make any payment of any kind in exchange for the designation referred to in 13.7.1.
  - 13.7.5 The designated individual must:
    - a. possess a hunting licence that under Provincial Law may only be issued to a “resident” as defined in the *Wildlife Act*, or
    - b. be a British Columbia “resident” as defined in the *Wildlife Act* and be exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia.
  - 13.7.6 The designated individual must:
    - a. be qualified to operate a firearm under Federal or Provincial Law;

- b. be the spouse or a child or a grandchild of the Ditidaht / Pacheedaht Citizen;
- c. have provided to Ditidaht / Pacheedaht a signed agreement to provide harvested Migratory Birds to Ditidaht/ Pacheedaht Citizens for Domestic Purposes;
- d. carry on his or her person and present to an authorized person upon request, any documentation issued by Ditidaht / Pacheedaht as evidence of the designation; and
- e. harvest Migratory Birds in accordance with the Treaty.

13.7.7 Each year, if requested by the Minister, Ditidaht / Pacheedaht will provide to the Minister a list of all individuals who are authorized under 13.7.1.

#### **13.8.0 DOCUMENTATION**

13.8.1 The Treaty will provide that Ditidaht / Pacheedaht will issue documentation to identify:

- a. Ditidaht / Pacheedaht Citizens who are authorized by Ditidaht / Pacheedaht to exercise the Ditidaht / Pacheedaht Right to Harvest Migratory Birds; and
- b. Any individual designated to harvest under 13.7.1.

13.8.2 The Treaty will provide that the documentation referred to in 13.8.1 will:

- a. be in the English language, which will be the authoritative version, and, at the discretion of Ditidaht / Pacheedaht, in the Ditidaht / Pacheedaht language
- b. state that it has been issued by Ditidaht / Pacheedaht;
- c. include the name and sufficient information to identify the Ditidaht / Pacheedaht Citizen; and
- d. meet any requirements under Ditidaht / Pacheedaht Law.

13.8.3 Before concluding the Treaty, the Parties will discuss third party transporters and applicable documentation.

#### **13.9.0 TRANSPORT AND EXPORT**

The Treaty will provide that:

13.9.1 Within Canada, Ditidaht / Pacheedaht Citizens may transport Migratory Birds harvested under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds, in accordance with:

- a. Federal and Provincial Law; and
- b. Ditidaht / Pacheedaht Law under 13.6.4.

13.9.2 Any export, outside of Canada, of Migratory Birds harvested under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds will be in accordance with Federal and Provincial Law.

#### **13.10.0 TRADE AND BARTER**

13.10.1 The Treaty will provide that Ditidaht / Pacheedaht has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any Migratory Birds harvested under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds.

13.10.2 Before concluding the Treaty, the Parties will discuss a right to Trade and Barter Migratory Birds harvested under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds in Canada with aboriginal people other than those referred to in 13.10.1 with whom Ditidaht / Pacheedaht traditionally traded and who are not aboriginal people within the meaning of Section 35 of the *Constitution Act, 1982*.

13.10.3 The Treaty will provide that a Ditidaht / Pacheedaht right to Trade and Barter described in 13.10.1 may be exercised by a Ditidaht / Pacheedaht Citizen except as otherwise provided in a Ditidaht / Pacheedaht Law.

13.10.4 The Treaty will provide that the Ditidaht / Pacheedaht right to Trade and Barter may not be alienated.

13.10.5 The Treaty will provide that Ditidaht / Pacheedaht and Ditidaht / Pacheedaht Citizens may sell inedible byproducts, including down, of Migratory Birds harvested under the Ditidaht / Pacheedaht Right to Harvest Migratory Birds in accordance with any Ditidaht / Pacheedaht Law enacted pursuant to 13.6.3.

#### **13.11.0 REGIONAL MANAGEMENT PROCESS**

The Treaty will provide that:

- 13.11.1 Ditidaht / Pacheedaht has the right to participate in any public Migratory Birds advisory committee that may be established by Canada or British Columbia in respect of the Ditidaht / Pacheedaht Migratory Birds Harvest Area.
- 13.11.2 For greater certainty, no involvement of Ditidaht / Pacheedaht under 13.11.1 is a substitution for any consultation required by the Treaty, unless Ditidaht / Pacheedaht otherwise agrees in writing.

#### **13.12.0 CONSULTATION ON CONSERVATION MEASURES**

- 13.12.1 Before concluding the Treaty, the Parties will discuss consultation on conservation measures on the Ditidaht / Pacheedaht Right to Harvest Migratory Birds in the Ditidaht / Pacheedaht Migratory Birds Harvest Area.

#### **13.13.0 MIGRATORY BIRDS AGREEMENTS**

The Treaty will provide that:

- 13.13.1 Canada and Ditidaht / Pacheedaht may enter into agreements in respect of the conservation and management of Migratory Birds including:
  - a. information sharing;
  - b. implementing conservation measures;
  - c. local management of Migratory Birds and their habitats;
  - d. population, harvest, and habitat monitoring;
  - e. stewardship and enhancement;
  - f. enforcement; and
  - g. licence or permit requirements.

#### **13.14.0 ENFORCEMENT**

- 13.14.1 Before concluding the Treaty, the Parties will discuss enforcement arrangements, including mechanisms for compliance with conservation measures in respect of Migratory Birds.

## **CHAPTER 14 GOVERNANCE**

### **14.1.0 DITIDAHT / PACHEEDAHT SELF GOVERNMENT**

The Treaty will provide that:

- 14.1.1 Ditidaht / Pacheedaht has the right to self government, and the authority to make laws, as set out in the Treaty.
- 14.1.2 For greater certainty, the authority of Ditidaht / Pacheedaht to make laws in respect of a subject matter as set out in the Treaty includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.

### **14.2.0 LEGAL STATUS AND CAPACITY**

The Treaty will provide that:

- 14.2.1 Ditidaht / Pacheedaht is a legal entity with the capacity, rights, powers, and privileges of a natural person, including the ability to:
  - a. enter into contracts and agreements;
  - b. acquire and hold property or an interest in property, and sell or otherwise dispose of that property or interest;
  - c. raise, spend, invest, and borrow money;
  - d. sue and be sued; and
  - e. do other things ancillary to the exercise of its rights, powers and privileges.
- 14.2.2 The rights, powers, privileges and authorities of Ditidaht / Pacheedaht will be exercised in accordance with:
  - a. the Treaty; and
  - b. Ditidaht / Pacheedaht Law, including the Ditidaht / Pacheedaht Constitution.
- 14.2.3 Ditidaht / Pacheedaht will act through the Ditidaht / Pacheedaht Government in exercising its rights, powers, privileges and authorities and in carrying out its duties, functions and obligations.

### **14.3.0 DITIDAHT / PACHEEDAHT CONSTITUTION**

The Treaty will provide that:

14.3.1 Ditidaht / Pacheedaht will have a constitution, consistent with the Treaty, which will provide:

- a. Ditidaht / Pacheedaht will act through the Ditidaht / Pacheedaht Government in exercising its rights, powers, privileges and authorities and in carrying out its duties, functions and obligations;
- b. for a democratic Ditidaht / Pacheedaht Government, including its duties, composition, and membership;
- c. for the structure of Ditidaht / Pacheedaht Government;
- d. that the Ditidaht / Pacheedaht Government will be democratically accountable with elections at least every five years;
- e. that a majority of members of the Ditidaht / Pacheedaht Government will be elected;
- f. that only Ditidaht / Pacheedaht Citizens may vote in elections for the Ditidaht / Pacheedaht Government;
- g. for a system of financial administration with standards comparable to those generally accepted for governments of similar size in Canada, through which the Ditidaht / Pacheedaht Government will be financially accountable to Ditidaht / Pacheedaht Citizens;
- h. for conflict of interest rules comparable to those generally accepted for governments of similar size in Canada;
- i. for recognition and protection of rights and freedoms of Ditidaht / Pacheedaht Citizens;
- j. that every individual who is enrolled under the Treaty is entitled to be a Ditidaht / Pacheedaht Citizen;
- k. processes for the enactment and review of Ditidaht / Pacheedaht Law;
- l. a process for challenging the validity of Ditidaht / Pacheedaht Law prior to review by a court of competent jurisdiction;

- m. that any Ditidaht / Pacheedaht Law which is inconsistent with the Ditidaht / Pacheedaht Constitution is, to the extent of the inconsistency, of no force and effect;
- n. for conditions under which Ditidaht / Pacheedaht may dispose of land or interests in lands;
- o. for the establishment of Ditidaht / Pacheedaht Public Institutions;
- p. for amendment of the Ditidaht / Pacheedaht Constitution; and
- q. for other provisions, as determined by Ditidaht / Pacheedaht.

14.3.2 The Ditidaht / Pacheedaht Constitution, once ratified in accordance with the Treaty, will come into force on the Effective Date.

#### **14.4.0 DITIDAHT / PACHEEDAHT GOVERNMENT STRUCTURE**

The Treaty will provide that:

- 14.4.1 The Ditidaht / Pacheedaht Constitution may provide for the inclusion of Chaabut into its governance structure, including:
- a. the process of inclusion of Chaabut;
  - b. the duties of Chaabut; and
  - c. other related measures.

#### **14.5.0 POST-EFFECTIVE DATE GOVERNMENT TRANSITION**

The Treaty will provide that:

- 14.5.1 The Chief Councilor and Councilors of the Ditidaht / Pacheedaht Band under the *Indian Act* on the day immediately before the Effective Date are the elected members of the Ditidaht / Pacheedaht Government from the Effective Date, until the first election for the Ditidaht / Pacheedaht Government takes place.
- 14.5.2 The first election for the Ditidaht / Pacheedaht Government will be initiated no later than six months after the Effective Date, and those elected in the election will take office no later than one year after the Effective Date.

#### **14.6.0 APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS**

The Treaty will provide that:

- 14.6.1    Ditidaht / Pacheedaht will establish processes for appeal or review of administrative decisions made by the Ditidaht / Pacheedaht Government and Ditidaht / Pacheedaht Public Institutions and if those processes provide for a right of appeal to a court, the Supreme Court of British Columbia will have jurisdiction to hear those appeals.
- 14.6.2    The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by the Ditidaht / Pacheedaht Government and Ditidaht / Pacheedaht Public Institutions, under a Ditidaht / Pacheedaht Law, but no application for judicial review of those decisions may be brought until all procedures for appeal or review provided by Ditidaht / Pacheedaht and applicable to that decision have been exhausted.
- 14.6.3    The *Judicial Review Procedure Act* applies to an application for judicial review of administrative decisions taken by the Ditidaht / Pacheedaht Government and Ditidaht / Pacheedaht Public Institutions under 14.6.2 as if the Ditidaht / Pacheedaht Law were an “enactment” within the meaning of that Act.

#### **14.7.0    REGISTRY OF LAWS**

The Treaty will provide that:

- 14.7.1    Ditidaht / Pacheedaht will:
  - a. maintain a public registry of Ditidaht / Pacheedaht Law in the English language and, at the discretion of Ditidaht / Pacheedaht, in the Ditidaht / Pacheedaht language, the English version of which will be authoritative;
  - b. provide Canada and British Columbia with copies of Ditidaht / Pacheedaht Laws as soon as practical after they are enacted; and
  - c. establish procedures for the coming into force and the publication of Ditidaht / Pacheedaht Laws.

#### **14.8.0    PARTICIPATION OF NON-CITIZENS**

The Treaty will provide that:

- 14.8.1    Ditidaht / Pacheedaht will consult with Non-Citizens in respect of administrative decisions of the Ditidaht / Pacheedaht Government and a Ditidaht / Pacheedaht Public Institution that directly and significantly affect those Non-Citizens.

- 14.8.2 For the purposes of 14.8.1, Ditidaht / Pacheedaht must provide:
- a. notice to Non-Citizens of the matter to be decided;
  - b. sufficient information with respect to the matter to permit Non-Citizens to prepare their views on the matter;
  - c. a reasonable period of time to permit Non-Citizens to prepare their views on the matter;
  - d. an opportunity for Non-Citizens to present their views on the matter; and
  - e. a full and fair consideration of any views on the matter presented by Non-Citizens.
- 14.8.3 In addition to the requirement to consult under 14.8.1, Ditidaht / Pacheedaht will provide Non-Citizens with the opportunity to participate in the decision-making processes of a Ditidaht / Pacheedaht Public Institution if the activities of that Ditidaht / Pacheedaht Public Institution directly and significantly affect Non-Citizens.
- 14.8.4 The means of participation under 14.8.3 will include:
- a. an opportunity for Non-Citizens to elect at least one Non-Citizen as a member of the Ditidaht / Pacheedaht Public Institution with the ability to participate in discussions and vote on matters that directly and significantly affect Non-Citizens;
  - b. the appointment of at least one Non-Citizen, selected by Non-Citizens, as a member of the Ditidaht / Pacheedaht Public Institution with the ability to participate in discussions and vote on matters that directly and significantly affect Non-Citizens; or
  - c. other comparable measures.
- 14.8.5 Ditidaht / Pacheedaht will establish the means of participation under 14.8.4 by Ditidaht / Pacheedaht Law at the same time that it establishes a Ditidaht / Pacheedaht Public Institution whose activities may directly and significantly affect Non-Citizens.
- 14.8.6 Ditidaht / Pacheedaht will provide Non-Citizens with access to the appeal and review procedures that may be established under 14.6.1 in respect of administrative decisions that directly and significantly affect Non-Citizens.

**14.9.0 NOTIFICATION OF PROVINCIAL LEGISLATION**

The Treaty will provide that:

- 14.9.1 Subject to 14.9.6 or an agreement under 14.9.4, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant Governor in Council, British Columbia will notify Ditidaht / Pacheedaht where:
- a. the Treaty provides Ditidaht / Pacheedaht with law making authority in respect of the subject matter of the legislation or regulation;
  - b. the legislation or regulation may affect the protections, immunities, limitations in respect of liability, remedies over, and rights referred to in 14.13.8 and 14.13.9; or
  - c. the legislation or regulation may affect:
    - i. the rights, powers, duties, obligations; or
    - ii. the protections, immunities, or limitations in respect of liability, referred to in 14.11.83,
- except where this cannot be done for reasons of emergency or confidentiality.
- 14.9.2 Where British Columbia does not notify Ditidaht / Pacheedaht under 14.9.1 for reasons of emergency or confidentiality, British Columbia will notify Ditidaht / Pacheedaht, as soon as practical, that the legislation has been introduced in the Legislative Assembly, or the regulation has been deposited with the registrar of regulations, as the case may be.
- 14.9.3 Notifications under 14.9.1 and 14.9.2 will include:
- a. the nature and purpose of the proposed legislation or regulation; and
  - b. the date the proposed legislation or regulation is anticipated to take effect, if it has not already done so.
- 14.9.4 Ditidaht / Pacheedaht and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under 14.9.1 to 14.9.3 and 14.9.5.
- 14.9.5 Subject to 14.9.6 and 14.9.7 or an agreement under 14.9.4, if, within 30 days after notification under 14.9.1 or 14.9.2 or by agreement under 14.9.4, Ditidaht / Pacheedaht makes a written request to British Columbia, then

British Columbia and Ditidaht / Pacheedaht will discuss the effect of the legislation or regulation, if any, on:

- a. a Ditidaht / Pacheedaht Law; or
  - b. a matter referred to in 14.9.1.b or 14.9.1.c.
- 14.9.6 Where British Columbia establishes a process or has established a process providing for collective discussion with First Nation governments in British Columbia in relation to matters referred to in 14.9.5:
- a. Ditidaht / Pacheedaht will be invited to participate in that process; and
  - b. the process will be deemed to satisfy British Columbia's obligation for discussion in respect of a particular matter under 14.9.5.
- 14.9.7 Where Ditidaht / Pacheedaht is a member of a representative body and, with the consent of Ditidaht / Pacheedaht, British Columbia and that body have entered into an agreement providing for consultation in respect of matters under 14.9.1, 14.9.2 and 14.9.5, then such consultations in respect of a particular matter will be deemed to satisfy British Columbia's obligations for notification under 14.9.1 and 14.9.2 and discussion under 14.9.5.
- 14.9.8 Unless British Columbia agrees otherwise, Ditidaht / Pacheedaht will retain the information provided under 14.9.1 to 14.9.7 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative Assembly or a regulation is deposited with the registrar of regulations, as applicable.
- 14.9.9 The Parties acknowledge that nothing in 14.9.1 to 14.9.7 is intended to interfere with British Columbia's legislative process.
- 14.9.10 Notwithstanding any other provision of the Treaty, to the extent that provincial legislation or a regulation referred to in 14.9.1 affects the validity of a Ditidaht / Pacheedaht Law, the Ditidaht / Pacheedaht Law will be deemed to be valid for a period of six months after the coming into force of the provincial legislation or regulation.

#### **14.10.0 DELEGATION**

The Treaty will provide that:

- 14.10.1 Any law making authority of Ditidaht / Pacheedaht under the Treaty may be delegated by Ditidaht / Pacheedaht Law to:

- a. a Ditidaht / Pacheedaht Public Institution;
- b. another First Nation government in British Columbia;
- c. a public institution established by one or more First Nation governments in British Columbia;
- d. Canada, British Columbia, a Local Government; or
- e. a legal entity as agreed to by the Parties,

where the delegation and the exercise of any law making authority is in accordance with the Treaty and the Ditidaht / Pacheedaht Constitution.

- 14.10.2 Any authority of Ditidaht / Pacheedaht under the Treaty other than a law making authority may be delegated by a Ditidaht / Pacheedaht Law to any body or legal entity set out in 14.10.1 if the delegation and the exercise of any delegated authority is in accordance with the Treaty and the Ditidaht / Pacheedaht Constitution.
- 14.10.3 Any delegation under 14.10.1 or 14.10.2 to a body or legal entity described in 14.10.1.b to 14.10.1.e requires the written consent of the delegate.
- 14.10.4 Ditidaht / Pacheedaht may enter into agreements to receive authorities, including law making authority, by delegation.

#### **14.11.0 DITIDAHT / PACHEEDAHT LAW MAKING AUTHORITIES**

The Treaty will provide that:

##### **Ditidaht / Pacheedaht Law Making Transition**

- 14.11.1 Ditidaht / Pacheedaht will give at least six months notice to Canada and British Columbia before bringing into effect any Ditidaht / Pacheedaht Law in respect of:
  - a. adoption;
  - b. Child Protection Services;
  - c. health services;
  - d. family and social services;
  - e. Child Care; or
  - f. kindergarten to grade 12 education.

- 14.11.2 Upon agreement by the Parties, Ditidaht / Pacheedaht may exercise a law making authority before the expiration of the six month notice period in 14.11.1.
- 14.11.3 At the written request of any Party made within three months of receiving notice under 14.11.1, the relevant Parties will discuss:
- a. options to address the interests of Ditidaht / Pacheedaht through methods other than the exercise of law making authority;
  - b. any transfer of cases and related documentation from federal or provincial institutions to the Ditidaht / Pacheedaht Government or Ditidaht / Pacheedaht Public Institutions, including any confidentiality and privacy considerations;
  - c. any transfer of assets from federal or provincial institutions to the Ditidaht / Pacheedaht Government or Ditidaht / Pacheedaht Public Institutions;
  - d. any appropriate amendments to Federal or Provincial Law;
  - e. immunity of individuals providing services or exercising authority under Ditidaht / Pacheedaht Law; and
  - f. other matters agreed to by the Parties.
- 14.11.4 The Parties may enter into agreements regarding any of the matters set out in 14.11.3 but an agreement under this paragraph is not a condition precedent to the exercise of law making authority by Ditidaht / Pacheedaht, and such authority may be exercised immediately following the six month notice period or the notice period agreed upon in accordance with 14.11.2.

### **Ditidaht / Pacheedaht Government**

- 14.11.5 Ditidaht / Pacheedaht may make laws in respect of the election, administration, management and operation of the Ditidaht / Pacheedaht Government including:
- a. the establishment of Ditidaht / Pacheedaht Public Institutions, including their respective powers, duties, composition, and membership, but any incorporation of a Ditidaht / Pacheedaht Public Institution must be under Federal or Provincial Law;

- b. the powers, duties, responsibilities, remuneration, and indemnification of members, officials, and appointees of the Ditidaht / Pacheedaht Government and Ditidaht / Pacheedaht Public Institutions;
  - c. the establishment of Ditidaht / Pacheedaht Corporations, but the registration or incorporation of Ditidaht / Pacheedaht Corporations must be under Federal or Provincial Law;
  - d. financial administration of Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or Ditidaht / Pacheedaht Public Institutions; and
  - e. elections, by-elections, and referenda.
- 14.11.6 Ditidaht / Pacheedaht will make laws to provide Ditidaht / Pacheedaht Citizens with reasonable access to information in the custody or control of the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution.
- 14.11.7 Ditidaht / Pacheedaht will make laws to provide persons other than Ditidaht / Pacheedaht Citizens with reasonable access to information in the custody or control of the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution regarding matters that directly and significantly affect those persons.
- 14.11.8 Ditidaht / Pacheedaht Law made under 14.11.6 and 14.11.7 may exempt access to information that is generally unavailable under Federal or Provincial Law.
- 14.11.9 Ditidaht / Pacheedaht Law under 14.11.5, 14.11.6, or 14.11.7 prevails to the extent of a Conflict with Federal or Provincial Law, unless the Conflict is in respect of the protection of personal information, in which case Federal or Provincial Law prevails to the extent of the Conflict.

### **Ditidaht / Pacheedaht Citizenship**

- 14.11.10 Ditidaht / Pacheedaht may make laws in respect of Ditidaht / Pacheedaht citizenship.
- 14.11.11 Ditidaht / Pacheedaht Law under 14.11.10 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Ditidaht / Pacheedaht Assets**

- 14.11.12 Ditidaht / Pacheedaht may make laws in respect of the use, possession, disposition, and management of assets of Ditidaht / Pacheedaht, the Ditidaht Pacheedaht Government, Ditidaht / Pacheedaht Public Institutions or a Ditidaht / Pacheedaht Corporation:
  - a. located off Ditidaht / Pacheedaht Lands; and
  - b. located on Ditidaht / Pacheedaht Lands.
- 14.11.13 For greater certainty, the law making authority under 14.11.12 does not include the authority to make laws regarding creditors' rights and remedies.
- 14.11.14 Federal or Provincial Law prevails to the extent of a Conflict with Ditidaht / Pacheedaht Law under 14.11.12.a.
- 14.11.15 Ditidaht / Pacheedaht Law under 14.11.12.b prevails to the extent of a Conflict with Federal or Provincial Law.

### **Adoption**

- 14.11.16 For the purposes of this chapter, all relevant factors will be considered in determining a Child's best interests, including those factors that must be considered under the *Adoption Act*.
- 14.11.17 Ditidaht / Pacheedaht may make laws in respect of adoptions in British Columbia for:
  - a. Ditidaht / Pacheedaht Children; and
  - b. Children who reside on Ditidaht / Pacheedaht Lands to be adopted by Ditidaht / Pacheedaht Citizens.
- 14.11.18 Ditidaht / Pacheedaht Law under 14.11.17 will:
  - a. expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place; and
  - b. provide for the consent of individuals whose consent to a Child's adoption is required under Provincial Law, subject to the power of the court to dispense with such consent under Provincial Law.
- 14.11.19 Where Ditidaht / Pacheedaht makes laws under 14.11.17, Ditidaht / Pacheedaht will:

- a. develop operational and practice standards that promote the best interests of the Child, and
- b. provide Canada and British Columbia with a record of all adoptions occurring under Ditidaht / Pacheedaht Law.

14.11.20 The adoption record under 14.11.19.b will include:

- a. name and birthdate of the adoptee;
- b. names of the biological parents;
- c. names of the adoptive parents;
- d. completion date of the adoption; and
- e. such other matters as Ditidaht / Pacheedaht and British Columbia may agree.

14.11.21 Ditidaht / Pacheedaht Law under 14.11.17 applies to the adoption of a Ditidaht / Pacheedaht Child residing off Ditidaht / Pacheedaht Lands or a Child residing on Pacheedaht Lands who is not a Ditidaht / Pacheedaht Child where:

- a. the Child has not been placed for adoption under the *Adoption Act*, and all of the following consent to the application of the Ditidaht / Pacheedaht Law to the adoption:
  - i. the parents;
  - ii. the Child, if the Child has reached the age where consent to adoption is required under the *Adoption Act*; and
  - iii. the guardian of the Child, if the Child is not under the guardianship of a Director;
- b. a Director is guardian of the child, and the Director consents; or
- c. a court dispenses with the requirement for the consent referred to in 14.11.21.a, in accordance with the criteria that would be used by that court in an application to dispense with the requirement for a parent or guardian's consent to an adoption under Provincial Law.

14.11.22 Where a Director becomes the guardian of a Ditidaht / Pacheedaht Child, the Director will:

- a. provide notice to Ditidaht / Pacheedaht that the Director is the guardian of the Child;
- b. provide notice to Ditidaht / Pacheedaht when the Director applies for a continuing custody order;
- c. provide Ditidaht / Pacheedaht with a copy of the continuing custody order once the order is made and make reasonable efforts to involve Ditidaht / Pacheedaht in planning for the Child;
- d. if requested by Ditidaht / Pacheedaht, consent to the application of Ditidaht / Pacheedaht Law to the adoption of that Ditidaht / Pacheedaht Child, provided that it is in the best interests of the Child; and
- e. in determining the best interests of the Child under 14.11.22.d, consider, the importance of preserving the Child's cultural identity.

14.11.23 Ditidaht / Pacheedaht Law under 14.11.17 prevails to the extent of a Conflict with Federal or Provincial Law.

14.11.24 Before placing a Ditidaht / Pacheedaht Child for adoption, an adoption agency will make reasonable efforts to obtain information about the Child's cultural identity and discuss with a designated representative of Ditidaht / Pacheedaht the Child's placement.

14.11.25 14.11.24 does not apply if the Ditidaht / Pacheedaht Child has reached the age where consent to adoption is required under the *Adoption Act*, and objects to the discussion taking place, or if the birth parent or other guardian of the Child who requested that the Child be placed for adoption objects to the discussion taking place.

### **Child Custody**

14.11.26 Ditidaht / Pacheedaht has standing in any judicial proceedings in British Columbia in which custody of a Ditidaht / Pacheedaht Child is in dispute and the court will consider any evidence and representations in respect of Ditidaht / Pacheedaht Law and customs in addition to any other matters it is required by law to consider.

14.11.27 The participation of Ditidaht / Pacheedaht in proceedings referred to in 14.11.26 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Child Protection Services**

14.11.28 Ditidaht / Pacheedaht may make laws in respect of Child Protection Services for Children of Ditidaht / Pacheedaht Families resident on Ditidaht / Pacheedaht Lands

14.11.29 Ditidaht / Pacheedaht Laws under 14.11.28 will:

- a. expressly provide that those laws will be interpreted and administered such that the Safety and Well-Being of Children are the paramount considerations; and
- b. not preclude the reporting, under Provincial Law, of a Child in Need of Protection.

14.11.30 Where Ditidaht / Pacheedaht makes laws under 14.11.28, Ditidaht / Pacheedaht will:

- a. develop operational and practice standards intended to ensure the Safety and Well-Being of Children and families;
- b. participate in, or establish information management systems compatible with, British Columbia's information management systems concerning Children in Need of Protection and Children in Care;
- c. allow for mutual sharing of information concerning Children in Need of Protection and Children in Care with British Columbia; and
- d. establish and maintain a system for the management, storage and disposal of Child Protection Services records and the safeguarding of personal Child Protection Services information.

14.11.31 Notwithstanding any laws made under 14.11.28, if there is an emergency in which a Child of a Ditidaht / Pacheedaht Family on Ditidaht / Pacheedaht Lands is in need of protection, and Ditidaht / Pacheedaht has not responded or is unable to respond in a timely manner, British Columbia may act to protect the Child and unless British Columbia and Ditidaht / Pacheedaht otherwise agree in writing, British Columbia will refer the matter to Ditidaht / Pacheedaht after the emergency.

14.11.32 Ditidaht / Pacheedaht Law under 14.11.28 prevails to the extent of a Conflict with Federal or Provincial Law.

14.11.33 At the request of Ditidaht / Pacheedaht or British Columbia, Ditidaht / Pacheedaht and British Columbia will negotiate and attempt to reach agreement in respect of how Child Protection Services are provided to:

- a. Ditidaht / Pacheedaht Children who reside off Ditidaht / Pacheedaht Lands; or
- b. Children who reside on Ditidaht / Pacheedaht Lands who are not members of Ditidaht / Pacheedaht Families.

14.11.34 Where the Director becomes the guardian of a Ditidaht / Pacheedaht Child, the Director will make reasonable efforts to include Ditidaht / Pacheedaht in planning for the Ditidaht / Pacheedaht Child, including adoption planning.

### **Aboriginal Healers**

14.11.35 Ditidaht / Pacheedaht may make laws in respect of the authorization of individuals to practice as aboriginal healers on Ditidaht / Pacheedaht Lands.

14.11.36 The authority to make laws under 14.11.35 does not include the authority to regulate:

- a. medical or health practices that, or practitioners who, require licensing or certification under Federal or Provincial Law; or
- b. products or substances that are regulated under Federal or Provincial Law.

14.11.37 Ditidaht / Pacheedaht Laws under 14.11.35 will establish standards:

- a. in respect of competence, ethics, and quality of practice that are reasonably required to protect the public; and
- b. that are reasonably required to safeguard personal client information.

14.11.38 Ditidaht / Pacheedaht Law under 14.11.35 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Health**

14.11.39 Ditidaht / Pacheedaht may make laws in respect of health services, including public health, provided by the Ditidaht / Pacheedaht Government and a Ditidaht / Pacheedaht Public Institution on Ditidaht / Pacheedaht Lands.

14.11.40 Ditidaht / Pacheedaht Laws under 14.11.39 will take into account the protection, improvement and promotion of public and individual health and safety.

- 14.11.41 Ditidaht / Pacheedaht Laws under 14.11.39 do not apply to health services provided by a provincially-funded health institution, agency or body, other than an institution, agency or body established by Ditidaht / Pacheedaht.
- 14.11.42 At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration of Federal and Provincial health services and programs by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution for individuals residing on Ditidaht / Pacheedaht Lands.
- 14.11.43 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.39.
- 14.11.44 Notwithstanding 14.11.43, a Ditidaht / Pacheedaht Law under 14.11.39 in respect of the organization and structure of the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution used to deliver health services on Ditidaht / Pacheedaht Lands will prevail to the extent of a Conflict with Federal or Provincial Law.

### **Family and Social Services**

- 14.11.45 Ditidaht / Pacheedaht may make laws in respect of family and social services provided by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution.
- 14.11.46 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.45.
- 14.11.47 Ditidaht / Pacheedaht law making authority under 14.11.45 does not include the authority to make laws in respect of the licensing and regulation of facility-based services off Ditidaht / Pacheedaht Lands.
- 14.11.48 Where Ditidaht / Pacheedaht makes laws under 14.11.45, at the request of any Party, the Parties will negotiate and attempt to reach agreement in respect of exchange of information with regards to avoidance of double payments and related matters.
- 14.11.49 At the request of any Party, the Parties will negotiate and attempt to reach agreements for administration and delivery by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution of Federal and Provincial social services and programs for all individuals residing within Ditidaht / Pacheedaht Lands.

## **Child Care**

- 14.11.50 Ditidaht / Pacheedaht may make laws in respect of Child Care services on Ditidaht / Pacheedaht Lands.
- 14.11.51 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.52.

## **Liquor Control**

- 14.11.52 Ditidaht / Pacheedaht may make laws in respect of the prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on Ditidaht / Pacheedaht Lands.
- 14.11.53 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.52.
- 14.11.54 British Columbia will not issue a licence, permit, or other authority to sell liquor on Ditidaht / Pacheedaht Lands without the consent of Ditidaht / Pacheedaht.
- 14.11.55 British Columbia will, in accordance with Provincial Law, authorize persons designated by Ditidaht / Pacheedaht to approve or deny applications for special occasion licences to sell liquor on Ditidaht / Pacheedaht Lands.

## **Solemnization of Marriages**

- 14.11.56 Ditidaht / Pacheedaht may make laws in respect of:
- a. the marriage rites and ceremonies of Ditidaht / Pacheedaht culture; and
  - b. the designation of Ditidaht / Pacheedaht Citizens to solemnize marriages.
- 14.11.57 Nothing in the *Marriage Act* will be construed as in any way preventing Ditidaht / Pacheedaht from solemnizing, according to the rites and ceremonies of Ditidaht / Pacheedaht culture, a marriage between any two persons:
- a. neither of whom is under any legal disqualification to contract marriage under Federal or Provincial Law; and
  - b. either or both of whom are Ditidaht / Pacheedaht Citizens

- 14.11.58 A marriage may not be solemnized under Ditidaht / Pacheedaht Law unless the persons intending to marry possess a valid marriage licence.
- 14.11.59 For the purposes of 14.11.58, marriage licences may only be issued by Ditidaht / Pacheedaht where:
- a. Ditidaht / Pacheedaht has been appointed as an issuer of marriage licences under Provincial Law; and
  - b. the issuance of the marriage licence complies with the *Marriage Act*.
- 14.11.60 Immediately after the solemnization of the marriage, a representative designated under 14.11.56.b must register the marriage:
- a. by entering a record of it in a marriage register book issued by the chief executive officer under the *Vital Statistics Act* and kept by Ditidaht / Pacheedaht for that purpose; and
  - b. by providing the original registration to the chief executive officer under the *Vital Statistics Act*.
- 14.11.61 The chief executive officer, or a person authorized by the chief executive officer under the *Vital Statistics Act* may, during normal business hours and as often as the chief executive officer considers necessary, inspect the marriage register book kept by Ditidaht / Pacheedaht and compare it with the registrations returned by Ditidaht / Pacheedaht under 14.11.60.
- 14.11.62 The record under 14.11.60.a must be signed:
- a. by each of the parties to the marriage;
  - b. by two witnesses; and
  - c. by a representative designated under 14.11.56.b
- 14.11.63 A representative designated under 14.11.56.b by whom a marriage is solemnized must observe and perform the duties imposed on him or her under the *Vital Statistics Act* respecting the records of marriage.
- 14.11.64 Subject to 14.11.57 to 14.11.63, a Ditidaht / Pacheedaht Law under 14.11.56 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Devolution of Cultural Property**

- 14.11.65 In 14.11.66 to 14.11.71, “Cultural Property” means:

- a. ceremonial regalia and similar personal property associated with Ditidaht / Pacheedaht; and
- b. other personal property that has cultural significance to Ditidaht / Pacheedaht.

14.11.66 Ditidaht / Pacheedaht may make laws consistent with Ditidaht / Pacheedaht practices, customs and traditions in respect of devolution of the Cultural Property of a Ditidaht / Pacheedaht Citizen who dies without a will.

14.11.67 Ditidaht / Pacheedaht Law under 14.11.68 prevails to the extent of a Conflict with Federal or Provincial Law.

14.11.68 Ditidaht / Pacheedaht has standing in any judicial proceeding in which:

- a. the validity of the will of a Ditidaht / Pacheedaht Citizen; or
- b. the devolution of the Cultural Property of a Ditidaht / Pacheedaht Citizen/Member;

is at issue, including any proceedings under wills variation legislation.

14.11.69 Ditidaht / Pacheedaht may commence an action under provincial wills variation legislation in respect of cultural property addressed by the will of a Ditidaht / Pacheedaht Citizen that provides for the devolution of Cultural Property.

14.11.70 In a proceeding to which 14.11.68 or 14.11.69 applies, the court will consider, among other matters, any evidence or representations in respect of Ditidaht / Pacheedaht Law and customs dealing with the devolution of Cultural Property.

14.11.71 The participation of Ditidaht / Pacheedaht in proceedings referred to in 14.11.68 or 14.11.69 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Education of Language and Culture**

14.11.72 Ditidaht / Pacheedaht may make laws in respect of language and culture education provided by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution on Ditidaht / Pacheedaht Lands for:

- a. the certification and accreditation of teachers for Ditidaht / Pacheedaht language and culture; and

- b. the development and teaching of a Ditidaht / Pacheedaht language and culture curriculum.

14.11.73 Ditidaht / Pacheedaht Law under 14.11.72 prevails to the extent of a Conflict with Federal or Provincial Law.

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

14.11.74 Ditidaht / Pacheedaht may make laws in respect of kindergarten to grade 12 education provided by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution on Ditidaht / Pacheedaht Lands.

14.11.75 Ditidaht / Pacheedaht Laws under 14.11.74 will:

- a. establish curriculum, examination, and other standards that permit transfers of students between school systems in British Columbia at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
- b. provide for the certification and accreditation of teachers, other than those contemplated in 14.11.72.a, by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution, or a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially funded independent schools in British Columbia.

14.11.76 Ditidaht / Pacheedaht Law under 14.11.74 does not apply to schools under the *School Act* or the *Independent School Act*, unless the school is established under the *Independent School Act* by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution.

14.11.77 Ditidaht / Pacheedaht may make laws in respect of home education of Ditidaht / Pacheedaht Children on Ditidaht / Pacheedaht Lands.

14.11.78 Ditidaht / Pacheedaht Law under 14.11.74 must not interfere with the ability of parents to decide where their Children may be enrolled to receive kindergarten to grade 12 educations.

14.11.79 Ditidaht / Pacheedaht Law under 14.11.74 or 14.11.77 prevail to the extent of a Conflict with Federal or Provincial Law.

14.11.80 At the request of Ditidaht / Pacheedaht or British Columbia, Ditidaht / Pacheedaht and British Columbia will negotiate and attempt to reach an

agreement concerning the provision for kindergarten to grade 12 education by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution to:

- a. individuals other than Ditidaht / Pacheedaht Citizens residing on Ditidaht / Pacheedaht Lands; or
- b. Ditidaht / Pacheedaht Citizens residing off Ditidaht / Pacheedaht Lands.

### **Post-Secondary Education**

- 14.11.81 Ditidaht / Pacheedaht may make laws in respect of post-secondary education provided by the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution on Ditidaht / Pacheedaht Lands including:
- a. the establishment of post-secondary education institutions with the ability to grant degrees, diplomas or certificates;
  - b. the determination of the curriculum for post-secondary education institutions established by Ditidaht / Pacheedaht; and
  - c. the provision for and coordination of adult education programs.

- 14.11.82 Subject to 14.11.73, Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.81.

### **Emergency Preparedness**

- 14.11.83 Ditidaht / Pacheedaht has:
- a. the rights, powers, duties, and obligations; and
  - b. the protections, immunities and limitations in respect of liability,
- of a local authority under Federal and Provincial Law in respect of emergency preparedness and emergency measures on Ditidaht / Pacheedaht Lands.
- 14.11.84 Ditidaht / Pacheedaht may make laws in respect of its rights, powers, duties, and obligations under 14.11.83.
- 14.11.85 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.84.
- 14.11.86 For greater certainty, Ditidaht / Pacheedaht may declare a state of local emergency, and exercise the powers of a local authority in respect of local emergencies in accordance with Federal or Provincial Law in respect of

emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia under Federal or Provincial Law.

14.11.87 Nothing in the Treaty affects the authority of:

- a. Canada to declare a national emergency; or
- b. British Columbia to declare a provincial emergency,

in accordance with Federal or Provincial Law.

### **Regulation of Business**

14.11.88 Ditidaht / Pacheedaht may make laws in respect of the regulation, licensing and prohibition of business on Ditidaht / Pacheedaht Lands, including the imposition of licence fees or other fees.

14.11.89 Unless otherwise provided for in the Treaty, Ditidaht / Pacheedaht law making authority under 14.11.88 does not include the authority to make laws in respect of the accreditation, certification, or professional conduct of professions and trades.

14.11.90 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.88.

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

14.11.91 Ditidaht / Pacheedaht may make laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Ditidaht / Pacheedaht Lands that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety.

14.11.92 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.91.

### **Buildings and Structures**

14.11.93 Ditidaht / Pacheedaht may make laws in relation to the design, construction, maintenance, repair and demolition of buildings and structures on Ditidaht / Pacheedaht Lands.

14.11.94 Subject to 14.11.95, a Ditidaht / Pacheedaht Law under 14.11.93 must not establish standards for buildings or structures to which the *British Columbia*

*Building Code* applies which are additional to or different from the standards established by the *British Columbia Building Code*.

- 14.11.95 At the request of Ditidaht / Pacheedaht, British Columbia and Ditidaht / Pacheedaht will negotiate and attempt to reach agreement to enable the Ditidaht / Pacheedaht Government to establish standards for buildings or structures which are additional to or different from the standards established by the *British Columbia Building Code*.
- 14.11.96 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law made under 14.11.93

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

- 14.11.97 Ditidaht / Pacheedaht may make laws in respect of traffic, parking, transportation and highways on Ditidaht / Pacheedaht Lands to the same extent as municipal governments have authority to make laws in respect of traffic, parking, transportation and highways in municipalities in British Columbia.
- 14.11.98 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.11.97.

### **Public Works**

- 14.11.99 Ditidaht / Pacheedaht may make laws in respect of public works and related services on Ditidaht / Pacheedaht Lands.
- 14.11.100 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law made under 14.11.99.

## **14.12.0 ADMINISTRATION OF JUSTICE**

The Treaty will provide that:

### **Offences and Sanctions**

- 14.12.1 Ditidaht / Pacheedaht Laws may provide for the imposition of sanctions, including fines, Administrative Penalties, restitution, and imprisonment, for the violation of Ditidaht / Pacheedaht Laws.
- 14.12.2 Subject to 19.3.3, Ditidaht / Pacheedaht Law may provide for:

- a. a maximum fine that is not greater than that which may be imposed for comparable regulatory offences punishable by way of summary conviction under Federal or Provincial Law; and
  - b. a maximum Administrative Penalty that is not greater than that which may be imposed for a breach of a comparable regulatory requirement under Federal or Provincial Law.
- 14.12.3 Where there is no comparable regulatory offence or regulatory requirement under Federal or Provincial Law, the maximum fine or Administrative Penalty shall not be greater than the general limit for offences under the provincial *Offence Act*.
- 14.12.4 Subject to 19.3.3.b, Ditidaht / Pacheedaht Law may provide for a maximum term of imprisonment that is not greater than the general limit for offences under the provincial *Offence Act*.

### **Enforcement of Ditidaht / Pacheedaht Laws**

- 14.12.5 Ditidaht / Pacheedaht is responsible for the enforcement of Ditidaht / Pacheedaht Law.
- 14.12.6 At the request of Ditidaht / Pacheedaht, the Parties may, to the extent of their respective authority, negotiate agreements for the enforcement of Ditidaht / Pacheedaht Law by a police force or federal or provincial enforcement officials.
- 14.12.7 Ditidaht / Pacheedaht may make laws for the enforcement of Ditidaht / Pacheedaht Laws including:
- a. the appointment of officials to enforce Ditidaht / Pacheedaht Laws; and
  - b. powers of enforcement, provided such powers do not exceed those provided by Federal or Provincial Law for enforcing similar laws in British Columbia.
- 14.12.8 Ditidaht / Pacheedaht law making authority in 14.12.7 does not include the authority to:
- a. establish a police force; or
  - b. authorize the carriage or use of a firearm by Ditidaht / Pacheedaht enforcement officials;

but nothing in the Treaty prevents Ditidaht / Pacheedaht from establishing a police force under Provincial Law.

- 14.12.9 Where Ditidaht / Pacheedaht appoints officials to enforce Ditidaht / Pacheedaht Law, Ditidaht / Pacheedaht will:
  - a. ensure that any Ditidaht / Pacheedaht enforcement officials are adequately trained to carry out their duties, having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in British Columbia; and
  - b. establish and implement procedures for responding to complaints against Ditidaht / Pacheedaht enforcement officials.
- 14.12.10 Ditidaht / Pacheedaht Laws made under the Wildlife and Migratory Birds Chapters may be enforced by persons authorized to enforce Federal or Provincial Law or Ditidaht / Pacheedaht Law in respect of Wildlife and Migratory Birds in British Columbia.
- 14.12.11 Federal or Provincial Law prevails to the extent of a Conflict with a Ditidaht / Pacheedaht Law under 14.12.7.
- 14.12.12 Ditidaht / Pacheedaht may, by a proceeding brought in the Supreme Court of British Columbia, enforce, prevent or restrain the contravention of a Ditidaht / Pacheedaht Law.

### **Adjudication of Laws**

- 14.12.13 As of the Effective Date, the Provincial Court of British Columbia has jurisdiction to hear prosecutions of offences under Ditidaht / Pacheedaht Law.
- 14.12.14 The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under Ditidaht / Pacheedaht Law.
- 14.12.15 The Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, has jurisdiction to hear legal disputes arising between individuals under Ditidaht / Pacheedaht Law.
- 14.12.16 Ditidaht / Pacheedaht is responsible for the prosecution of all matters arising from Ditidaht / Pacheedaht Law, including appeals, and may carry out this responsibility by:

- a. appointing or retaining individuals to conduct prosecutions and appeals in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia; or
  - b. entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals.
- 14.12.17 Unless the Parties agree otherwise, British Columbia will pay any fines collected in respect of a penalty imposed on a person by the Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, for an offence under Ditidaht / Pacheedaht Law, to Ditidaht / Pacheedaht on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia in respect of an offence under Federal Law.
- 14.12.18 Ditidaht / Pacheedaht law making authority does not include the authority to establish a court.
- 14.12.19 After receiving a written request from Ditidaht / Pacheedaht, the Parties will discuss and explore options for the establishment of a court, other than a provincial court with inherent jurisdiction or a federal court, to adjudicate offences and other matters arising under Ditidaht / Pacheedaht Law or laws of other First Nation governments in British Columbia.

### **Community Correctional Services**

- 14.12.20 Ditidaht / Pacheedaht may provide Community Correctional Services for persons charged with, or found guilty of, an offence under Ditidaht / Pacheedaht Law and to carry out such other responsibilities as may be set out in an agreement under 14.12.21 and 14.12.22.
- 14.12.21 At the request of Ditidaht / Pacheedaht, Ditidaht / Pacheedaht and British Columbia may enter into agreements to provide Community Correctional Services in relation to persons who fall under the jurisdiction of British Columbia on Ditidaht / Pacheedaht Lands for persons charged with, or found guilty of, an offence under Federal or Provincial Law.
- 14.12.22 Ditidaht / Pacheedaht and British Columbia may enter into agreements to enable Ditidaht / Pacheedaht to provide rehabilitative community-based programs and interventions off Ditidaht / Pacheedaht Lands for Ditidaht / Pacheedaht Citizens charged with, or found guilty of, an offence under Federal or Provincial Law.

14.12.23 The Treaty does not authorize Ditidaht / Pacheedaht to establish or maintain places of confinement except for police jails or lockups operated by a police service established under Provincial Law, or as provided for under an agreement referred to in 14.12.21.

#### **14.13.0 DITIDAHT / PACHEEDAHT GOVERNMENT LIABILITY**

The Treaty will provide that:

##### **Members of the Ditidaht / Pacheedaht Government**

14.13.1 No action for damages lies or may be instituted against a member or former member of the Ditidaht / Pacheedaht Government for:

- a. anything said or done, or omitted to be said or done, by or on behalf of Ditidaht / Pacheedaht or the Ditidaht / Pacheedaht Government by somebody other than that member or former member while he or she is, or was, a member;
- b. any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of Ditidaht / Pacheedaht or the Ditidaht / Pacheedaht Government while that individual is, or was, a member;
- c. anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of the individual's duty or the exercise of the individual's power; or
- d. any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.

14.13.2 14.13.1.c and 14.13.1.d do not provide a defense where:

- a. the individual has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
- b. the cause of action is libel or slander.

14.13.3 14.13.1.c and 14.13.1.d do not absolve Ditidaht / Pacheedaht from vicarious liability arising out of a tort committed by an elected member or former elected member of the Ditidaht / Pacheedaht Government for which Ditidaht /

Pacheedaht would have been liable had 14.13.1.c and 14.13.1.d not been in effect.

### **Ditidaht / Pacheedaht Public Officers**

- 14.13.4 No action for damages lies or may be instituted against a Ditidaht / Pacheedaht Public Officer or former Ditidaht / Pacheedaht Public Officer for:
- a. anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of the individual's duty or the exercise of the individual's power; or
  - b. any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that person's power.
- 14.13.5 14.13.4 does not provide a defense where:
- a. the Ditidaht / Pacheedaht Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
  - b. the cause of action is libel or slander.
- 14.13.6 14.13.4 does not absolve any of the corporations or bodies referred to in the definition of Ditidaht / Pacheedaht Public Officer from vicarious liability arising out of a tort committed by a Ditidaht / Pacheedaht Public Officer for which the corporation or body would have been liable had 14.13.4 not been in effect.
- 14.13.7 Notwithstanding 14.13.4, except as may be otherwise provided under Federal or Provincial Law, a Ditidaht / Pacheedaht Public Officer does not have protections, immunities or limitations in respect of liability in respect of the provision of a service, if no persons delivering reasonably similar programs or services under Federal or Provincial Law have protections, immunities, limitations in respect of liability and rights under Federal or Provincial Law.

### **Ditidaht / Pacheedaht Government**

- 14.13.8 Ditidaht / Pacheedaht and the Ditidaht / Pacheedaht Government have the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a municipality and its municipal council under Part 7 of the *Local Government Act*.

14.13.9 Subject to 6.1.1.b, Ditidaht / Pacheedaht has the protections, immunities, limitations in respect of liability, remedies over and rights provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities, limitations in respect of liability, remedies over, and rights in respect of a road on Ditidaht / Pacheedaht Lands used by the public, or by industrial or resource users, if Ditidaht / Pacheedaht is the occupier of that road.

**14.14.0 GAMING AND GAMBLING**

14.14.1 Before concluding the Treaty, Ditidaht / Pacheedaht intend to raise the potential for law making authority with respect to gambling, gaming and lotteries and the relationship of any such laws to Federal or Provincial Law.

**14.15.0 CREDITOR REMEDIES**

The Treaty will provide that:

- 14.15.1 No creditor will have any remedy against an estate, interest, reservation or exception in any parcel of Ditidaht / Pacheedaht Land held by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution if the land has not been registered in the Land Title Office.
- 14.15.2 Before granting a security instrument in an estate, interest, reservation or exception in a parcel of unregistered Ditidaht / Pacheedaht Land held by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution, Ditidaht / Pacheedaht will register the indefeasible title to the parcel under the *Land Title Act* in accordance with the Treaty and the *Land Title Act*.
- 14.15.3 The registration of a security instrument against registered Ditidaht / Pacheedaht Land held by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution will be conclusively deemed to be properly executed where it meets the requirements under Schedule 1 of the *Land Title Act*.
- 14.15.4 Subject to 14.15.5, an unsecured creditor will not have a remedy against a parcel of registered Ditidaht / Pacheedaht Land or Essential Personal Property held by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution unless the Supreme Court of British Columbia makes an order granting the creditor a remedy

against such property at a time and on any such conditions as the court consider proper.

- 14.15.5 The court will consider the following factors in determining whether to grant an unsecured creditor under 14.15.4 an application for a remedy against a parcel of registered Ditidaht / Pacheedaht Land or Essential Personal Property held by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution:
- a. whether granting the application is likely to result in the insolvency of Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution, as applicable;
  - b. the effect of granting the application on the delivery of programs or services provided by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution at the time of the application; and
  - c. whether the creditor has exhausted all other reasonable remedies, including obtaining a court order to realize on personal property, other than Essential Personal Property, of Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution, as applicable.
- 14.15.6 Notwithstanding 14.15.4, no creditor will have any remedy against a Ditidaht / Pacheedaht Artifact owned by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution or a Ditidaht / Pacheedaht family or individual provided that the Ditidaht / Pacheedaht Artifact is not offered for sale.

## CHAPTER 15 LOCAL GOVERNMENT

### 15.1.0 GENERAL

The Treaty will provide that:

- 15.1.1 Ditidaht / Pacheedaht Lands do not form part of any municipality or electoral area, and do not form part of any regional district unless Ditidaht / Pacheedaht becomes a member of the regional district in accordance with 15.3.1.
- 15.1.2 For greater certainty, Local Government bylaws do not apply to Ditidaht / Pacheedaht Lands.
- 15.1.3 On the Effective Date, Ditidaht / Pacheedaht is responsible for managing its intergovernmental relations with Local Governments.
- 15.1.4 Nothing in the Treaty will limit British Columbia's ability to restructure regional districts or to amend or divide the boundaries of a regional district, municipality or electoral area in accordance with Provincial Law.
- 15.1.5 British Columbia will consult with Ditidaht / Pacheedaht on the incorporation of a municipality including, without limitation, Port Renfrew and Jordan River, or any changes to the boundaries of a regional district or municipality that adversely affect Ditidaht / Pacheedaht.

### 15.2.0 INTERGOVERNMENTAL AGREEMENTS

The Treaty will provide that:

- 15.2.1 Ditidaht / Pacheedaht may enter into agreements with Local Government with respect to the provision and delivery of:
  - a. Local Government services to Ditidaht / Pacheedaht, Ditidaht / Pacheedaht Lands, or any resident of Ditidaht / Pacheedaht Lands; and
  - b. Ditidaht / Pacheedaht services to lands under the jurisdiction of the applicable Local Government.
- 15.2.2 Any agreement under 15.2.1:
  - a. will not be part of the Treaty; and

- b. will not be a treaty or land claims agreement and will not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
- 15.2.3 Any service agreement with a Local Government in effect on the Effective Date will remain in effect until such time as it is renegotiated or terminated under the terms of the service agreement.
- 15.2.4 Ditidaht / Pacheedaht and a Local Government may establish and maintain agreements that set out principles, procedures and guidelines for the management of their relationship. The matters that may be governed by such agreements include:
  - a. protection of culture and heritage interests;
  - b. coordination and harmonization of land use and planning and water use and watershed planning, including regulating land use, enforcement of regulations and development;
  - c. coordination and harmonization of property tax structures;
  - d. coordination and harmonization of the development of infrastructure;
  - e. cooperative economic development;
  - f. environmental protection and stewardship; and
  - g. dispute resolution.

### **15.3.0 REGIONAL DISTRICT MEMBERSHIP**

The Treaty will provide that:

- 15.3.1 Ditidaht / Pacheedaht may become a member of a regional district as set out in Provincial Law.
- 15.3.2 Where Ditidaht/ Pacheedaht becomes a member of a regional district, Ditidaht / Pacheedaht will appoint an elected member of the Ditidaht / Pacheedaht Government to sit as a director on the board of the regional district in accordance with Provincial Law.
- 15.3.3 If Ditidaht / Pacheedaht is a member of a regional district, and a disagreement rises, it is not a Disagreement for the purposes of the Dispute Resolution Chapter.

### **15.4.0 REGIONAL HOSPITAL DISTRICT MEMBERSHIP**

The Treaty will provide that:

- 15.4.1     Ditidaht Lands form part of the Alberni-Clayoquot and Cowichan Valley Regional Hospital Districts, and on the Effective Date Ditidaht will be a member of those regional hospital districts.
- 15.4.2     Pacheedaht Lands form part of the Capital Regional Hospital District, and on the Effective Date Pacheedaht will be a member of that regional hospital district.
- 15.4.3     On the Effective Date, Ditidaht / Pacheedaht will appoint an elected member of the Ditidaht / Pacheedaht Government to sit as a director on the board of the applicable regional hospital district in accordance with Provincial Law.
- 15.4.4     Where Ditidaht becomes a member of the Alberni-Clayoquot or Cowichan Valley Regional Districts under 15.3.1, Ditidaht's membership in the Alberni-Clayoquot or Cowichan Valley Regional Hospital District under 15.4.1 will be replaced through regional district membership.
- 15.4.5     Where Pacheedaht becomes a member of the Capital Regional District under 15.3.1, Pacheedaht's membership in the Capital Regional Hospital District under 15.4.2 will be replaced through regional district membership.
- 15.4.6     The Ditidaht / Pacheedaht director will have the functions, powers, duties, obligations and liability protections of a municipal director of the regional district hospital board as is provided to a treaty First Nation director under Provincial Law

## CHAPTER 16 **INDIAN ACT TRANSITION**

### 16.1.0 **ESTATES**

The Treaty will provide that:

16.1.1 The *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of an individual who:

- a. died testate or intestate before the Effective Date; and
- b. at the time of death, was a member of the Ditidaht / Pacheedaht Band.

16.1.2 Before the Effective Date, Canada will take reasonable steps to:

- a. notify in writing all members of the Ditidaht / Pacheedaht Band who have deposited wills with the Minister; and
- b. provide information to all members of the Ditidaht / Pacheedaht Band who have not deposited wills with the Minister and to all individuals who may be eligible for enrolment under the Treaty,

that their wills may not be valid after the Effective Date, and that their wills should be reviewed to ensure validity under Provincial Law.

16.1.3 Section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of a Ditidaht / Pacheedaht Citizen whose property was administered under Section 51 of the *Indian Act* immediately before the Effective Date, until that individual is declared to be no longer incapable under the *Patients Property Act*.

16.1.4 The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a Ditidaht / Pacheedaht Citizen:

- a. who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before the Effective Date;
- b. whose property was administered under Section 51 of the *Indian Act* immediately before the Effective Date and at the time of death; and
- c. who did not execute a will that complies with the requirements as to form and execution under Provincial Law during a period after the Effective Date in which that individual was declared to be no longer incapable under the *Patients Property Act*.

16.1.5 Sections 52 and 52.2 to 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which a Ditidaht / Pacheedaht Citizen who is a Child is entitled, if the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister in respect of the administration have been discharged.

#### **16.2.0 CONTINUATION OF *INDIAN ACT* BYLAWS**

The Treaty will provide that:

16.2.1 The bylaws of the Ditidaht / Pacheedaht Band that were in effect immediately before the Effective Date have effect for 12 months after the Effective Date on Ditidaht / Pacheedaht Lands.

16.2.2 The relationship between a bylaw referred to in 16.2.1 and Federal or Provincial Law will be governed by the provisions of the Treaty governing the relationship between Ditidaht / Pacheedaht Law and Federal or Provincial Law in respect of the subject matter of the bylaw.

16.2.3 Ditidaht / Pacheedaht may repeal, but not amend, a bylaw referred to in 16.2.1.

16.2.4 Nothing in the Treaty precludes a person from challenging the validity of a bylaw referred to in 16.2.1.

#### **16.3.0 STATUS OF BANDS AND TRANSFER OF BAND ASSETS**

The Treaty will provide that:

16.3.1 Subject to the provisions of the Treaty, on the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of Ditidaht Band vest in Ditidaht, and Ditidaht Band ceases to exist.

16.3.2 All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of Ditidaht Band, including capital and revenue moneys of the Band, shall be transferred by Canada to Ditidaht as soon as practicable on or after the Effective Date.

16.3.3 Upon transfer of the moneys referred to in 16.3.2, Canada will no longer be responsible for the collection of moneys payable:

- a. to or for the benefit of Ditidaht; or

- b. to or for the benefit of a Ditidaht Citizen, except as provided in 16.1.1, 16.1.3, 16.1.4, and 16.1.5.
- 16.3.4 For greater certainty, Canada shall not be liable for any errors or omissions in the administration of all moneys held by Ditidaht for the use and benefit of Ditidaht that occur subsequent to the transfer of capital and revenue moneys of the Ditidaht Band from Canada to Ditidaht.
- 16.3.5 Subject to the provisions of the Treaty, on the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of Pacheedaht Band vest in Pacheedaht, and Pacheedaht Band ceases to exist.
- 16.3.6 All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of Pacheedaht Band, including capital and revenue moneys of the Band, shall be transferred by Canada to Pacheedaht as soon as practicable on or after the Effective Date.
- 16.3.7 Upon transfer of the moneys referred to in 16.3.6, Canada will no longer be responsible for the collection of moneys payable:
  - a. to or for the benefit of Pacheedaht; or
  - b. to or for the benefit of a Pacheedaht Citizen, except as provided in 16.1.1, 16.1.3, 16.1.4, and 16.1.5.
- 16.3.8 For greater certainty, Canada shall not be liable for any errors or omissions in the administration of all moneys held by Pacheedaht for the use and benefit of Pacheedaht that occur subsequent to the transfer of capital and revenue moneys of the Pacheedaht Band from Canada to Pacheedaht.

## **CHAPTER 17 CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT**

### **17.1.0 CAPITAL TRANSFER**

- 17.1.1 The Ditidaht Treaty will provide that the Ditidaht Capital Transfer from Canada and British Columbia to Ditidaht will be \$39,900,000 (Q4 2016\$) and will be paid in accordance with the provisions of the Ditidaht Treaty.
- 17.1.2 The Pacheedaht Treaty will provide that the Pacheedaht Capital Transfer from Canada and British Columbia to Pacheedaht will be \$19,720,000 (Q4 2016\$) and will be paid in accordance with the provisions of the Pacheedaht Treaty.
- 17.1.3 A provisional schedule of payments will be negotiated prior to the initialing of the Treaty such that:
- a. the timing and amounts of payments in the provisional schedule of payments will provide for a first payment to Ditidaht / Pacheedaht on the Effective Date and subsequent payments on each anniversary of the Effective Date;
  - b. the net present value of the amounts listed in the provisional schedule of payments will equal the amount set out in 17.1.1 for Ditidaht or 17.1.2 for Pacheedaht; and
  - c. the net present value of the amounts listed in the provisional schedule of payments will be calculated using as a discount rate the most recent and appropriate Consolidated Revenue Fund Lending Rate available before the initialing of the Treaty from the Department of Finance, Canada, less one-eighth of one percent.
- 17.1.4 A final schedule of payments will be determined one month before or as soon as the Effective Date is known, whichever date is closest to the Effective Date, in accordance with the following formula:

Final Amount = Provisional Amount X Effective Date FDDIPI/Q4 2016  
FDDIPI

Where,

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

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

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

“Q4 2016 FDDIPI” refers to the value of the Canada FDDIPI for the 4<sup>th</sup> quarter of the year 2016; and

the Effective Date FDDIPI and Q4 2016 FDDIPI values used will be the latest published values available from Statistics Canada one month prior to or as soon as the Effective Date is known, whichever date is closest to the Effective Date.

- 17.1.5 British Columbia and, subject to 17.3.5, Canada will make payments to Ditidaht / Pacheedaht in accordance with a final schedule of payments determined under 17.1.4.

## **17.2.0 REVENUE SHARING**

- 17.2.1 Before concluding the Treaty, the Parties will explore a resource revenue sharing arrangement in the Treaty with Ditidaht / Pacheedaht, with the understanding that the Capital Transfer in 17.1.1 or 17.1.2 will be reduced by an amount equivalent to the net present value of the resource revenue sharing arrangement.

## **17.3.0 NEGOTIATION LOAN REPAYMENT**

- 17.3.1 On the date of the initialing of the Treaty, Canada will determine the outstanding amount of negotiation loans made to Ditidaht / Pacheedaht, including any interest that may have accrued to that date, in accordance with the terms and conditions of any First Nation negotiation support agreements pertaining to such negotiation loans.
- 17.3.2 At the same time, Canada will prepare a provisional schedule for the repayment of the outstanding negotiation loan amount referred to in 17.3.1, such that the repayments will be proportional to the provisional schedule of payments referred to in 17.1.3.
- 17.3.3 This provisional schedule will use an interest rate equal to the discount rate referred to in 17.1.3.c.

- 17.3.4 A final schedule of loan repayment amounts will be determined one month before the Effective Date or as soon as the Effective Date is known, whichever date is closest to the Effective Date, by:
- a. determining the amount of any additional negotiation loans made by Canada to Ditidaht / Pacheedaht after the initialing of the Treaty and before the Effective Date, and any further interest that may have accrued in respect of any negotiation loans, in accordance with First Nation negotiation support agreements; and
  - b. pro-rating the additional amount in 17.3.4.a over the provisional repayment schedule.
- 17.3.5 Canada may deduct any amounts due pursuant to the final schedule of loan repayments referred to in 17.3.4 from Capital Transfer payments payable to Ditidaht / Pacheedaht in accordance with 17.1.5.
- 17.3.6 Ditidaht / Pacheedaht may pay to Canada, in advance and on account, without bonus or penalty, amounts that will be credited against the loan repayment amounts set out in 17.3.1.

## CHAPTER 18 FISCAL RELATIONS

### 18.1.0 GENERAL

- 18.1.1 The Treaty will provide that the Parties acknowledge they each have a role in supporting Ditidaht / Pacheedaht, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements.
- 18.1.2 Before concluding the Treaty, the Parties will address fiscal matters including:
- a. Treaty provisions regarding the ongoing fiscal relationship among the Parties; and
  - b. funding arrangements to take effect no later than the Effective Date that will set out terms, conditions and funding with respect to the responsibilities assumed by Ditidaht / Pacheedaht, taking into account its ability to contribute from its own source revenues.
- 18.1.3 The Parties acknowledge that Canada is developing a new national fiscal policy including a transparent methodology for determining levels of federal funding that may be provided to self-governing aboriginal groups in Canada to support the delivery of agreed upon programs and services, taking into account the ability of each self-governing aboriginal group to generate revenues from its own sources.
- 18.1.4 The Treaty will provide that unless otherwise agreed by the Parties in a Fiscal Financing Agreement, the creation of the Ditidaht / Pacheedaht Government, the provision of Ditidaht / Pacheedaht legislative authority under the Treaty, or the exercise of Ditidaht / Pacheedaht legislative authority, does not create or imply any financial obligation or service responsibility on the part of any Party.
- 18.1.5 The Treaty will provide that any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is contemplated by the Treaty and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
- a. in the case of Canada, by the Parliament of Canada;
  - b. in the case of British Columbia, by the Legislature of British Columbia; or

- c. in the case of Ditidaht / Pacheedaht, by the Ditidaht / Pacheedaht Government.

## CHAPTER 19 TAXATION

### 19.1.0 DIRECT TAXATION POWERS

The Treaty will provide that:

- 19.1.1 Ditidaht / Pacheedaht may make laws in relation to:
  - a. Direct taxation of Ditidaht / Pacheedaht Citizens, within Ditidaht / Pacheedaht Lands, in order to raise revenue for Ditidaht / Pacheedaht purposes; and
  - b. the implementation of any taxation agreement entered into between Ditidaht / Pacheedaht and Canada or British Columbia.
- 19.1.2 The Ditidaht / Pacheedaht law making authority provided for in 19.1.1.a does not limit the taxation powers of Canada or British Columbia.
- 19.1.3 Notwithstanding any other provision of the Treaty, any Ditidaht / Pacheedaht Law made under this chapter or any exercise of power by Ditidaht / Pacheedaht, is subject to Canada's International Legal Obligations in respect of taxation.

### 19.2.0 TAXATION POWER AGREEMENTS

The Treaty will provide that:

- 19.2.1 From time to time, at the request of Ditidaht / Pacheedaht, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with Ditidaht / Pacheedaht respecting:
  - a. the extent to which the Direct taxation law making authority of Ditidaht / Pacheedaht under 19.1.1.a may be extended to apply to Persons other than Ditidaht / Pacheedaht Citizens, within Ditidaht / Pacheedaht Lands; and
  - b. the manner in which the Ditidaht / Pacheedaht law making authority under 19.1.1.a, as extended by the application of 19.2.1.a will be coordinated with existing federal or provincial tax systems, including:
    - i. the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by Ditidaht / Pacheedaht, and

- ii. the terms and conditions under which Canada or British Columbia may administer, on behalf of Ditidaht / Pacheedaht, taxes imposed by Ditidaht / Pacheedaht.

#### **19.3.0    REAL PROPERTY TAX COORDINATION AGREEMENT**

19.3.1 Before concluding the Treaty, Ditidaht / Pacheedaht and British Columbia will negotiate and attempt to reach agreement on:

- a. Ditidaht's / Pacheedaht's authority to impose property taxes on persons who are not Ditidaht / Pacheedaht Citizens in relation to those persons' ownership or occupation of Ditidaht / Pacheedaht Lands; and
- b. the coordination of the exercise of the Ditidaht / Pacheedaht taxation authority with British Columbia's tax systems.

#### **Adjudication**

The Treaty will provide that:

19.3.2 Notwithstanding the provisions of the Governance Chapter, parties to an agreement under 19.2.1 may provide for an alternative approach to the appeal, enforcement or adjudication of matters related to a Ditidaht / Pacheedaht Law in respect of taxation.

#### **Penalties**

The Treaty will provide that:

19.3.3 A Ditidaht / Pacheedaht Law in respect of taxation may provide for:

- a. a fine that is greater than the limits set out in 14.12.2; or
- b. a term of imprisonment that is greater than the limit set out in 14.12.4,

where there is an agreement to that effect as contemplated in 19.2.1 of the Taxation Chapter.

#### **19.4.0    DITIDAHT / PACHEEDAHT LANDS**

The Treaty will provide that:

19.4.1 Ditidaht / Pacheedaht is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of

Ditidaht / Pacheedaht in Ditidaht / Pacheedaht Lands on which there are no improvements or on which there is a designated improvement.

- 19.4.2 In 19.4.1, “designated improvement” means:
- a. a residence of a Ditidaht / Pacheedaht Citizen;
  - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to a public purpose, including:
    - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Ditidaht / Pacheedaht cultural or spiritual purposes;
    - ii. works of public convenience constructed or operated for the benefit of Ditidaht / Pacheedaht Citizens, occupiers of Ditidaht / Pacheedaht Lands or individuals visiting or in transit through Ditidaht / Pacheedaht Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks and public parking lots; or
    - iii. other improvements similar in nature to those described in 19.4.2.b.i and ii;
  - c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a Forest Resource or a fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
  - d. Forest Resources and forest roads.
- 19.4.3 In 19.4.2.b “public purpose” does not include the provision of property or services primarily for the purpose of profit.
- 19.4.4 For the purposes of 19.4.1 and 19.4.2:

- a. for greater certainty, Ditidaht / Pacheedaht Lands include the improvements on those lands; and
  - b. an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.
- 19.4.5 For greater certainty, the exemption from taxation in 19.4.1 does not apply to a taxpayer other than Ditidaht / Pacheedaht nor does it apply with respect to a disposition of Ditidaht / Pacheedaht Lands, or interests in those lands, by Ditidaht / Pacheedaht.
- 19.4.6 For federal and provincial income tax purposes, proceeds of disposition received by Ditidaht / Pacheedaht on expropriation of Ditidaht / Pacheedaht Lands in accordance with the Lands Chapter are not taxable.
- 19.5.0 TRANSFER OF DITIDAHT / PACHEEDAHT CAPITAL**
- The Treaty will provide that:
- 19.5.1 A transfer under the Treaty of Ditidaht / Pacheedaht Capital is not taxable and a recognition of ownership of Ditidaht / Pacheedaht Capital under the Treaty is not taxable.
  - 19.5.2 For purposes of 19.5.1, an amount paid to a Ditidaht / Pacheedaht Citizen under the Treaty is deemed to be a transfer of Ditidaht / Pacheedaht Capital under the Treaty if the payment:
    - a. reasonably can be considered to be a distribution of a Capital Transfer received by Ditidaht / Pacheedaht; and
    - b. becomes payable to the Ditidaht / Pacheedaht Citizen under the Treaty within 90 days and is paid to the Ditidaht / Pacheedaht Citizen under the Treaty within 270 days from the date that Ditidaht / Pacheedaht receives the Capital Transfer.
  - 19.5.3 For federal and provincial income tax purposes, Ditidaht / Pacheedaht Capital is deemed to have been acquired by Ditidaht / Pacheedaht at a cost equal to its fair market value on the later of:
    - a. the Effective Date; and
    - b. the date of transfer of ownership or the date of recognition of ownership, as the case may be.

**19.6.0 INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION**

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

**19.7.0 TAX TREATMENT AGREEMENT**

The Treaty will provide that:

- 19.7.1 The Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date.
- 19.7.2 Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the tax treatment agreement be given effect and force of law under federal and provincial legislation.

## CHAPTER 20 CULTURE AND HERITAGE

### 20.1.0 GENERAL

The Treaty will provide that:

- 20.1.1 Ditidaht / Pacheedaht has the right to practice and revitalize the Ditidaht / Pacheedaht culture, and revitalize, use, develop and transmit to future generations the Ditidaht / Pacheedaht language, in a manner consistent with the Treaty.
- 20.1.2 For greater certainty, nothing in 20.1.1:
  - a. subject to 1.11.1, creates or implies any financial obligations or service delivery responsibilities on the part of any of the Parties; or
  - b. otherwise authorizes or permits the use of Crown land or resources except in accordance with the Treaty.
- 20.1.3 Before concluding the Treaty, the Parties commit to further discussions regarding how the phrase “in a manner consistent with the Treaty” in 20.1.1 will be interpreted in relation to the rights described in 20.1.1.

### 20.2.0 LAWMAKING

The Treaty will provide that:

- 20.2.1 Ditidaht / Pacheedaht may make laws applicable on Ditidaht / Pacheedaht Lands in respect of:
  - a. the establishment, conservation, protection and management of Heritage Sites, including public access to those sites;
  - b. Ditidaht / Pacheedaht Artifacts owned by Ditidaht / Pacheedaht;
  - c. the preservation, promotion, development, practice and revitalization of Ditidaht / Pacheedaht culture and language; and
  - d. the cremation or interment of Archaeological Human Remains found on Ditidaht / Pacheedaht Lands or returned to Ditidaht / Pacheedaht.
- 20.2.2 Ditidaht / Pacheedaht Law under 20.2.1.a will:

- a. establish standards and processes for the conservation and protection of Heritage Sites; and
  - b. ensure the Minister is provided with information relating to:
    - i. the location of Heritage Sites; and
    - ii. any materials recovered from Heritage Sites.
- 20.2.3 Until Ditidaht / Pacheedaht makes a law under 20.2.1.a, British Columbia standards and permitting processes for heritage inspections, heritage investigations and the alteration of Heritage Sites will apply to Ditidaht / Pacheedaht Lands.
- 20.2.4 Other than information related to non-aboriginal materials recovered from a Heritage Site, information provided by Ditidaht / Pacheedaht to British Columbia under 20.2.2.b will not be subject to public disclosure without the consent of Ditidaht / Pacheedaht.
- 20.2.5 British Columbia will not designate any Ditidaht / Pacheedaht Lands as a provincial Heritage Site without the consent of Ditidaht / Pacheedaht.
- 20.2.6 Ditidaht / Pacheedaht Law under 20.2.1 prevails to the extent of a Conflict with Federal or Provincial Law.

### **20.3.0 ARCHAEOLOGICAL HUMAN REMAINS AND ARTIFACTS**

The Treaty will provide that:

- 20.3.1 After the Effective Date:
- a. any Archaeological Human Remains, including associated burial objects, will be delivered to Ditidaht / Pacheedaht; and
  - b. any artifacts will be owned by and returned to Ditidaht / Pacheedaht, if they are found within an archaeological context:
  - c. on Ditidaht / Pacheedaht Lands;
  - d. within the area off Ditidaht / Pacheedaht Lands, excluding the Pacific Rim National Park Reserve, which does not overlap with the traditional territory of another aboriginal group, as identified in an appendix to the Treaty; or

- e. outside the area referred to in 20.3.1.d, but within the Ditidaht / Pacheedaht Area, excluding the Pacific Rim National Park Reserve, subject to the resolution of any competing claims with other aboriginal groups.
- 20.3.2 British Columbia will notify or cause Ditidaht / Pacheedaht to be notified of any Archaeological Human Remains, including associated burial objects, or artifacts which are discovered within the area referred to in 20.3.1.e.
- 20.3.3 For the purposes of 20.3.1.e, if Ditidaht / Pacheedaht and the other aboriginal groups agree to their delivery or return to Ditidaht / Pacheedaht, British Columbia will, on notice from Ditidaht / Pacheedaht, cause the permit holder to deliver or return the Archaeological Human Remains, including associated burial objects, and artifacts to Ditidaht / Pacheedaht.
- 20.3.4 Ditidaht / Pacheedaht will be deemed to be the owner of any artifacts returned to Ditidaht / Pacheedaht under 20.3.3.
- 20.3.5 After the Effective Date, if Ditidaht / Pacheedaht Archaeological Human Remains or associated burial objects are in or come into the permanent possession of Canada, Canada will notify Ditidaht / Pacheedaht, and at the request of Ditidaht / Pacheedaht, Canada will negotiate and attempt to reach agreement with respect to the disposition of those Ditidaht / Pacheedaht Archaeological Human Remains or associated burial objects including transfer of its legal interest, loans, or custodial arrangements, to Ditidaht / Pacheedaht in accordance with Federal Law and policy and Provincial Law.
- 20.3.6 In the event of competing claims with another aboriginal group as to whether Archaeological Human Remains or associated burial objects are Ditidaht / Pacheedaht Archaeological Human Remains or associated burial objects, Ditidaht / Pacheedaht will take steps to resolve the issue and will provide Canada with written confirmation of the resolution before the transfer proceeds.
- 20.3.7 After the Effective Date, at the request of Ditidaht / Pacheedaht, Canada will use reasonable efforts in accordance with Federal Law and policy and Provincial Law to facilitate Ditidaht / Pacheedaht access to other public collections in Canada not in the permanent possession of Canada, that are known to hold Ditidaht / Pacheedaht Artifacts or Ditidaht / Pacheedaht Archaeological Human Remains and associated burial objects.

**20.4.0 HERITAGE SITES AND PLACE NAMES**

The Treaty will provide that:

- 20.4.1     Ditidaht / Pacheedaht may request that, if a Heritage Site is discovered within the Ditidaht / Pacheedaht Area:
    - a. the Minister designate the site as a provincial Heritage Site; and
    - b. British Columbia negotiate and attempt to reach agreement with Ditidaht / Pacheedaht on the conservation and protection of the site.
  - 20.4.2     As soon as practical after the Effective Date, British Columbia will commence the provincial designation process under the *Heritage Conservation Act* for sites of cultural or historic significance set out in the Treaty.
  - 20.4.3     After the Effective Date, Ditidaht / Pacheedaht may propose that British Columbia name or rename other geographic features with names in the Ditidaht / Pacheedaht language, and British Columbia will consider those proposals in accordance with Provincial Law and provincial policy and procedures.
- 20.5.0     ROYAL BRITISH COLUMBIA MUSEUM**
- 20.5.1     The Treaty will set out the Ditidaht / Pacheedaht Artifacts in the permanent collection of the Royal British Columbia Museum that will be transferred to Ditidaht / Pacheedaht on the Effective Date.
  - 20.5.2     The process for the transfer of the Ditidaht / Pacheedaht Artifacts identified under 20.5.1, including the timing and terms and conditions of their transfer, will be set out in the Treaty.
  - 20.5.3     After the Effective Date and at the request of Ditidaht / Pacheedaht, Ditidaht / Pacheedaht and the Royal British Columbia Museum will negotiate and attempt to reach agreement on custodial arrangements with respect to the Ditidaht / Pacheedaht Artifacts that remain in or have been added to the collection of the Royal British Columbia Museum.
  - 20.5.4     Any agreement on custodial arrangements under 20.5.3 will respect Ditidaht / Pacheedaht cultural traditions in relation to Ditidaht / Pacheedaht Artifacts and will comply with Federal or Provincial Law, including the statutory mandate of the Royal British Columbia Museum.
- 20.6.0     CANADIAN MUSEUM OF HISTORY**

20.6.1 Before concluding the Treaty, the Canadian Museum of History and Ditidaht / Pacheedaht will attempt to agree on a schedule to the Treaty that will set out:

- a. a list of any Ditidaht / Pacheedaht Artifacts to be transferred to Ditidaht / Pacheedaht by the Canadian Museum of History; and
- b. a list of any Ditidaht / Pacheedaht Artifacts in respect of which Ditidaht / Pacheedaht and the Canadian Museum of History will attempt to negotiate custodial arrangements.

20.6.2 After the Effective Date, and at the request of Ditidaht / Pacheedaht, the Canadian Museum of History will negotiate and attempt to reach agreement with respect to the disposition of a Ditidaht / Pacheedaht Artifact held by the Canadian Museum of History, including transfer of its legal interest, loans, or custodial arrangements, to Ditidaht / Pacheedaht in accordance with a negotiated agreement.

## **20.7.0 PARKS CANADA AGENCY**

The Treaty will provide that:

20.7.1 Where a Ditidaht / Pacheedaht Artifact is in or comes into the permanent possession of Parks Canada Agency, Canada will notify Ditidaht / Pacheedaht and, at the request of Ditidaht / Pacheedaht, Parks Canada Agency may lend or transfer its legal interests in that Ditidaht / Pacheedaht Artifact to Ditidaht / Pacheedaht in accordance with an agreement negotiated between Parks Canada Agency and Ditidaht / Pacheedaht and in accordance with federal policy and procedures and, for greater certainty, 20.3.1 will not apply.

20.7.2 In the event that Ditidaht / Pacheedaht and Parks Canada Agency disagree over whether an artifact is a Ditidaht / Pacheedaht Artifact:

- a. Ditidaht / Pacheedaht and Parks Canada Agency will work collaboratively to ascertain the determination of the artifact based on the evidence;
- b. Parks Canada Agency will take into consideration the evidence provided by Ditidaht / Pacheedaht; and
- c. Ditidaht / Pacheedaht will take into consideration the evidence provided by Parks Canada Agency.

## CHAPTER 21 ENVIRONMENTAL ASSESSMENT AND PROTECTION

### 21.1.0 GENERAL

The Treaty will provide that:

- 21.1.1 For greater certainty, Federal and Provincial Law in relation to environmental assessment apply on Ditidaht / Pacheedaht Lands.
- 21.1.2 Notwithstanding any decision made by Canada or British Columbia in respect of a Federal Project or Provincial Project, no Federal Project or Provincial Project on Ditidaht / Pacheedaht Land will proceed without the consent of the Ditidaht / Pacheedaht except where:
  - a. the Ditidaht / Pacheedaht Land required for the Federal Project or Provincial Project has been expropriated in accordance with the Lands Chapter; or
  - b. a project is within the rights granted under an interest described in an appendix to the Treaty and that project is a Federal Project or Provincial Project.

### 21.2.0 ENGAGEMENT SIDE AGREEMENT

- 21.2.1 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will negotiate a government to government Engagement Side Agreement to take effect on the Effective Date, which will establish a collaborative process to evaluate potential impacts of Provincial Projects, including impacts to Ditidaht / Pacheedaht Section 35 Rights and Ditidaht / Pacheedaht Lands, by authorized uses or dispositions of provincial Crown land which may occur within the Ditidaht / Pacheedaht Wildlife Harvesting Area and the Ditidaht / Pacheedaht Plant Gathering Area.
- 21.2.2 For greater certainty, British Columbia will ensure any information developed in any such Engagement Side Agreement will be considered in any environmental assessment of a Provincial Project carried out under Provincial Law.

### 21.3.0 FEDERAL AGREEMENTS

- 21.3.1 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht agree to negotiate an agreement based on the Framework Roles and Responsibilities Agreement on Environmental Assessment. Negotiations will include consideration of the potential roles of the parties and how to address:
- a. the factors, and related Ditidaht / Pacheedaht traditional and contemporary knowledge, to be considered in the assessment of adverse impacts to Ditidaht / Pacheedaht Lands and Section 35 Rights; and
  - b. any other considerations agreed to by both Parties.
- 21.3.2 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will negotiate and attempt to reach agreement on measures or processes that may address decisions or projects that are not subject to federal environmental assessment but may have adverse impacts on Ditidaht / Pacheedaht Section 35 Rights and Ditidaht / Pacheedaht Lands.
- 21.4.0 **DITIDAHT / PACHEEDAHT PARTICIPATION IN FEDERAL ENVIRONMENTAL ASSESSMENTS**

The Treaty will provide that:

- 21.4.1 Where a proposed Federal Project may reasonably be expected to adversely affect Ditidaht / Pacheedaht Lands or Ditidaht / Pacheedaht Section 35 Rights:
- a. Canada will ensure that Ditidaht / Pacheedaht is provided with timely notice of the environmental assessment and information describing the Federal Project in sufficient detail to permit Ditidaht / Pacheedaht to determine if it is interested in participating in the environmental assessment;
  - b. Canada will provide Ditidaht / Pacheedaht with an opportunity to provide input on the environmental assessment conducted under the federal environmental assessment legislation in accordance with the process outlined below, including:
    - i. the scope of the assessment of:
      - (1) the environmental effects of the Federal Project;

- (2) the adverse impacts of the Federal Project on Ditidaht / Pacheedaht Lands and Ditidaht / Pacheedaht Section 35 Rights;
    - ii. any mitigation or accommodation measures; and
    - iii. any follow-up programs.
  - c. Ditidaht / Pacheedaht will have access to information in Canada's possession related to the environmental assessment in accordance with the public registry provisions in the federal environmental assessment legislation; and
  - d. In response to Ditidaht / Pacheedaht input under 21.4.1.b, prior to making a decision on a Federal Project, Canada will:
    - i. indicate how Ditidaht / Pacheedaht input was taken into account in the assessment; and
    - ii. provide a rationale for why any of the Ditidaht / Pacheedaht input was not incorporated into the assessment.
- 21.4.2 In addition to the commitments in 21.4.1, where a proposed Federal Project that is referred to a panel under the federal environmental assessment legislation may reasonably be expected to adversely affect Ditidaht / Pacheedaht Lands and Ditidaht / Pacheedaht Section 35 Rights, or will be located on Ditidaht / Pacheedaht Lands, Canada will also provide Ditidaht / Pacheedaht with:
- a. the opportunity to propose to the Minister a list of names that the Minister may consider for appointment to the panel in accordance with the federal environmental assessment legislation, unless Ditidaht / Pacheedaht is a proponent of the Federal Project;
  - b. an opportunity to participate in the development of terms of reference of the panel; and
  - c. formal standing before the panel.
- 21.5.0 **CANADA'S PARTICIPATION IN DITIDAHT / PACHEEDAHT ENVIRONMENTAL ASSESSMENT**

The Treaty will provide that:

21.5.1 Where a Ditidaht / Pacheedaht Project may reasonably be expected to have adverse effects on federal lands or areas of federal jurisdiction, Ditidaht / Pacheedaht will ensure that Canada:

- a. receives timely notice of, and relevant information in Ditidaht / Pacheedaht possession on the Ditidaht / Pacheedaht Project and the potential environmental effects, subject to the relevant privacy legislation; and
- b. is consulted and provided with an opportunity to participate in the environmental assessment of the Ditidaht / Pacheedaht Project.

21.5.2 During the course of the environmental assessment of the Ditidaht / Pacheedaht Project, Ditidaht / Pacheedaht will give full and fair consideration to any comments provided by Canada, and will respond to the comments, before taking any decision that would have the effect of allowing the Ditidaht / Pacheedaht Project to proceed in whole or in part.

## **21.6.0 DITIDAHT / PACHEEDAHT PARTICIPATION IN PROVINCIAL ENVIRONMENTAL ASSESSMENT PROCESSES**

The Treaty will provide that:

21.6.1 Where a Provincial Project is located within the Ditidaht / Pacheedaht Area or may reasonably be expected to adversely affect Ditidaht / Pacheedaht Lands, the residents of such lands, or Ditidaht / Pacheedaht Section 35 Rights, British Columbia will ensure Ditidaht / Pacheedaht is consulted as described in the Engagement Side Agreement in respect of a Provincial Project.

## **21.7.0 LAW MAKING AUTHORITY**

The Treaty will provide that:

21.7.1 Ditidaht / Pacheedaht may make laws applicable on Ditidaht / Pacheedaht Lands to protect, preserve, conserve and manage the Environment with respect to:

- a. environmental assessment, including effects on Heritage Sites, for projects that are not subject to environmental assessment under Provincial Law;
- b. prevention, mitigation and remediation of pollution and degradation of the Environment;

- c. waste management, including solid wastes and wastewater;
  - d. protection of local air quality; and
  - e. Environmental Emergency response.
- 21.7.2 Where Ditidaht / Pacheedaht exercises law making authority under 21.7.1.a, Canada and Ditidaht / Pacheedaht will work collaboratively to promote a timely and efficient review through:
- a. coordinating their respective environmental assessment requirements; and
  - b. avoiding duplication where a Ditidaht / Pacheedaht Project is also a Federal Project.
- 21.7.3 In developing laws under 21.7.1.a in respect of Ditidaht / Pacheedaht Projects that are also Federal Projects, Ditidaht / Pacheedaht will ensure that Ditidaht's / Pacheedaht's environmental assessment process will maintain, or exceed, the requirements of the federal environmental assessment legislation.
- 21.7.4 Federal or Provincial Law prevails to the extent of a Conflict with Ditidaht / Pacheedaht Law under 21.7.1.

## **21.8.0 ENVIRONMENTAL EMERGENCIES**

The Treaty will provide that:

- 21.8.1 Ditidaht / Pacheedaht may enter into agreements with Canada, British Columbia, Local Governments, other First Nations or First Nation organizations for the prevention of, preparedness for, response to and recovery from Environmental Emergencies occurring on Ditidaht / Pacheedaht Lands or on land or waters adjacent to Ditidaht / Pacheedaht Lands.

## **CHAPTER 22 NATIONAL PARKS AND NATIONAL MARINE CONSERVATION AREAS**

### **22.1.0 GENERAL**

The Treaty will provide that:

- 22.1.1 Ditidaht / Pacheedaht has the right to carry out Renewable Resource Harvesting Activities in the Renewable Resource Harvesting Area.
- 22.1.2 The Ditidaht / Pacheedaht Right to Harvest Renewable Resources is limited by measures necessary for conservation, public health or public safety.
- 22.1.3 The Ditidaht / Pacheedaht Right to Harvest Renewable Resources includes reasonable access to the Renewable Resource Harvesting Area.
- 22.1.4 Within the Renewable Resource Harvesting Area, Ditidaht / Pacheedaht will be included in decision making related to conservation, public health, public safety, or other decisions that may adversely affect the Ditidaht / Pacheedaht Right to Harvest Renewable Resources, which will be in accordance with the terms negotiated as part of the side agreement contemplated in 22.12.1.
- 22.1.5 The Ditidaht / Pacheedaht Right to Harvest Renewable Resources may not be alienated.
- 22.1.6 All Ditidaht / Pacheedaht Citizens may exercise the Ditidaht / Pacheedaht Right to Harvest Renewable Resources, except as otherwise provided for under a Ditidaht / Pacheedaht Law.
- 22.1.7 Subject to 22.1.9, Ditidaht / Pacheedaht Citizens will not be required to have any federal licence or pay any fee or royalty to Canada relating to the exercise of the Ditidaht / Pacheedaht Right to Harvest Renewable Resources.
- 22.1.8 Nothing in the Treaty affects Canada's ability to require any Ditidaht / Pacheedaht Citizen to obtain licences, authorizations or registration certificates for the use and possession of firearms under Federal or Provincial Law, including in respect of its application to aboriginal peoples of Canada.

- 22.1.9 The Treaty does not alter Federal or Provincial Law with respect to property in renewable resources harvested under the Ditidaht / Pacheedaht Right to Harvest Renewable Resources.
- 22.1.10 The Minister retains authority for the management, administration and control of National Parks, National Marine Conservation Areas, and other protected areas owned by Canada and administered by the Parks Canada Agency.
- 22.2.0 TRADE AND BARTER AND SALE**
- 22.2.1 The Treaty will provide that Ditidaht / Pacheedaht has the right to Trade and Barter among themselves, or with other aboriginal people of Canada, any renewable resources harvested under the Ditidaht / Pacheedaht Right to Harvest Renewable Resources.
- 22.2.2 Before concluding the Treaty, the Parties will discuss a right to Trade and Barter in Canada with aboriginal people other than those referred to in 22.2.1 with whom Ditidaht / Pacheedaht traditionally traded and who are not aboriginal people within the meaning of Section 35 of the *Constitution Act, 1982*.
- 22.2.3 The Treaty will provide that the Ditidaht / Pacheedaht right to Trade and Barter described in 22.2.1 may not be alienated.
- 22.2.4 The Treaty will provide that the Ditidaht / Pacheedaht right to Trade and Barter described in 22.2.1 may be exercised by any Ditidaht / Pacheedaht Citizen, except as otherwise provided for under a Ditidaht / Pacheedaht Law.
- 22.2.5 The Treaty will provide that renewable resources harvested under the Ditidaht / Pacheedaht Right to Harvest Renewable Resources may not be sold, except for:
- a. fur-bearing land mammals; or
  - b. renewable resources that are used for the making of traditional crafts and artistic objects.
- 22.2.6 The Treaty will provide that notwithstanding 22.2.5.b, Timber Resources harvested under the Ditidaht / Pacheedaht Right to Harvest Renewable Resources and traditional crafts and artistic objects made from such Timber Resources may not be sold or used for commercial purposes.

- 22.2.7 Before concluding the Treaty, the Parties will discuss the potential sale of renewable resources harvested under the Ditidaht / Pacheedaht Right to Harvest Renewable Resources as traditional foods.
- 22.2.8 Before concluding the Treaty, the Parties will discuss, as part of a side agreement, a potential use of Timber Resources for firewood or community construction purposes.

#### **22.3.0 TRANSPORT AND EXPORT**

The Treaty will provide that:

- 22.3.1 Any transport or export of renewable resources harvested under the Ditidaht / Pacheedaht Right to Harvest Renewable Resources will be in accordance with Federal and Provincial Law.

#### **22.4.0 LAW MAKING**

The Treaty will provide that:

- 22.4.1 Ditidaht / Pacheedaht may make laws in respect of the Ditidaht / Pacheedaht Right to Harvest Renewable Resources with respect to:
  - a. the distribution of harvested renewable resources among Ditidaht / Pacheedaht Citizens;
  - b. the designation of Ditidaht / Pacheedaht Citizens who may exercise the Ditidaht / Pacheedaht Right to Harvest Renewable Resources;
  - c. the methods and timing of harvesting by Ditidaht / Pacheedaht Citizens;
  - d. the location of harvesting by Ditidaht / Pacheedaht Citizens;
  - e. the administration of documentation to identify Ditidaht / Pacheedaht Citizens undertaking Renewable Resource Activities;
  - f. the resolution of disputes among Ditidaht / Pacheedaht Citizens with respect to the Ditidaht / Pacheedaht Right to Harvest Renewable Resources; and
  - g. the Trade and Barter of renewable resources harvested by Ditidaht / Pacheedaht Citizens.

- 22.4.2 Subject to 22.4.3, in the event of a Conflict between a Ditidaht / Pacheedaht Law made under 22.4.1 and Federal or Provincial Law, the Ditidaht / Pacheedaht Law will prevail to the extent of the Conflict.

22.4.3 In the event of a Conflict between a Ditidaht / Pacheedaht Law made under 22.4.1.d and Federal or Provincial Law, the Federal or Provincial Law will prevail to the extent of the Conflict.

## 22.5.0 **DESIGNATED HARVESTER**

The Treaty will provide that:

22.5.1 Ditidaht / Pacheedaht may designate individuals other than Ditidaht / Pacheedaht Citizens to exercise the Ditidaht / Pacheedaht Right to Harvest Renewable Resources on behalf of a Ditidaht / Pacheedaht Citizen who is unable to exercise the Ditidaht / Pacheedaht Right to Harvest Renewable Resources.

22.5.2 The term of the designation will be for a maximum of one year from the date the designation was authorized by Ditidaht / Pacheedaht, subject to renewal. A Ditidaht / Pacheedaht Citizen may only have one designated harvester at a time.

22.5.3 Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government, or a Ditidaht / Pacheedaht Citizen must not accept any payment of any kind or make any payment of any kind in exchange for the designation referred to in 22.5.1.

22.5.4 Each year, if requested by the Minister, Ditidaht / Pacheedaht will provide to the Minister a list of all individuals who are designated under 22.5.1.

22.5.5 The designated individual must:

- a. possess a hunting licence that under Provincial Law may only be issued to a “resident” as defined in the *Wildlife Act*; or
- b. be a British Columbia “resident” as defined in the *Wildlife Act* and be exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia.

22.5.6 The designated individual must:

- a. be qualified to operate a firearm under Federal or Provincial Law;
- b. be the spouse or child or grandchild of the Ditidaht / Pacheedaht Citizen;

- c. have provided to Ditidaht / Pacheedaht a signed agreement to carry out Renewable Resource Harvesting Activities and provide the harvested renewable resources to Ditidaht / Pacheedaht Citizens;
- d. carry on his or her person and present to an authorized person upon request, any documentation issued by Ditidaht / Pacheedaht as evidence of the designation; and
- e. carry out Renewable Resource Harvesting Activities in accordance with the Treaty.

## **22.6.0 DOCUMENTATION AND ENFORCEMENT**

The Treaty will provide that:

- 22.6.1 Ditidaht / Pacheedaht will issue documentation to Ditidaht / Pacheedaht Citizens who may exercise the Ditidaht / Pacheedaht Right to Harvest Renewable Resources.
- 22.6.2 Ditidaht / Pacheedaht Citizens who exercise the Ditidaht / Pacheedaht Right to Harvest Renewable Resources are required to carry documentation issued by Ditidaht / Pacheedaht and to produce that documentation at the request of an authorized individual.
- 22.6.3 Documentation issued by Ditidaht / Pacheedaht in accordance with 22.6.1 will:
  - a. be in the English language, which will be the authoritative version, and at the discretion of Ditidaht / Pacheedaht, in the Ditidaht / Pacheedaht language;
  - b. include the name and address of the Ditidaht / Pacheedaht Citizen;
  - c. include any requirements described in a Ditidaht / Pacheedaht permit or Federal Law or pursuant to the agreement respecting harvest management contemplated in 22.7.1; and
  - d. include any other requirements agreed to by Ditidaht / Pacheedaht and Canada.

## **22.7.0 HARVEST MANAGEMENT**

- 22.7.1 Before concluding the Treaty, Parks Canada Agency and Ditidaht / Pacheedaht will negotiate and attempt to reach agreement on harvest

management, to be included as part of the side agreement contemplated under 22.12.1.

22.7.2 The side agreement contemplated under 22.12.1 will address all matters Parks Canada Agency and Ditidaht / Pacheedaht require to support effective harvest management and support exercise of the Ditidaht / Pacheedaht Right to Harvest Renewable Resources, including processes, criteria or factors and information requirements for determining adverse impacts to the Ditidaht / Pacheedaht Right to Harvest Renewable Resources.

## **22.8.0 MATTERS REQUIRING CONSULTATION**

22.8.1 The Treaty will provide that where a National Park or National Marine Conservation Area is wholly or partly within the Ditidaht / Pacheedaht Area, Canada will consult with Ditidaht / Pacheedaht with respect to:

- a. the need for, or development and implementation of, public health, public safety, conservation, or other management measures or decisions that may adversely affect the Ditidaht / Pacheedaht Right to Harvest Renewable Resources;
- b. other matters related to the management of the Ditidaht / Pacheedaht Right to Harvest Renewable Resources;
- c. establishment of or changes to the boundaries of a National Park or National Marine Conservation Area wholly or partly within the Ditidaht / Pacheedaht Area;
- d. park land use planning and zoning;
- e. any proposed management decision within a National Park or National Marine Conservation Area which may affect the exercise of Ditidaht / Pacheedaht Section 35 Rights;
- f. protection and management of cultural resources;
- g. Ditidaht / Pacheedaht interests in economic opportunities and benefits, including capacity and training;
- h. emergency or other closures, including Ditidaht's / Pacheedaht's role in emergency planning, emergency response and related monitoring; and
- i. other matters that the Parties agree requires consultation.

- 22.8.2 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will negotiate and attempt to reach agreement on a process for consultation that is triggered by 22.8.1.
- 22.8.3 The Treaty will provide that the side agreement described in 22.12.1 may take the place of any or all of the consultation requirements in 22.8.1 during the term of the side agreement.

## **22.9.0 EMERGENCY CLOSURES**

The Treaty will provide that:

- 22.9.1 Where an emergency exists within a National Park or National Marine Conservation Area that is wholly or partly within the Ditidaht / Pacheedaht Area that, in the opinion of Canada, requires an area closure, the Minister will notify Ditidaht / Pacheedaht of the closure as soon as practical and will provide Ditidaht / Pacheedaht information concerning the reasons for such closure, available data and projected time frames, subject to requirements under Federal Law.
- 22.9.2 Canada will take reasonable steps to address the reasons for an area closure under 22.9.1, in order to allow the exercise of the Ditidaht / Pacheedaht Right to Harvest Renewable Resources in that area.
- 22.9.3 The Minister will open areas closed to Renewable Resource Harvesting Activities under 22.9.1 once the reasons for the closure no longer exist.
- 22.9.4 Ditidaht / Pacheedaht may request that an area closed to Renewable Resource Harvesting Activities under 22.9.1 be reopened and the Minister will fully and fairly consider any such request.

## **22.10.0 NATIONAL PARKS AND NATIONAL MARINE CONSERVATION AREA ESTABLISHMENT**

The Treaty will provide that:

- 22.10.1 Ditidaht / Pacheedaht may propose the establishment of or changes to the boundaries of a National Park or National Marine Conservation Area wholly or partly within the Ditidaht / Pacheedaht Area, and Canada will consider any such proposal.
- 22.10.2 If Canada conducts studies regarding changes to the boundaries of a National Park or National Marine Conservation Area wholly or partly within

the Ditidaht / Pacheedaht Area, Ditidaht / Pacheedaht will be invited to participate in the design and conduct of the studies and will be provided with the results.

- 22.10.3 No National Park or National Marine Conservation Area will include Ditidaht / Pacheedaht Lands without the consent of Ditidaht / Pacheedaht.
- 22.10.4 No part of a National Park or National Marine Conservation Area wholly or partly within the Ditidaht / Pacheedaht Area will be removed from that National Park or National Marine Conservation Area without the consent of Ditidaht / Pacheedaht.
- 22.10.5 Ditidaht / Pacheedaht Citizens will have access to, without a fee being charged for entrance, a National Park or National Marine Conservation Area wholly or partly within the Ditidaht / Pacheedaht Area, but may be charged fees in relation to visitor facilities and services.

## **22.11.0 PACIFIC RIM NATIONAL PARK**

The Treaty will provide that:

- 22.11.1 Canada may establish as part of the Pacific Rim National Park those portions of the Pacific Rim National Park Reserve lying within the Ditidaht / Pacheedaht Area, subject to the resolution of any overlapping claims of other aboriginal groups.

## **22.12.0 PARKS SIDE AGREEMENT**

- 22.12.1 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will conclude a side agreement for cooperative management of the Pacific Rim National Park Reserve that will come into effect on the Effective Date.
- 22.12.2 The side agreement in 22.12.1 will include the following sections:
  - a. cooperative management;
  - b. management planning;
  - c. management of harvesting and cultural activities;
  - d. process for matters requiring consultation;
  - e. access for Ditidaht / Pacheedaht Citizens;
  - f. monitoring of cultural and natural resources;

- g. stewardship, restoration and enhancement;
- h. heritage protection and presentation;
- i. economic opportunities;
- j. training, capacity building, and education requirements;
- k. park establishment and land acquisition;
- l. treaty settlement lands;
- m. other aboriginal groups;
- n. dispute resolution and agreement breaches;
- o. term, review and amendment; and
- p. other matters as may be agreed to by Canada and Ditidaht / Pacheedaht.

22.12.3 Before concluding the Treaty, Canada and Ditidaht / Pacheedaht will discuss implementation of the side agreement contemplated in 22.12.1 and related capacity funding, as contemplated in the Fiscal Relations Chapter.

## **22.13.0 FEDERAL EXPROPRIATION**

The Treaty will provide that:

22.13.1 Notwithstanding 3.14.0, Canada will not acquire any interest in Ditidaht / Pacheedaht Lands by expropriation for the purpose of enlarging an existing National Park or National Marine Conservation Area or establishing or changing the boundaries of a National Park or National Marine Conservation Area.

## CHAPTER 23 PROVINCIAL PROTECTED AREAS

### 23.1.0 GENERAL

- 23.1.1 Before concluding the Treaty, the Parties will address matters related to Provincial Protected Areas and review other parts of the Treaty that may be affected, and make any necessary changes, and the Treaty will reflect the agreement of the Parties on such matters.
- 23.1.2 For greater certainty, the Treaty is not intended to affect any Ditidaht / Pacheedaht rights that may be exercised in Provincial Protected Areas.
- 23.1.3 Before concluding the Treaty, British Columbia and Ditidaht / Pacheedaht will discuss Ditidaht's / Pacheedaht's role in collaborative management of Provincial Protected Areas within the Ditidaht / Pacheedaht Area.

## CHAPTER 24 DISPUTE RESOLUTION

### 24.1.0 GENERAL

The Treaty will provide that:

- 24.1.1 The Parties share the following objectives:
- a. to cooperate with each other to develop harmonious working relationships;
  - b. to prevent or, alternatively, to minimize Disagreements;
  - c. to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner possible; and
  - d. to resolve Disagreements in a non-adversarial, collaborative, and informal atmosphere.
- 24.1.2 Except as otherwise provided in the Treaty, the Parties may agree to vary a procedural requirement contained in this chapter, or in Appendices X-1 to X-6, as it applies to a particular Disagreement.
- 24.1.3 Participating Parties may agree to, or the Supreme Court of British Columbia, on application, may order:
- a. the abridgment of a time limit in this chapter or in Appendices X-1 to X-6; or
  - b. the extension of a time limit in this chapter or in Appendices X-1 to X-6, despite the expiration of that time limit.

### 24.2.0 SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT

The Treaty will provide that:

- 24.2.1 In this chapter and Appendices X-1 to X-6, a Party is deemed to be directly engaged in a Disagreement where another Party, acting reasonably, provides that Party a notice requiring it to participate in a process described in this chapter to resolve the Disagreement.
- 24.2.2 This chapter is not intended to apply to all disputes between or among the Parties, but is limited to the disputes described in 24.2.3.
- 24.2.3 This chapter only applies to:

- a. dispute respecting:
  - i. the interpretation, application, or implementation of the Treaty, or
  - ii. a breach or anticipated breach of the Treaty;
- b. a dispute, where provided for in the Treaty; or
- c. negotiations required to be conducted under any provision of the Treaty that provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”.

24.2.4 This chapter does not apply to:

- a. any agreement, plan, guideline or other document contemplated in the Treaty that is entered into, negotiated or prepared by the Parties unless the Parties have agreed that this chapter applies to that agreement, plan, guideline or other document; or
- b. disputes, where excluded from this chapter.

24.2.5 Nothing in this chapter limits the application of a dispute resolution process, under any law, to a dispute involving a person if that dispute is not a Disagreement.

24.2.6 Nothing in Federal or Provincial Law limits the right of a Party to refer a Disagreement to this chapter.

#### **24.3.0 DISAGREEMENTS TO GO THROUGH STAGES**

The Treaty will provide that:

24.3.1 The Parties desire and expect that most Disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this chapter.

24.3.2 Except as otherwise provided in the Treaty, Disagreements not resolved informally will progress, until resolved, through the following stages:

- a. Stage One: formal, unassisted efforts to reach agreement between or among the Participating Parties in collaborative negotiations under an appendix to the Treaty;
- b. Stage Two: structured efforts to reach agreement between or among the Participating Parties with the assistance of a Neutral, who has no

- authority to resolve the Disagreement, in a facilitated process under Appendices X-2, X-3, X-4 or X-5, as applicable; and
- c. Stage Three: final adjudication in arbitral proceedings under Appendix X-6, or in judicial proceedings.
- 24.3.3 Except as otherwise provided in the Treaty, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and Stage Two as required in this chapter.
- 24.3.4 Nothing in this chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
- a. to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
  - b. to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this chapter.
- 24.4.0 STAGE ONE: COLLABORATIVE NEGOTIATIONS**
- The Treaty will provide that:
- 24.4.1 Where a Disagreement is not resolved by informal discussion and a Party directly engaged in the Disagreement wishes to invoke this chapter, that Party will deliver a notice, as required under Appendix X-1, to the other Parties, requiring the commencement of collaborative negotiations.
- 24.4.2 Upon receiving a notice under 24.4.1, a Party directly engaged in the Disagreement will participate in the collaborative negotiations.
- 24.4.3 A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving notice to the other Parties, preferably before the collaborative negotiations commence.
- 24.4.4 Where the Parties have commenced negotiations in the circumstances described in 24.2.3, then, for all purposes under this chapter, those negotiations are deemed collaborative negotiations.
- 24.4.5 Collaborative negotiations terminate in the circumstances described in Appendix X-1.
- 24.5.0 STAGE TWO: FACILITATED PROCESSES**

- 24.5.1 Within 30 days of the termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement may require the commencement of a facilitated process by delivering a notice to the other Parties.
- 24.5.2 A notice contemplated by 24.5.1:
- a. will identify the Party or Parties directly engaged in the Disagreement and include a summary of the particulars of the Disagreement; and
  - b. may propose the use of a particular facilitated process described in 24.5.5.
- 24.5.3 Upon receiving a notice under 24.5.1, a Party identified in that notice as a Party directly engaged in the Disagreement will participate in a facilitated process described in 24.5.5.
- 24.5.4 A Party not directly engaged in the Disagreement may participate in the facilitated process by giving notice to the other Parties within 15 days of delivery of a notice under 24.5.1.
- 24.5.5 Within 30 days after the delivery of a notice under 24.5.1, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:
- a. mediation under Appendix X-2;
  - b. technical advisory panel under Appendix X-3;
  - c. neutral evaluation under Appendix X-4;
  - d. any other non-binding dispute resolution process assisted by a Neutral; or
  - e. a Ditidaht / Pacheedaht advisory panel under Appendix X-5;
- and if the Parties fail to agree, they are deemed to have selected mediation under Appendix X-2.
- 24.5.6 A facilitated process terminates:
- a. in the circumstances set out in the applicable appendix; or
  - b. as agreed by the Participating Parties, where an appendix does not apply.

## **24.6.0 NEGOTIATING CONDITIONS**

The Treaty will provide that:

24.6.1 In order to enhance the prospect of reaching agreement, the Participating Parties will:

- a. at the request of a Participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;
- b. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
- c. negotiate in good faith.

## **24.7.0 SETTLEMENT AGREEMENT**

24.7.1 Any agreement reached in a process under this chapter:

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

24.7.2 For greater certainty, any agreement reached in a facilitated process under this chapter requires the agreement only of those Participating Parties who are directly engaged in the Disagreement.

## **24.8.0 STAGE THREE: ADJUDICATION – ARBITRATION**

The Treaty will provide that:

24.8.1 Where a Disagreement arises out of any provisions of the Treaty that provides that a matter will be “finally determined by arbitration”, the Disagreement will, on the delivery of a notice to arbitrate by a Party directly engaged in the Disagreement to all Parties as required under Appendix X-6,

be referred to and finally resolved by arbitration in accordance with that Appendix.

- 24.8.2 A Disagreement, other than a Disagreement referred to in 24.8.1, with the written agreement of all Parties directly engaged in the Disagreement, will be referred to, and finally resolved by, arbitration in accordance with Appendix X-6.
- 24.8.3 Where two Parties directly engaged in a Disagreement make a written agreement to arbitrate in accordance with 24.8.2, they will deliver a copy of the agreement as soon as practicable to the other Party.
- 24.8.4 A Party not directly engaged in the Disagreement is entitled to be, and will be added as, a Participating Party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process, by providing notice to the Parties to the arbitration within 15 days of receiving the notice under 24.8.1 or a copy of a written agreement to arbitrate under 24.8.2.
- 24.8.5 Notwithstanding 24.8.4, an arbitral tribunal may make an order adding a Party as a Participating Party at any time, if the arbitral tribunal considers that:
  - a. the other Parties will not be unduly prejudiced; or
  - b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under 24.8.1 or the agreement to arbitrate under 24.8.2,

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

#### **24.9.0    EFFECT OF ARBITRAL AWARD**

The Treaty will provide that:

- 24.9.1 An arbitral award, as defined in Appendix X-6, is final and binding on all Parties whether or not a Party has participated in the arbitration.
- 24.9.2 Notwithstanding 24.9.1, an arbitral award, as defined in Appendix X-6, is not binding on a Party that has not participated in the arbitration if:
  - a. the Party did not receive copies of:

- i. the notice of arbitration or the agreement to arbitrate, or
  - ii. the pleadings and any amendments or supplements to the pleadings; or
- b. the arbitral tribunal refused to add the Party as a Participating Party to the arbitration under 24.8.5.

#### **24.10.0 APPLICATION OF LEGISLATION**

The Treaty will provide that:

- 24.10.1 No legislation of any Party respecting arbitration, except the Federal Settlement Legislation and Provincial Settlement Legislation, applies to an arbitration conducted under this chapter.
- 24.10.2 A court must not intervene or offer assistance in an arbitration or review an arbitral award, as defined in Appendix X-6, under this chapter, except as provided in Appendix X-6.

#### **24.11.0 STAGE THREE: ADJUDICATION – JUDICIAL PROCEEDINGS**

- 24.11.1 Nothing in this chapter creates a cause of action where none otherwise exists.
- 24.11.2 Subject to 24.11.3, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a Disagreement.
- 24.11.3 Subject to 24.3.4, a Party may not commence judicial proceedings in respect of a Disagreement if the Disagreement:
  - a. is required to be referred to arbitration under 24.8.1 or has been agreed to be referred to arbitration under 24.8.2;
  - b. has not been referred to collaborative negotiations or a facilitated process as required under this chapter; or
  - c. has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.
- 24.11.4 Nothing in 24.11.3.a prevents an arbitral tribunal or the Participating Parties from requesting the Supreme Court of British Columbia to make a ruling respecting a question of law as permitted in Appendix X-6.

#### **24.12.0 NOTICE TO PARTIES**

24.12.1 Where, in any judicial or administrative proceeding, an issue arises in respect of:

- a. the interpretation or validity of the Treaty; or
- b. the validity or applicability of:
  - i. any Federal Settlement Legislation or Provincial Settlement Legislation; or
  - ii. any Ditidaht / Pacheedaht Law;

the issue will not be decided until the Party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada and Ditidaht / Pacheedaht.

24.12.2 In any judicial or administrative proceeding to which 24.12.1 applies, the Attorney General of Canada, the Attorney General of British Columbia and Ditidaht / Pacheedaht may appear and participate in the proceedings as parties with the same rights as any other party.

#### **24.13.0 COSTS**

24.13.1 Except as provided otherwise in Appendices X-1 to X-6, each Participating Party will bear the costs of its own participation, representation, and appointments in collaborative negotiations, a facilitated process, or an arbitration conducted under this chapter.

24.13.2 Subject to 24.13.1 and except as otherwise provided in Appendices X-1 to X-6, the Participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration conducted under this chapter.

24.13.3 For purposes of 24.13.2, “costs” include:

- a. fees of the Neutrals;
- b. costs of hearing and meeting rooms;
- c. actual and reasonable costs of communications, accommodation, meals, and travel of the Neutrals;
- d. costs of required secretarial and administrative support for the Neutrals, as permitted in Appendices X-1 to X-6; and

- e. administration fees of a Neutral Appointing Authority as defined in Appendices X-2 to X-6.

## CHAPTER 25 ELIGIBILITY AND ENROLMENT

### 25.1.0 DITIDAHT / PACHEEDAHT ELIGIBILITY

The Treaty will provide that:

25.1.1 An individual is eligible for enrolment under the Treaty if that individual:

- a. is of Ditidaht / Pacheedaht ancestry;
- b. was a member, or was entitled to be a member, of the Ditidaht / Pacheedaht Band under the *Indian Act* as of the day before the Effective Date;
- c. was adopted under a law recognized in Canada or by Ditidaht / Pacheedaht custom by an individual eligible for enrolment under the Treaty in accordance with 25.1.1.a, 25.1.1.b, 25.1.1.d or 25.1.1.e;
- d. is accepted into the community by Ditidaht / Pacheedaht in accordance with the custom of Ditidaht / Pacheedaht; or
- e. is a descendant of an individual eligible for enrolment under 25.1.1.a, 25.1.1.b or 25.1.1.c.

25.1.2 Enrolment under the Treaty will not:

- a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any rights or benefits under the *Indian Act*; or
- b. except as set out in the Treaty or in any Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

### 25.2.0 APPLICATIONS FOR ENROLMENT

The Treaty will provide that:

25.2.1 An individual may, in accordance with this chapter:

- a. apply to the Enrolment Committee, or Ditidaht / Pacheedaht in accordance with 25.8.3, for enrolment under the Treaty; and
- b. with respect to his or her application:

- i. appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; and
  - ii. seek judicial review of a decision of the Enrolment Appeal Board or Ditidaht / Pacheedaht in accordance with 25.8.3.a.
- 25.2.2 Each individual has the burden of demonstrating that he or she meets the Eligibility Criteria.
- 25.2.3 For the purposes of this chapter:
- a. a minor or an adult that does not have legal capacity may be represented by an individual who has legal authority to act on behalf of the minor or adult; and
  - b. all references to individual include, as the context may require, an individual acting as representative on behalf of a minor or adult whose affairs the individual has the legal authority to manage.

### **25.3.0 OTHER LAND CLAIMS AGREEMENTS**

The Treaty will provide that:

- 25.3.1 Other than as provided below, an individual who is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada will not at the same time be enrolled under the Treaty.
- 25.3.2 Upon application to be enrolled under the Treaty, an individual must notify the Enrolment Committee, or Ditidaht / Pacheedaht in accordance with 25.8.3.a, if he or she is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada.
- 25.3.3 Subject to 25.3.4, an individual described in 25.3.1 may be enrolled if he or she meets the Eligibility Criteria.
- 25.3.4 An individual referred to in 25.3.3 will:
- a. within 120 days after the Effective Date; or
  - b. where the decision to accept his or her application to be enrolled under 25.3.3 is made after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee, or from Ditidaht / Pacheedaht in accordance with 25.8.3.a, that he or she has been enrolled,

provide written evidence to Ditidaht / Pacheedaht to demonstrate that he or she has ceased to be a beneficiary of, or has withdrawn his or her application for enrolment under, another treaty or land claims agreement in Canada.

- 25.3.5 An individual enrolled under 25.3.3 is not entitled to exercise any rights or receive any benefits under the Treaty until he or she has satisfied the requirements of 25.3.4.
- 25.3.6 Where an individual referred to in 25.3.3 fails to satisfy the requirements of 25.3.4, he or she will cease to be enrolled and his or her name will be removed from the Enrolment Register.
- 25.4.0 MEMBERSHIP IN AN INDIAN BAND OTHER THAN THE DITIDAHT / PACHEEDAHT BAND**

The Treaty will provide that:

- 25.4.1 An individual who was a member or a registered Indian of an Indian Band other than the Ditidaht / Pacheedaht Band will:
- within 120 days after the Effective Date; or
  - where the decision to accept his or her application to be enrolled after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee or Ditidaht / Pacheedaht in accordance with 25.8.3.a that he or she has been enrolled,

do all things necessary to request that Canada remove his or her name from the Indian Band list on which he or she is registered, change his or her affiliation to Ditidaht / Pacheedaht Band and issue a new status card.

- 25.4.2 For greater certainty, as provided in 1.7.1, after the Effective Date, upon becoming a Ditidaht / Pacheedaht Citizen an individual ceases to be a member or a registered Indian of any Indian Band.

**25.5.0 ENROLMENT COMMITTEE**

The Treaty will provide that:

- 25.5.1 Ditidaht / Pacheedaht will establish and appoint three representatives to an Enrolment Committee that will be responsible for the enrolment process.
- 25.5.2 Ditidaht / Pacheedaht will notify Canada and British Columbia of the members of the Enrolment Committee.

25.5.3 The Enrolment Committee will:

- a. establish enrolment procedures and time limits, including time limits for making enrolment decisions;
- b. publish the Eligibility Criteria and provide information on the enrolment process and application forms to any individual who wishes to apply for enrolment;
- c. publish its enrolment procedures, including a list of the documentation and information required of individuals applying for enrolment;
- d. receive and consider enrolment applications, request further information if required, enroll individuals that apply for enrolment and meet the Eligibility Criteria, and maintain a record of those decisions;
- e. notify in writing each individual that applied for enrolment and the Parties of its decision and, if enrolment is refused, provide written reasons;
- f. on request, provide information relating to an individual's enrolment application, in confidence, to the Parties and the Enrolment Appeal Board;
- g. establish and maintain an Enrolment Register;
- h. add names to, delete names from, or amend names on, the Enrolment Register in accordance with this chapter and decisions of the Enrolment Appeal Board;
- i. unless otherwise provided in this chapter, keep information provided by and about individuals that apply for enrolment confidential;
- j. provide a copy of the Enrolment Register to the Parties; and
- k. provide a copy of the Enrolment Register, and any other relevant information requested, to the Ratification Committee in a timely manner.

25.5.4 After a decision of the Enrolment Committee, and before any appeal of that decision is commenced, an individual that applied for enrolment may submit new information to the Enrolment Committee.

25.5.5 The Enrolment Committee may, before an appeal of a decision is commenced, vary the decision on the basis of new information if it considers the decision was in error.

- 25.5.6 Where the Enrolment Committee fails to decide upon an application for enrolment within the time limit established in its enrolment procedures, the application is deemed to be refused and the failure to decide constitutes grounds for appeal to the Enrolment Appeal Board.
- 25.5.7 Where an individual applies to be removed from the Enrolment Register, the Enrolment Committee, or Ditidaht / Pacheedaht in accordance with 25.8.3.a, will remove the name and will notify the individual.
- 25.5.8 Subject to this chapter, all decisions of the Enrolment Committee are final and binding.
- 25.5.9 No action lies or may be commenced against the Enrolment Committee or any member of the Enrolment Committee for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this chapter.

## **25.6.0 ENROLMENT APPEAL BOARD**

The Treaty will provide that:

- 25.6.1 Ditidaht / Pacheedaht and Canada will establish the Enrolment Appeal Board at a date agreed upon by the Parties.
- 25.6.2 The Enrolment Appeal Board will be comprised of two members appointed by Ditidaht / Pacheedaht and one member appointed by Canada.
- 25.6.3 A member of the Enrolment Committee may not also be a member of the Enrolment Appeal Board.
- 25.6.4 The Enrolment Appeal Board will:
- a. establish and publish its own procedures and time limits;
  - b. hear and determine any appeal brought under 25.6.5 or 25.6.6 and decide whether the individual that applied for enrolment will be enrolled;
  - c. conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing;
  - d. provide written reasons for its decision to an individual, the Enrolment Committee and the Parties; and

- e. maintain a record of its decisions and communicate them to the Enrolment Committee as required.
- 25.6.5 An individual who applied for enrolment may appeal by written notice to the Enrolment Appeal Board with respect to his or her application:
- a. any decision of the Enrolment Committee made under 25.5.3.d or 25.5.5; and
  - b. any application that is deemed to be refused under 25.5.6.
- 25.6.6 A Party may appeal by written notice to the Enrolment Appeal Board:
- a. any decision of the Enrolment Committee made under 25.5.3.d or 25.5.5; and
  - b. any application that is deemed to be refused under 25.5.6.
- 25.6.7 As of the Effective Date, the Enrolment Appeal Board may:
- a. by summons require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in his or her possession; and
  - b. direct a witness to answer on oath or solemn affirmation any relevant question posed to the witness.
- 25.6.8 If an individual fails to comply with a summons or direction of the Enrolment Appeal Board made under 25.6.7, on application by the Enrolment Appeal Board, a judge of the Provincial Court of British Columbia or other court of competent jurisdiction may enforce the summons or direction.
- 25.6.9 Any individual, Party or witness appearing before the Enrolment Appeal Board may be represented by counsel or an agent.
- 25.6.10 Subject to the provisions under 25.7.0, all decisions of the Enrolment Appeal Board will be final and binding.
- 25.6.11 No action lies or may be commenced against the Enrolment Appeal Board or any member of the Enrolment Appeal Board for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this chapter.

**25.7.0 JUDICIAL REVIEW**

The Treaty will provide that:

- 25.7.1 An individual who applied for enrolment may apply to the Supreme Court of British Columbia for judicial review of a decision of the Enrolment Appeal Board, or Ditidaht / Pacheedaht in accordance with 25.8.3.a, relating to his or her application, on the grounds that the Enrolment Appeal Board or Ditidaht / Pacheedaht:
- a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
  - b. failed to observe procedural fairness;
  - c. erred in law; or
  - d. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
- 25.7.2 A Party may apply to the Supreme Court of British Columbia for judicial review of a decision of the Enrolment Appeal Board, or Ditidaht / Pacheedaht in accordance with 25.8.3.a, on the grounds that the Enrolment Appeal Board or Ditidaht / Pacheedaht:
- a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
  - b. failed to observe procedural fairness;
  - c. erred in law; or
  - d. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
- 25.7.3 On an application for judicial review the Supreme Court of British Columbia may dismiss the application, set aside the decision or refer the matter back to the Enrolment Appeal Board, or Ditidaht / Pacheedaht in accordance with 25.8.3.a, for determination in accordance with such directions as the court considers appropriate.
- 25.7.4 If the Enrolment Appeal Board, or Ditidaht / Pacheedaht in accordance with 25.8.3.a, fails to hear or decide an appeal within a reasonable time, the individual, or a Party, may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board or Ditidaht / Pacheedaht to

hear or decide the appeal in accordance with such directions as the court considers appropriate.

- 25.7.5 An application for judicial review must be brought within 60 days of notification of the decision of the Enrolment Appeal Board or Ditidaht / Pacheedaht in accordance with 25.8.3.a.
- 25.7.6 Notwithstanding 25.7.5, the court may extend the time for making an application for judicial review on terms the court considers proper.

## **25.8.0 TRANSITION AFTER EFFECTIVE DATE**

The Treaty will provide that:

- 25.8.1 The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered final decisions with respect to those applications or appeals commenced before the Effective Date.
- 25.8.2 On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records to Ditidaht / Pacheedaht and to Canada or British Columbia upon request.
- 25.8.3 Subject to 25.8.1, as of the Effective Date, Ditidaht / Pacheedaht will:
  - a. be responsible for the enrolment process, including the application of the Eligibility Criteria;
  - b. maintain the Enrolment Register;
  - c. provide a copy of the Enrolment Register to Canada and British Columbia each year or as otherwise requested by Canada or British Columbia; and
  - d. provide information respecting enrolment to Canada or British Columbia upon request.

## **25.9.0 COSTS**

- 25.9.1 The Treaty will provide that Canada and British Columbia will, as agreed between them, provide funding for the Enrolment Committee and the Enrolment Appeal Board to carry out the duties and responsibilities set out in the Enrolment and Eligibility Chapter.

- 25.9.2 Before concluding the Treaty, the Parties will discuss how Canada and British Columbia will determine the level of funding for the activities set out in 25.9.1.

## CHAPTER 26 RATIFICATION

### 26.1.0 GENERAL

The Treaty will provide that:

26.1.1 The Treaty will be submitted to the Parties for ratification after it has been initialed by the authorized representatives of the Parties.

### 26.2.0 RATIFICATION OF THE DITIDAHT / PACHEEDAHT CONSTITUTION

The Treaty will provide that:

26.2.1 Ratification of the Ditidaht / Pacheedaht Constitution requires:

- a. that the Ditidaht / Pacheedaht People have a reasonable opportunity to review the Ditidaht / Pacheedaht Constitution;
- b. a vote, by way of a secret ballot of Eligible Voters on or before the date of the vote on the Treaty; and
- c. that at least fifty percent plus one of Eligible Voters on the Official Voters List vote in favour of the Ditidaht / Pacheedaht Constitution.

26.2.2 Once ratified, the Ditidaht / Pacheedaht Constitution will come into force on the Effective Date.

### 26.3.0 RATIFICATION OF THE DITIDAHT / PACHEEDAHT TREATY

The Treaty will provide that:

26.3.1 Ratification of the Ditidaht / Pacheedaht Treaty requires:

- a. that the Ditidaht / Pacheedaht People have a reasonable opportunity to review the Treaty;
- b. a vote, by way of a secret ballot of Eligible Voters;
- c. at least fifty percent plus one of Eligible Voters on the Official Voters List vote in favour of the Treaty;
- d. ratification of the Ditidaht / Pacheedaht Constitution under 26.2.1; and

- e. that the Treaty be signed by an authorized representative of Ditidaht / Pacheedaht.

#### **26.4.0 THE RATIFICATION COMMITTEE**

The Treaty will provide that:

- 26.4.1 Ditidaht / Pacheedaht will establish a Ratification Committee.
- 26.4.2 The Ratification Committee will be comprised of one representative from each of the Parties.
- 26.4.3 The Ratification Committee will:
  - a. establish, and, where necessary, update its rules of procedure for the ratification of the Ditidaht / Pacheedaht Constitution and the Treaty;
  - b. publish its rules of procedure in accessible locations and electronically on websites;
  - c. take reasonable steps to provide an opportunity for the Ditidaht / Pacheedaht People to review the Ditidaht / Pacheedaht Constitution and Treaty;
  - d. at least 45 days before the first day of voting, prepare and publish a preliminary list of voters for the Ratification Vote based on the information provided by the Enrolment Committee under 25.5.3;
  - e. at least 21 days before the first day of voting, prepare and publish the Official Voters List for the Ratification Vote based on the preliminary list of voters prepared under 26.4.3.d by:
    - i. determining whether each individual whose name is provided by the Enrolment Committee is eligible to vote under 26.5.1; and
    - ii. including on the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under 26.4.3.e.i;
  - f. update the Official Voters List for the Ratification Vote by:
    - i. adding to the Official Voters List at any time on or before the last day of voting;

- (1) the name of each individual whose name the Ratification Committee determines to be eligible to vote under 26.5.1;
  - (2) the name of each individual who casts a ballot under 26.5.2 and whose ballot is counted under 26.5.3; and
  - (3) the name of each individual whose name has been removed under 26.4.3.f.ii and who has provided contact information to the Ditidaht / Pacheedaht or the Ratification Committee; and
- ii. removing from the Official Voters List:
    - (1) the name of each individual who the Ditidaht / Pacheedaht Band has made a specific request to the Ratification Committee before the close of polls on the last voting day for removal from the Eligible Voters List due to an inability to contact that individual provided that the Ditidaht / Pacheedaht Band provides documentation of the steps taken to contact the individual and the Ratification Committee is satisfied that those steps are reasonable;
    - (2) the name of each individual who did not vote in the Ratification Vote and who provides, within seven days of the last scheduled day of voting in the Ratification Vote, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for general voting; and
    - (3) the name of each individual who died on or before the last voting day without having voted in the Ratification Vote; and
- iii. preparing and publishing a final Official Voters List;
- g. approve the form and content of the ballots before the Ratification Vote commences;
  - h. authorize and provide general direction to voting officers, including the establishment of polling stations and voting rules that may include advance polls, mail-in ballots, mobile polling stations and electronic voting;
  - i. conduct each of the Ratification Votes on a day or days determined by the Ratification Committee;

- j. make public the results of each of the Ratification Votes immediately following the Ratification Vote count; and
- k. prepare and provide to the Parties a written report on the outcome of each of the Ratification Votes within 90 days following the last day of each of the Ratification Votes.

## **26.5.0     ELIGIBLE VOTERS**

The Treaty will provide that:

- 26.5.1    An individual is eligible to vote in a Ratification Vote if that individual is:
  - a. enrolled in accordance with the Eligibility and Enrolment Chapter; and
  - b. at least 18 years of age on the last scheduled day of voting in the Ratification Vote.
- 26.5.2    An individual whose name is not included on the Official Voters List may vote if:
  - a. the Enrolment Committee provides a voting officer with confirmation that the individual submitted a completed enrolment application form to the Enrolment Committee; and
  - b. if the individual provides evidence satisfactory to a voting officer that the individual is at least 18 years of age on the last scheduled day of voting in the Ratification Vote.
- 26.5.3    The ballot of an individual described under 26.5.2 will be counted in the Ratification Vote only where the Enrolment Committee confirms to the Ratification Committee that the individual meets the Eligibility Criteria within a time frame established by the Ratification Committee.

## **26.6.0     FUNDING**

The Treaty will provide that:

- 26.6.1    Canada and British Columbia will, as agreed between them, provide funding for the Ratification Committee to carry out the duties and responsibilities set out in this chapter.
- 26.6.2    Before concluding the Treaty, the Parties will discuss how Canada and British Columbia will determine the level of funding for the activities set out in 26.6.1.

## **26.7.0 RATIFICATION BY BRITISH COLUMBIA**

The Treaty will provide that:

26.7.1 Ratification of the Treaty by British Columbia requires:

- a. that the Treaty be signed by a Minister authorized to do so; and
- b. the coming into force of Provincial Settlement Legislation giving effect to the Treaty.

26.7.2 British Columbia will consult with Ditidaht / Pacheedaht on the development of Provincial Settlement Legislation.

## **26.8.0 RATIFICATION BY CANADA**

The Treaty will provide that:

26.8.1 Ratification of the Treaty by Canada requires:

- a. that the Treaty be signed by a Minister authorized to do so; and
- b. the coming into force of Federal Settlement Legislation giving effect to the Treaty.

26.8.2 Canada will consult with Ditidaht / Pacheedaht on the development of Federal Settlement Legislation.

## **26.9.0 MINOR CHANGES BEFORE SIGNING**

The Treaty will provide that:

26.9.1 Before the Parties sign the Treaty the authorized representatives of the Parties may agree to make minor changes to the Treaty.

26.9.2 Before the Effective Date, the authorized representatives of the Parties may agree to amendments to the Treaty and the appendices to update information or correct any editing grammatical or typographical errors. Any updated information or corrections may be incorporated in the printing of the Treaty and the appendices after the Effective Date.

## **CHAPTER 27 IMPLEMENTATION**

### **27.1.0 GENERAL**

The Treaty will provide that:

- 27.1.1 The Implementation Plan takes effect on the Effective Date and has a term of ten years, which may be renewed or extended upon agreement of the Parties.

### **27.2.0 IMPLEMENTATION PLAN**

The Treaty will provide that:

- 27.2.1 The Implementation Plan:

- a. identifies the obligations arising from the Treaty, the activities to be undertaken to fulfill those obligations, the responsible Party and the timeframe for completion of those activities;
- b. specifies how the Implementation Plan may be amended;
- c. specifies how the Implementation Plan may be renewed or extended; and
- d. addresses other matters agreed to by the Parties.

- 27.2.2 The Implementation Plan:

- a. does not create legal obligations;
- b. does not alter any rights or obligations described in the Treaty;
- c. does not preclude any Party from asserting that rights or obligations exist under the Treaty even though they are not referred to in the Implementation Plan; and
- d. is not to be used to interpret the Treaty.

### **27.3.0 IMPLEMENTATION COMMITTEE**

The Treaty will provide that:

- 27.3.1 The Implementation Committee is established on the Effective Date for a term of ten years, which may be extended for a period as agreed by the Parties.
- 27.3.2 On the Effective Date, Ditidaht / Pacheedaht, Canada and British Columbia will each appoint one member as their representative on the Implementation Committee. Other individuals may participate in Implementation Committee meetings to support or assist a member.
- 27.3.3 The Implementation Committee will:
  - a. establish its own procedures and operating guidelines;
  - b. develop a communications strategy in respect of the implementation and content of the Treaty;
  - c. be a forum for the Parties to discuss the implementation of the Treaty;
  - d. attempt to resolve any implementation issues arising among the Parties in respect of the Treaty;
  - e. provide for the preparation of annual reports on the implementation of the Treaty;
  - f. before the expiry of the Implementation Plan, review the Implementation Plan and advise the Parties on the further implementation of the Treaty and, if a consensus is reached by the Implementation Committee in respect of a recommendation, recommend whether the Implementation Plan should be renewed or extended; and
  - g. address other matters agreed to by the Parties.

## **CHAPTER 28 APPROVAL OF THIS AGREEMENT**

### **28.1.0 GENERAL**

- 28.1.1 The authorized representatives for the Parties will jointly recommend, in writing, approval of this Agreement to their respective principals.
- 28.1.2 Ditidaht will have approved this Agreement when its counterpart is signed by Ditidaht's Chief and Council and Ditidaht's Chief Negotiator.
- 28.1.3 Pacheedaht will have approved this Agreement when its counterpart signed by Pacheedaht's Chief and Council and Pacheedaht's Chief Negotiator.
- 28.1.4 British Columbia will have approved this Agreement when it is signed by a Minister authorized to do so.
- 28.1.5 Canada will have approved this Agreement when it is signed by a Minister authorized to do so.

## CHAPTER 29 DEFINITIONS

**“Administrative Penalty”** means a sanction or monetary penalty established under a statutory regime in which liability for breach of a regulatory requirement and imposition of sanctions is determined through an administrative process, rather than through prosecution or through an action in the civil courts;

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

**“Agreement”** means this agreement in principle among Ditidaht / Pacheedaht, Canada and British Columbia;

**“Allocation”** means a defined harvest quantity or quota, or a formula for calculating a harvest quantity or quota, if required as a conservation measure;

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

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

**“Atlas”** means the Ditidaht / Pacheedaht Treaty Atlas as signed by the Parties and as amended from time to time in accordance with the Treaty, which consists of the version of the maps and plans shown at reduced scale for ease of reference in the appendices to the Treaty;

**“BC Hydro”** means the British Columbia Hydro and Power Authority, a corporation defined in the Hydro and Power Authority Act, or its successor;

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

**“British Columbia Building Code”** means the building code established for British Columbia in accordance with the *Local Government Act*;

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

**“Capital Transfer”** means an amount paid by Canada under 17.1.1 of the Capital Transfer Chapter;

**“Chaabut”** means a Ditidaht / Pacheedaht hereditary chief;

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

**“Child Care”** means the care, supervision, social or educational training, including early childhood and pre-school education, or physical or mental rehabilitative therapy of children under the age of 13 years, with or without charge, by caregivers other than the child’s parent or the person with whom the child resides and who stands in the place of the child’s mother or father, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a Ditidaht / Pacheedaht Law in accordance with 14.11.74 of the Governance Chapter;

**“Child in Need of Protection”** means a Child in need of protection under the *Child, Family and Community Services Act*;

**“Child Protection Service”** means a service that provides for:

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

**“Children in Care”** means a Child who is in the custody, care or guardianship of a Director or an individual designated with comparable authority under Ditidaht / Pacheedaht Law;

**“Community Correctional Services”** means:

- a. community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody center;

- b. preparation of reports for courts, correctional centers, youth custody centers, Crown counsel and parole boards;
- c. supervision of diverted offenders and development and operation of diversion programs;
- d. community-based programs and interventions for offenders, including alternative to custody programs;
- e. identification of and referral to appropriate community resources;
- f. programs to meet the needs of youth in conflict with the law; and
- g. other community correctional and community youth justice services as may be delivered by British Columbia or Canada from time to time;

**“Conflict”** means

- a. compliance with one law would mean the impossibility of compliance with the other law; or
- b. where the operation of one law frustrates the legislative purpose of the other law;

**“Contamination”** means, for the purposes of the Lands Chapter, “contamination” as defined in the *Environmental Management Act*;

**“Crown”** means Canada or British Columbia, as the case may be;

**“Crown Corridor”** means the lands identified as Crown Corridors in an appendix to the Treaty;

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

**“Director”** means a person designated as director by the Minister of Children and Family Development under the *Child, Family and Community Service Act* or the *Adoption Act*;

**“Disagreement”** means a dispute or negotiation to which the Dispute Resolution Chapter applies as described in 24.2.3;

**“Ditidaht Capital Transfer”** means an amount paid by Canada under the Capital Transfer and Negotiation Loan Repayment Chapter of the Ditidaht Treaty;

**“Ditidaht Treaty”** means the Ditidaht Treaty among Ditidaht, Canada and British Columbia, including all schedules and appendices to it;

**“Ditidaht Lands”** means those lands described in 3.2.1;

**“Ditidaht / Pacheedaht Area”** means the area set out in an appendix to the Treaty;

**“Ditidaht / Pacheedaht Artifact”** means any object:

- a. created by, traded to, commissioned by, or given as a gift to:
  - i. Ditidaht / Pacheedaht,
  - ii. a Ditidaht / Pacheedaht individual,
  - iii. the Ditidaht / Pacheedaht Government; or
  - iv. a Ditidaht / Pacheedaht Public Institution, or
- b. that originated from:
  - i. a Ditidaht / Pacheedaht community; or
  - ii. Ditidaht / Pacheedaht Lands; and
- c. that has past and on-going importance to the Ditidaht / Pacheedaht culture or spiritual practices;

but does not include any object traded to, or commissioned by, or given as a gift to another aboriginal group, aboriginal individual or aboriginal community;

**“Ditidaht / Pacheedaht Band”** means the Ditidaht / Pacheedaht band which was, on the day before the Effective Date, a “band” as defined in the *Indian Act*;

**“Ditidaht / Pacheedaht Capital”** means all land, cash, and other assets transferred to Ditidaht / Pacheedaht under the Treaty or recognized as owned by Ditidaht / Pacheedaht under the Treaty;

**“Ditidaht / Pacheedaht Citizen”** means a Ditidaht / Pacheedaht individual who is enrolled under the Treaty in accordance with the Eligibility and Enrolment Chapter;

**“Ditidaht / Pacheedaht Constitution”** means the constitution of Ditidaht / Pacheedaht described in 14.3.1;

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

- a. Ditidaht / Pacheedaht;
- b. one or more trusts that is resident in Canada and is for the sole benefit of the Ditidaht / Pacheedaht; or
- c. any combination of the persons set out in subparagraphs a and b;

**“Ditidaht / Pacheedaht Family”** means one or both parents or guardians living together with one or more Children where:

- a. at least one of the parents or guardians is a Ditidaht / Pacheedaht Citizen; or
- b. at least one of the Children is a Ditidaht / Pacheedaht Child;

**“Ditidaht / Pacheedaht Government”** is the government of Ditidaht / Pacheedaht;

**“Ditidaht / Pacheedaht Law”** means:

- a. a law made by Ditidaht / Pacheedaht under a law making authority provided for in the Treaty; and
- b. the Ditidaht / Pacheedaht Constitution;

**“Ditidaht / Pacheedaht Migratory Birds Harvesting Area”** refers to the Crown land area described as the Ditidaht / Pacheedaht Migratory Birds Harvesting Area in an appendix to the Treaty;

**“Ditidaht / Pacheedaht People”** means those individuals who are eligible to be enrolled under the Treaty in accordance with the Eligibility and Enrolment Chapter;

**“Ditidaht / Pacheedaht Plant Gathering Area”** refers to the Crown land area described as the Ditidaht / Pacheedaht Plant Gathering Area in an appendix to the Treaty;

**“Ditidaht / Pacheedaht Private Lands”** means Ditidaht / Pacheedaht Lands that are designated as “Ditidaht / Pacheedaht Private Lands” by Ditidaht / Pacheedaht in accordance in accordance with 6.2.0;

**“Ditidaht / Pacheedaht Project”** means a project on Ditidaht / Pacheedaht Lands that is subject to an environmental assessment under Ditidaht / Pacheedaht Law but does not include a Provincial Project or a Federal Project;

**“Ditidaht / Pacheedaht Public Institution”** means a Ditidaht / Pacheedaht Government body, board, commission or any other similar entity established under Ditidaht / Pacheedaht Law, including a school board or health board;

**“Ditidaht / Pacheedaht Public Lands”** means Ditidaht / Pacheedaht Lands other than Ditidaht / Pacheedaht Private Lands;

**“Ditidaht / Pacheedaht Public Officer”** means:

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

**“Ditidaht / Pacheedaht Right to Gather Plants”** means the right to gather Plants for Domestic Purposes as provided under the Treaty;

**“Ditidaht / Pacheedaht Right to Harvest Migratory Birds”** means the right to harvest Migratory Birds for Domestic Purposes under the Treaty;

**“Ditidaht / Pacheedaht Right to Harvest Renewable Resources”** means the right to carry out Renewable Resources Harvesting Activities in accordance with the National Parks and National Marine Conservation Areas Chapter;

**“Ditidaht / Pacheedaht Right to Harvest Wildlife”** means the right to harvest Wildlife for Domestic Purposes under the Treaty;

**“Ditidaht / Pacheedaht Road”** means any road that is on Ditidaht / Pacheedaht Lands and is under the administration and control of Ditidaht / Pacheedaht;

**“Ditidaht PRNPR Lands”** means the lands within the Pacific Rim National Park Reserve identified in Appendix A-4;

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

**“Doobah Cedar Lands”** means the area set out in Appendix A;

**“Effective Date”** means the date upon which the Treaty takes effect;

**“Eligible Voter”** means an individual who is eligible to vote in accordance with 26.5.1 of the Ratification Chapter;

**“Eligibility Criteria”** means the criteria listed in 25.1.1;

**“Engagement Side Agreement”** means the government to government Engagement Side Agreement between Ditidaht / Pacheedaht and British Columbia;

**“Enrolment Appeal Board”** means the board established under 25.6.1;

**“Enrolment Committee”** means the committee established under 25.5.1, to which an applicant may apply for enrolment and which maintains the Enrolment Register prior to the Effective Date;

**“Enrolment Register”** means the official record containing the names of each individual who has been enrolled in accordance with the Eligibility and Enrolment Chapter;

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

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

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

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

**“Essential Personal Property”** means personal property held by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution that is:

- a. essential to the day-to-day operations of Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution; or
- b. essential to the delivery of any programs and services by Ditidaht / Pacheedaht, the Ditidaht / Pacheedaht Government or a Ditidaht / Pacheedaht Public Institution, including funding contributed by Canada or British Columbia to Agreed-Upon Programs and Services;

**“Federal and Provincial Law”** means Federal Law and Provincial Law;

**“Federal Expropriating Authority”** means a federal department or agency or any person with the authority to expropriate land or an interest in land under Federal Law;

**“Federal Law”** includes federal statutes, regulations, ordinances, orders-in-council and the common law;

**“Federal or Provincial Law”** means Federal Law or Provincial Law;

**“Federal Project”** means a project which is subject to an environmental assessment under the federal environmental assessment legislation;

**“Federal Settlement Legislation”** means the Act of Parliament that gives effect to the Treaty;

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

**“Fish”** means:

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

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

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

**“Former Ditidaht Indian Reserves”** means the lands that:

- a. were, on the day before the Effective Date, Indian Reserves set apart for the use and benefit of Ditidaht Indian Band and;
- b. are described in Appendix A-3;

**“Former Pacheedaht Indian Reserves”** means the lands that:

- a. were, on the day before the Effective Date, Indian Reserves set apart for the use and benefit of Pacheedaht Indian Band and;
- b. are described in Appendix B-3;

**“Fossils”** mean remains, traces or imprints of animals or plants that have been preserved in rocks including bones, shells, casts and tracks;

**“Framework Roles and Responsibilities Agreement on Environmental Assessment”** means the agreement in principle between Ditidaht / Pacheedaht and the Canadian Environmental Assessment Agency, dated for reference October 23, 2018;

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

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

**“Gravel”** means gravel, rock, random borrow materials and sand;

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

**“Gus Bay and Daykins Bay Lands”** means the area set out in Appendix A-5;

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

**“Implementation Committee”** means the committee established under 27.3.1;

**“Implementation Plan”** means the plan described in 27.2.1;

**“Indian Band”** means a “band” as defined in the *Indian Act*;

**“Indian Reserve”** means a “reserve” as defined in the *Indian Act*;

**“Intellectual Property”** means any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including any rights relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights;

**“International Legal Obligations”** means an obligation binding on Canada under international law, including those that are in force before, on or after the Effective Date;

**“Land Title Office”** means the Land Title Office, as established and described in the *Land Title Act*;

**“Local Government”** means “local government” as defined in the *Local Government Act*;

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

**“Migratory Birds”** means migratory birds as defined under Federal Law enacted further to international conventions that are binding on British Columbia, including the eggs of those birds;

**“Mineral”** means an ore of metal or natural substance that can be mined and includes:

- a. rock and other materials from mine tailings, dumps, and previously mined deposits of minerals;
- b. dimension stone; and
- c. base and precious minerals;

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

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

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

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

**“NAV Canada”** means the “Corporation” as that term is defined in the *Civil, Air, Navigation Services and Commercialization Act*;

**“Neutral”** means an individual appointed to assist the Parties to resolve a Disagreement and, except in 24.5.5, includes an arbitrator;

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

**“Non-Citizen”** means an individual who has reached the age of majority under Provincial Law, who is ordinarily resident on Ditidaht / Pacheedaht Lands and who is not a Ditidaht / Pacheedaht Citizen;

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

**“Official Voters List”** means the list of Eligible Voters prepared and maintained by the Ratification Committee under 26.4.3;

**“Other Ditidaht / Pacheedaht Lands”** means the lands described in an appendix to the Treaty;

**“Pacific Rim National Park”** means federal Crown lands and waters named and described as “Pacific Rim National Park” in the schedules to the *Canada National Parks Act*;

**“Pacific Rim National Park Reserve”** means the federal Crown lands and waters named and described as “Pacific Rim National Park Reserve” in the schedules to the *Canada National Parks Act*;

**“Pacheedaht Capital Transfer”** means an amount paid by Canada under the Capital Transfer and Negotiation Loan Repayment Chapter of the Pacheedaht Treaty;

**“Pacheedaht PRNPR Lands”** means the lands within the Pacific Rim National Park Reserve identified in Appendix B-4;

**“Pacheedaht Treaty”** means the Pacheedaht Treaty among Pacheedaht, Canada and British Columbia, including all schedules and appendices to it;

**“Pacheedaht Lands”** means those lands described in 3.3.1;

**“Participating Party”** means a Party that initiates or is required or agrees to participate in a process described in the Dispute Resolution Chapter;

**“Parties”** means Ditidaht / Pacheedaht, Canada and British Columbia and “Party” means any one of them;

**“Periodic Review”** means the process for periodically reviewing the Treaty in accordance with 1.16.2 to 1.16.8;

**“Periodic Review Date”** means the 15<sup>th</sup> anniversary of the Effective Date or a date that occurs every 15 years after that date;

**“Person”** for the purpose of the Taxation Chapter, includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

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

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

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

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

**“Provincial Law”** includes provincial statutes, regulations, ordinances, orders in council, bylaws, and the common law;

**“Provincial Project”** means a “reviewable project” as defined in the *Environmental Assessment Act* that is subject to an environmental assessment under that Act;

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

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

**“Provincial Settlement Legislation”** means the Act of the Legislature of British Columbia that gives effect to the Treaty;

**“Public Utility”** means a person, or the person’s lessee, trustee, receiver or liquidator that owns or operates in British Columbia equipment or facilities for the:

- a. production, gathering, generating, processing, storage, transmission, sale, supply, distribution or delivery of petroleum (including petroleum products or by-products), gas (including natural gas, natural gas liquids, propane and coalbed gas), electricity, steam, water, sewage, or any other agent for the production of light, heat, cold or power, if that service is offered to the public for compensation; or
- b. emission, conveyance, transmission or reception of information, messages or communications by guided or unguided electromagnetic

waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation;

and for the purposes of this definition, “person” includes a partnership and a corporation, including a Crown corporation or agent of the Crown.

**“Railway”**, as the context requires, means:

- a. a company, established under Federal or Provincial Law, authorized to construct, own or operate a railway; or
- b. all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels or other structures connected with the railway, and the communications or signaling systems and related facilities and equipment used for railway purposes;

**“Range Practices”** means:

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

**“Ratification Committee”** means the committee established under 26.4.1;

**“Ratification Vote”** means the votes conducted by the Ratification Committee for the ratification of the Ditidaht / Pacheedaht Constitution and the Treaty;

**“Renewable Resource Harvesting Activities”** means:

- a. gathering of traditional foods for Domestic Purposes, other than Fish and Aquatic Plants for Domestic Purposes, which will be discussed under the Fisheries Chapter;
- b. gathering of Plants and Timber Resources for medicinal, ceremonial, cultural, or artistic purposes;

- c. trapping of fur-bearing land mammals;
- d. hunting of birds and land mammals for Domestic Purposes;

in accordance with the National Parks and National Marine Conservation Areas Chapter;

**“Renewable Resource Harvesting Area”** means, in respect of Ditidaht / Pacheedaht, the land and non-tidal waters of a National Park or National Marine Conservation Area within the Ditidaht / Pacheedaht Area;

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

**“Right of Way”** means a defined portion of Ditidaht / Pacheedaht Lands on which a grant is given by Ditidaht / Pacheedaht for a specified use, including use for a public or private road, or a Public Utility;

**“Safety and Well-Being of Children”** includes the principle that the cultural identity of aboriginal children should be preserved and those other guiding principles under section 2 of the *Child, Family and Community Service Act*,

**“Section 35 Rights”** means the rights, anywhere in Canada, of Ditidaht / Pacheedaht, which are recognized and affirmed by Section 35 of the *Constitution Act, 1982*;

**“Settlement Legislation”** means the Federal Settlement Legislation and the Provincial Settlement Legislation;

**“Species at Risk”** means those species defined as species at risk pursuant to Federal Law;

**“Specific Claims Policy”** means the policy described in Canada's Specific Claims Policy and Process Guide (2009) and, for greater certainty, includes any amendments to that policy or replacement policy;

**“Submerged Lands”** means lands below the “natural boundary” as that term is defined in the *Land Act*;

**“Subsurface Resources”** means:

- a. earth, including diatomaceous earth, soil, peat, marl, sand and Gravel;
- b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash, rock, riprap;

- c. Minerals, including Placer Minerals;
- d. coal, Petroleum and Natural Gas;
- e. Fossils; and
- f. Geothermal Resources;

**“Subsurface Tenures”** means those subsurface tenures:

- a. listed in an appendix to the Treaty; and
- b. that exist on any lands added to Ditidaht / Pacheedaht Lands immediately before the parcel of land becomes Ditidaht / Pacheedaht Lands unless Ditidaht / Pacheedaht acquire the subsurface tenure as part of its acquisition of the fee simple interest;

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

**“Timber Rights”** means the timber rights held by Canada on Former Ditidaht Indian Reserves created by Order in Council P.C. 1992-5/957 dated May 7, 1992;

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

**“Treaty”** means the Ditidaht / Pacheedaht Treaty among Ditidaht / Pacheedaht, Canada and British Columbia, including all schedules and appendices to it;

**“West Coast Trail”** means the hiking trail that runs through the Ditidaht / Pacheedaht Area as depicted in an appendix to the Treaty;

**“West Coast Trail MOU”** means the memorandum of understanding relating to the portions of the West Coast Trail running through the Ditidaht Indian Reserves that first came into effect on May 1, 1994;

**“Wildfire Suppression Agreement”** means an agreement entered into by Canada, British Columbia and Ditidaht / Pacheedaht in accordance with 9.6.1;

**“Wildlife”** means:

- a. all vertebrate and invertebrate animals, including mammals, birds, reptiles, and amphibians; and

- b. the eggs, juvenile stages, and adult stages of all vertebrate and invertebrate animals,

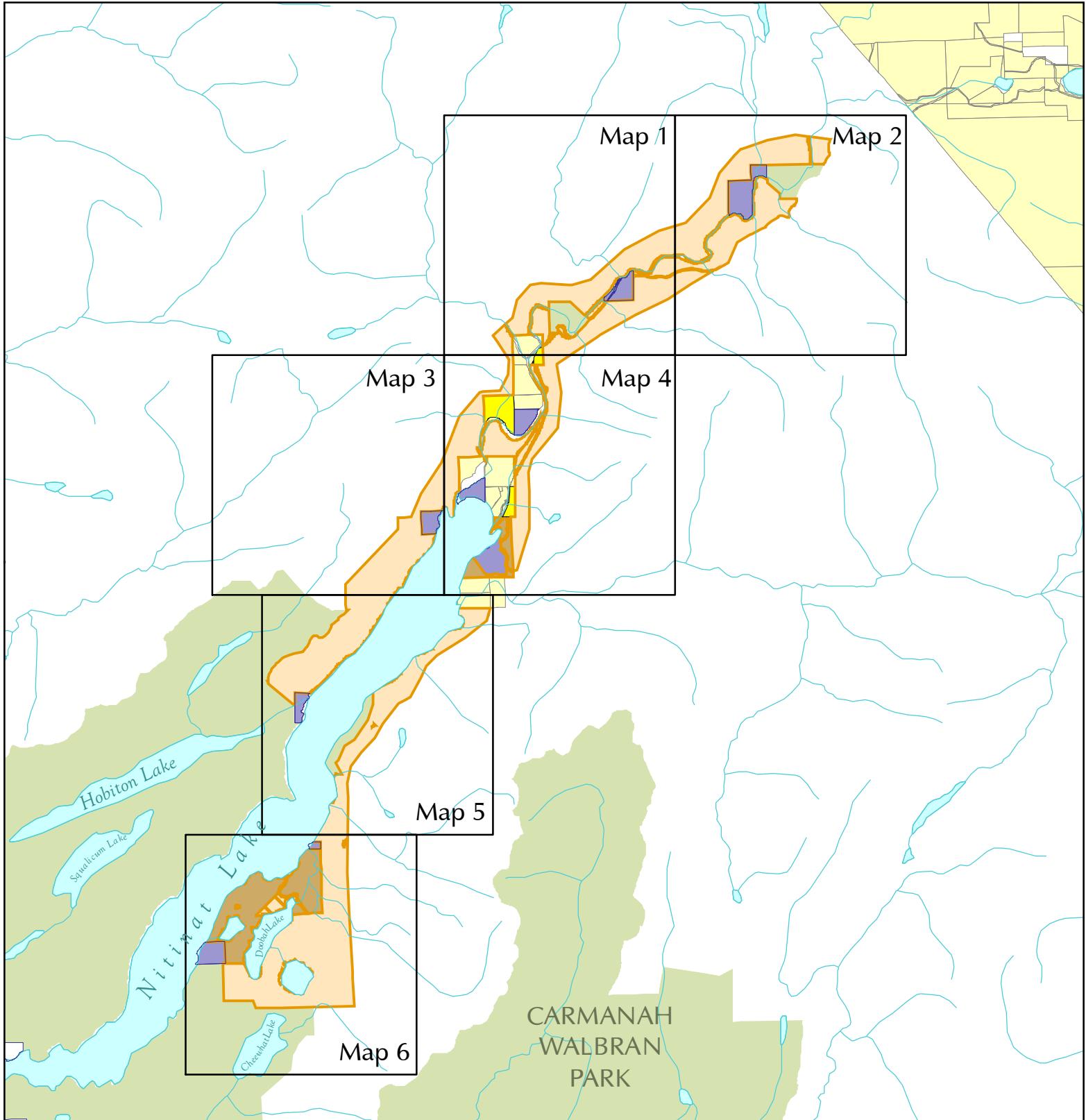
but does not include Fish, Migratory Birds, controlled alien species, humans or domestic animals;

**“Wildlife Harvesting Area”** means the area set out in an appendix to the Treaty; and

**“Windsurfer Camp Lands”** means the area set out in Appendix A-5.

## **APPENDIX A – DITIDAHT LANDS**

Note: These maps are for illustrative purposes only. The Parties will update the appendices before concluding the Treaty.

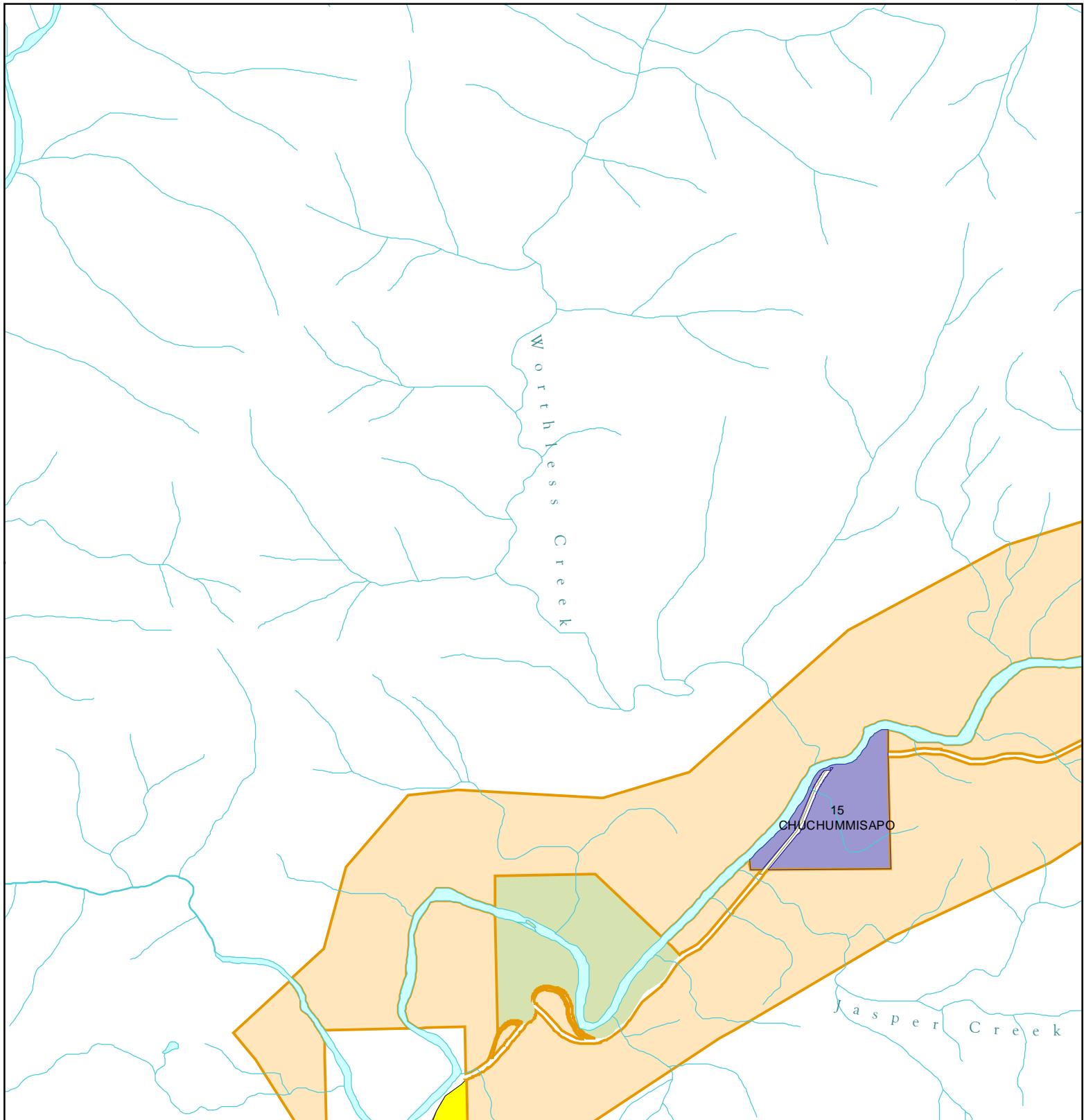


### Appendix A1 - Maps of Ditidaht Lands Overview

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.

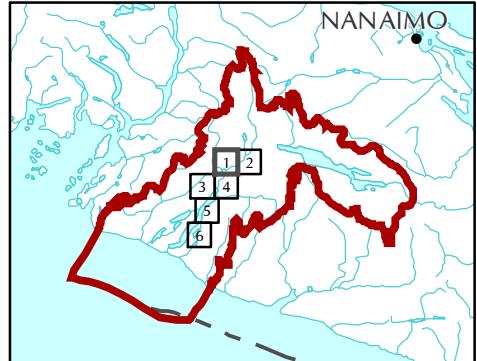


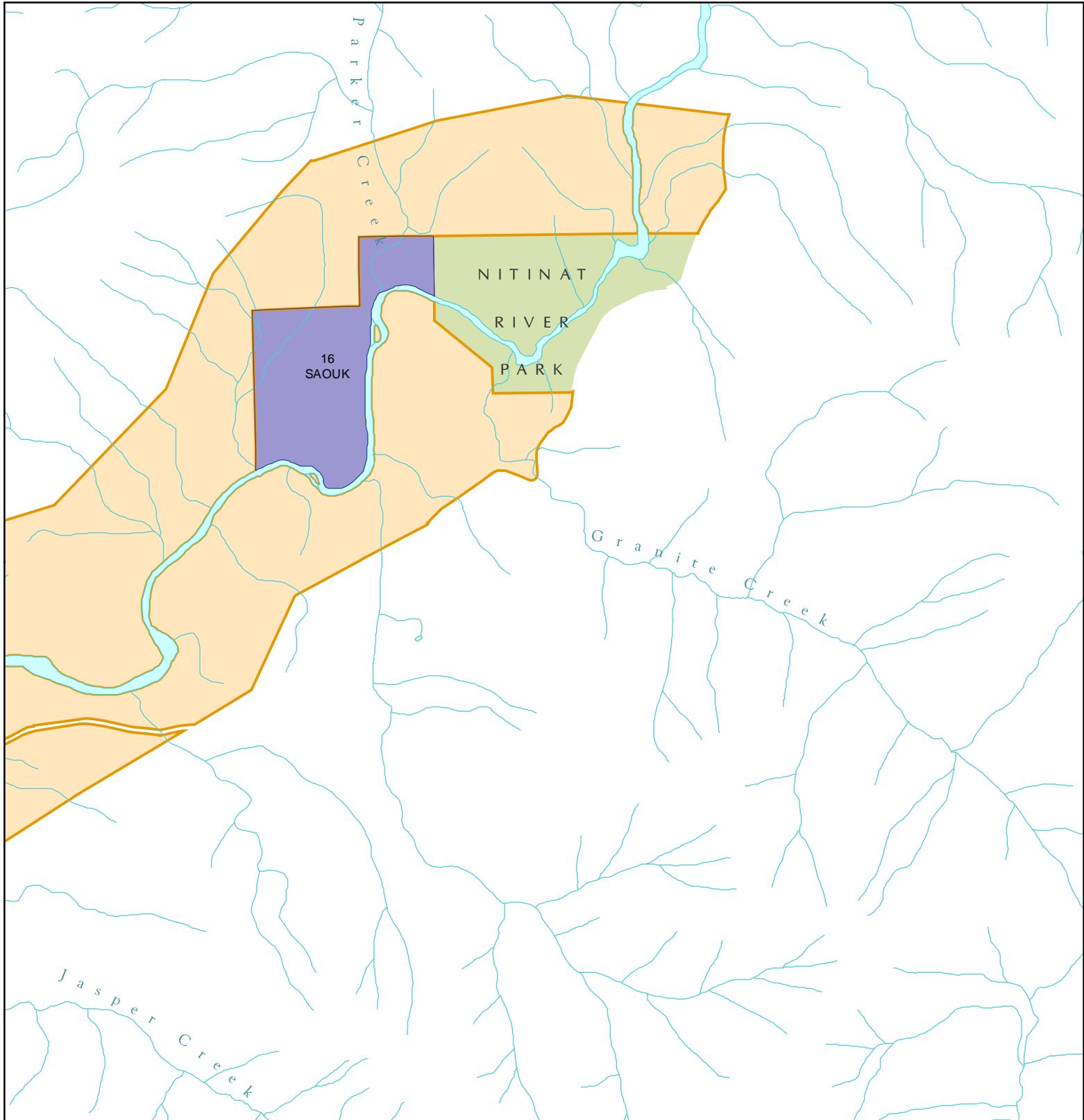


Appendix A2 - Maps of Ditidaht Lands  
Map 1 of 6

- [Orange Box] Ditidaht Lands
- [Brown Box] Ditidaht ITA Land
- [Diagonal Lines Box] Lands to be Considered at Treaty
- [Purple Box] Former Ditidaht Indian Reserve
- [Yellow Box] Ditidaht Fee Simple Private Land
- [Light Yellow Box] Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.

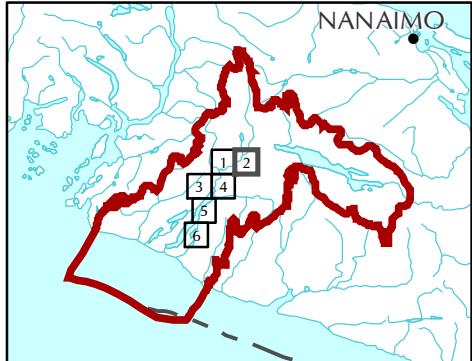
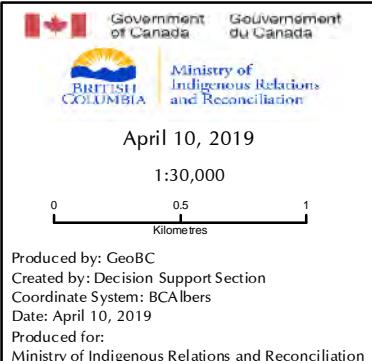


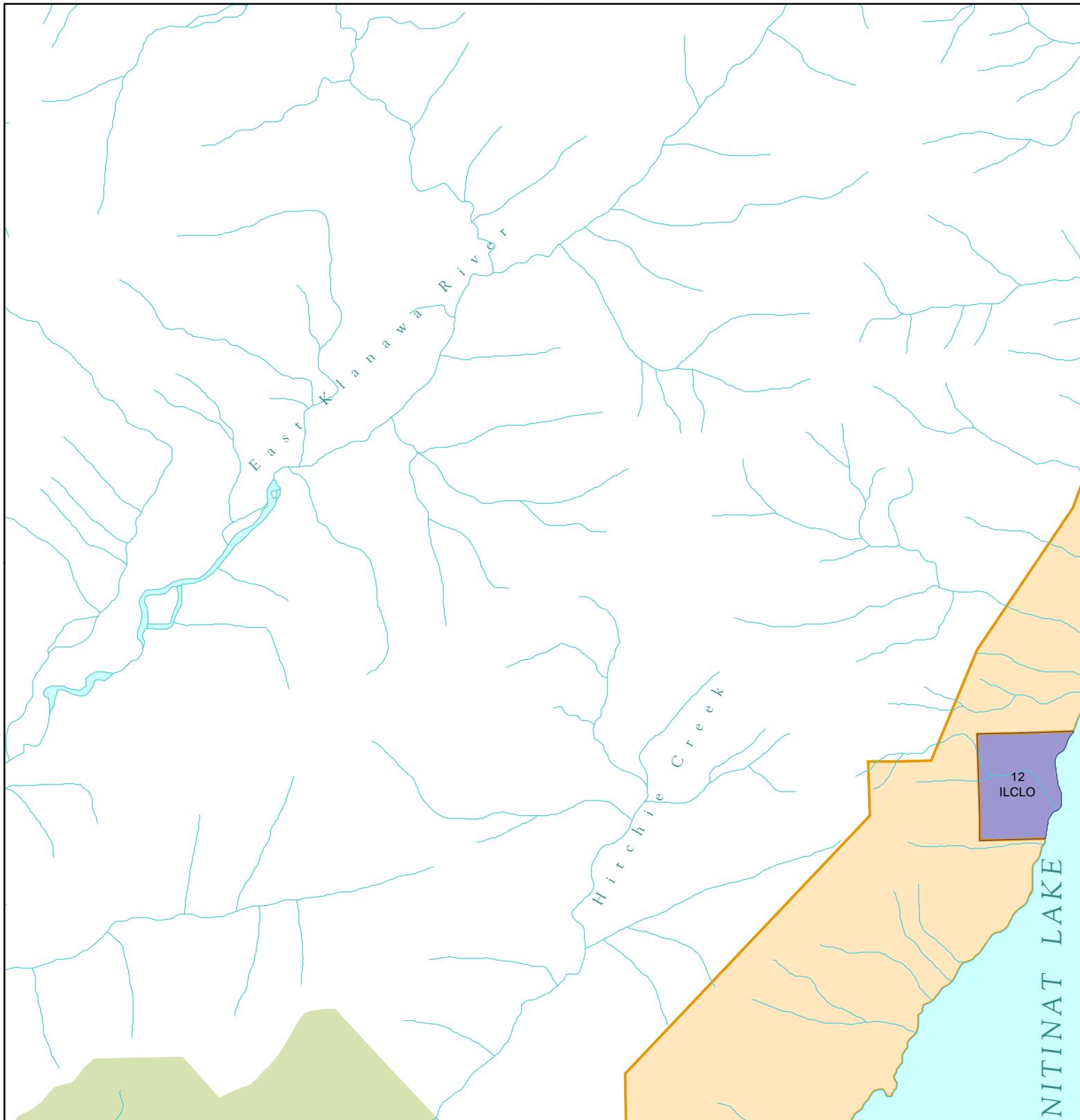


**Appendix A2 - Maps of Ditidaht Lands**  
**Map 2 of 6**

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



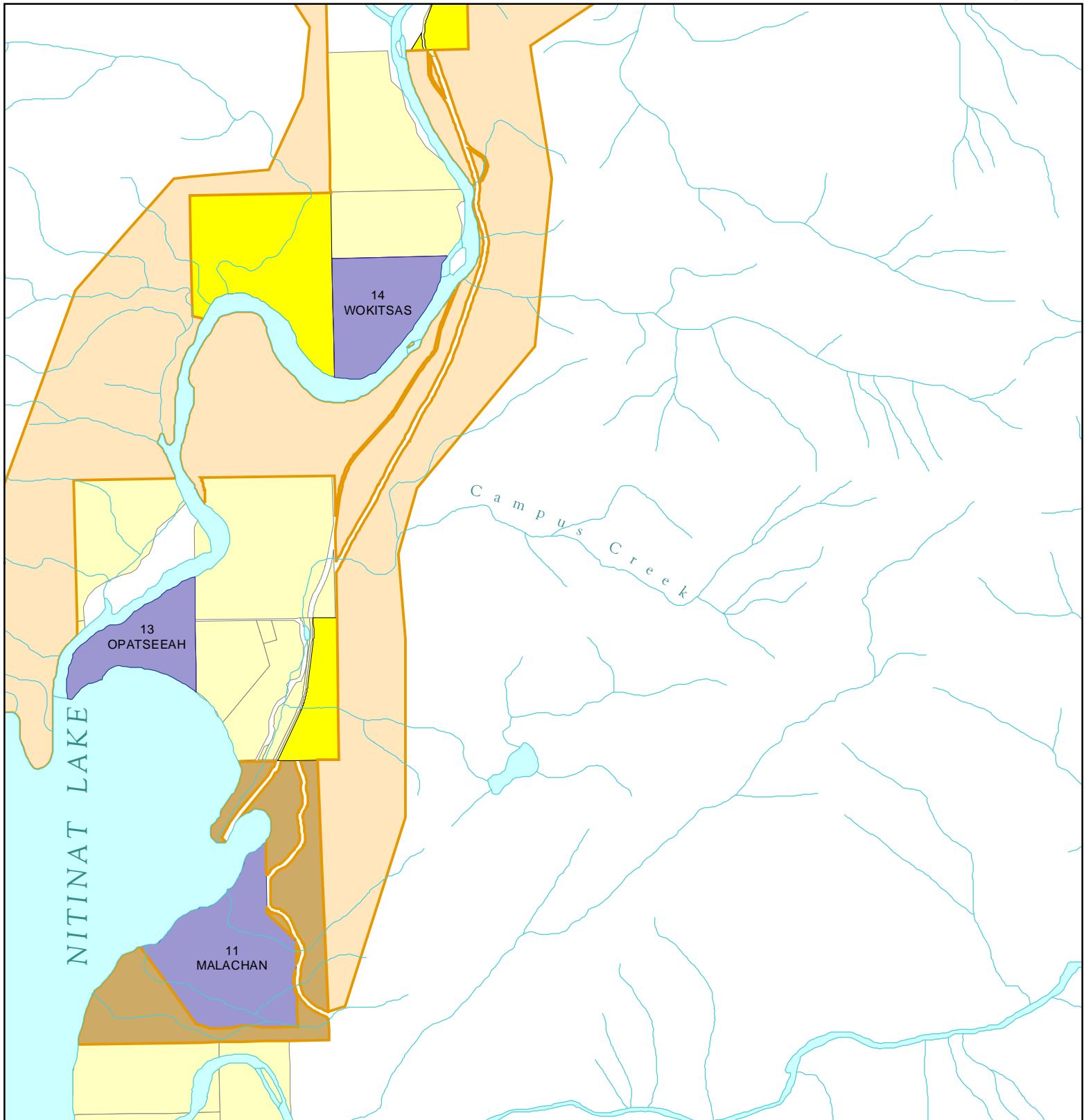


Appendix A2 - Maps of Ditidaht Lands  
Map 3 of 6

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



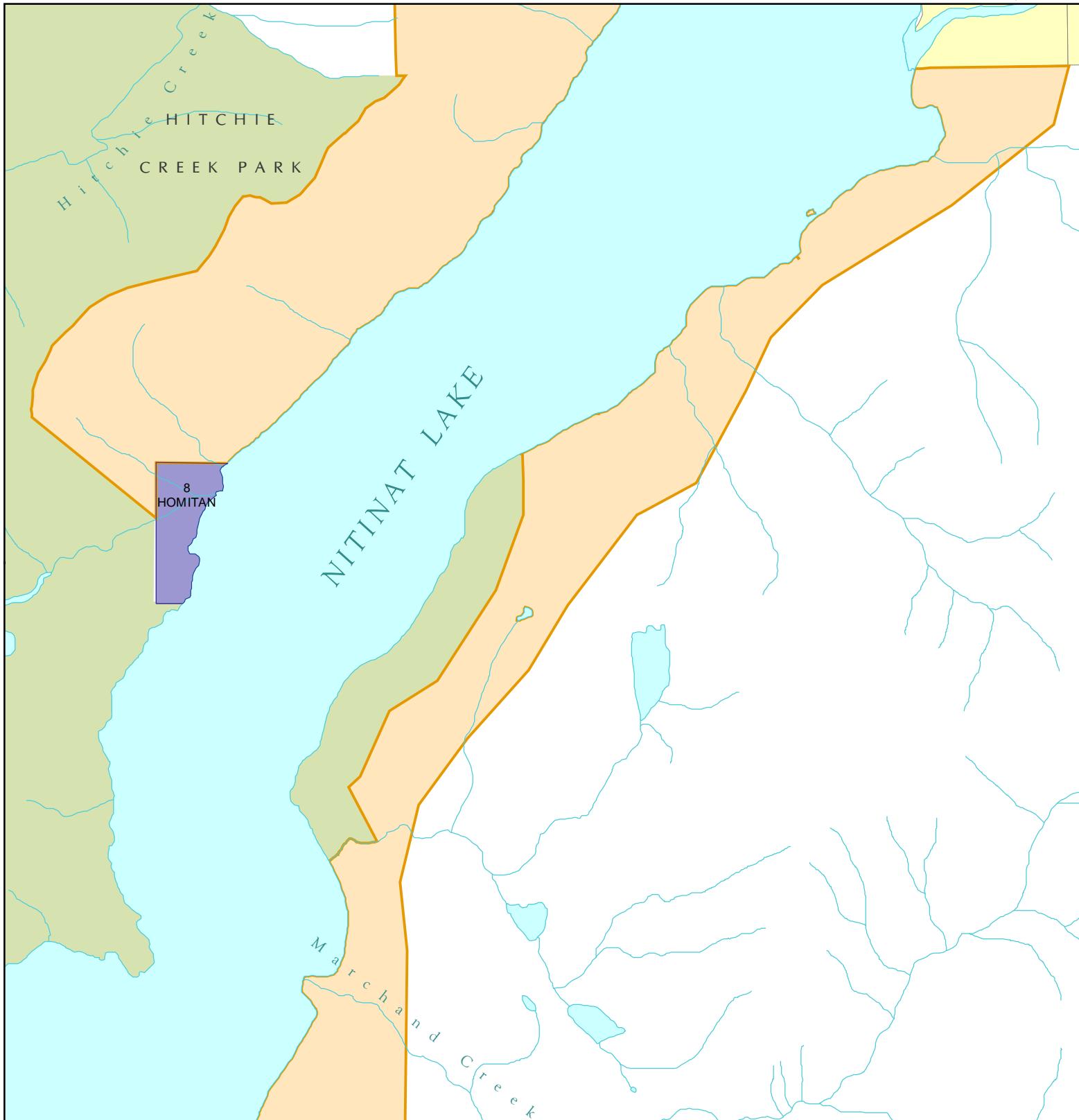


Appendix A2 - Maps of Ditidaht Lands  
Map 4 of 6

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.

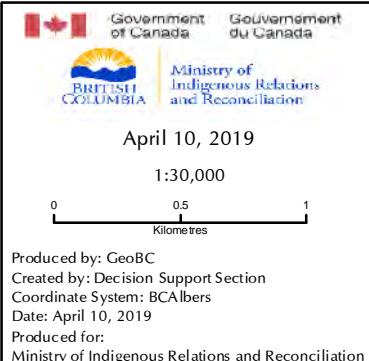


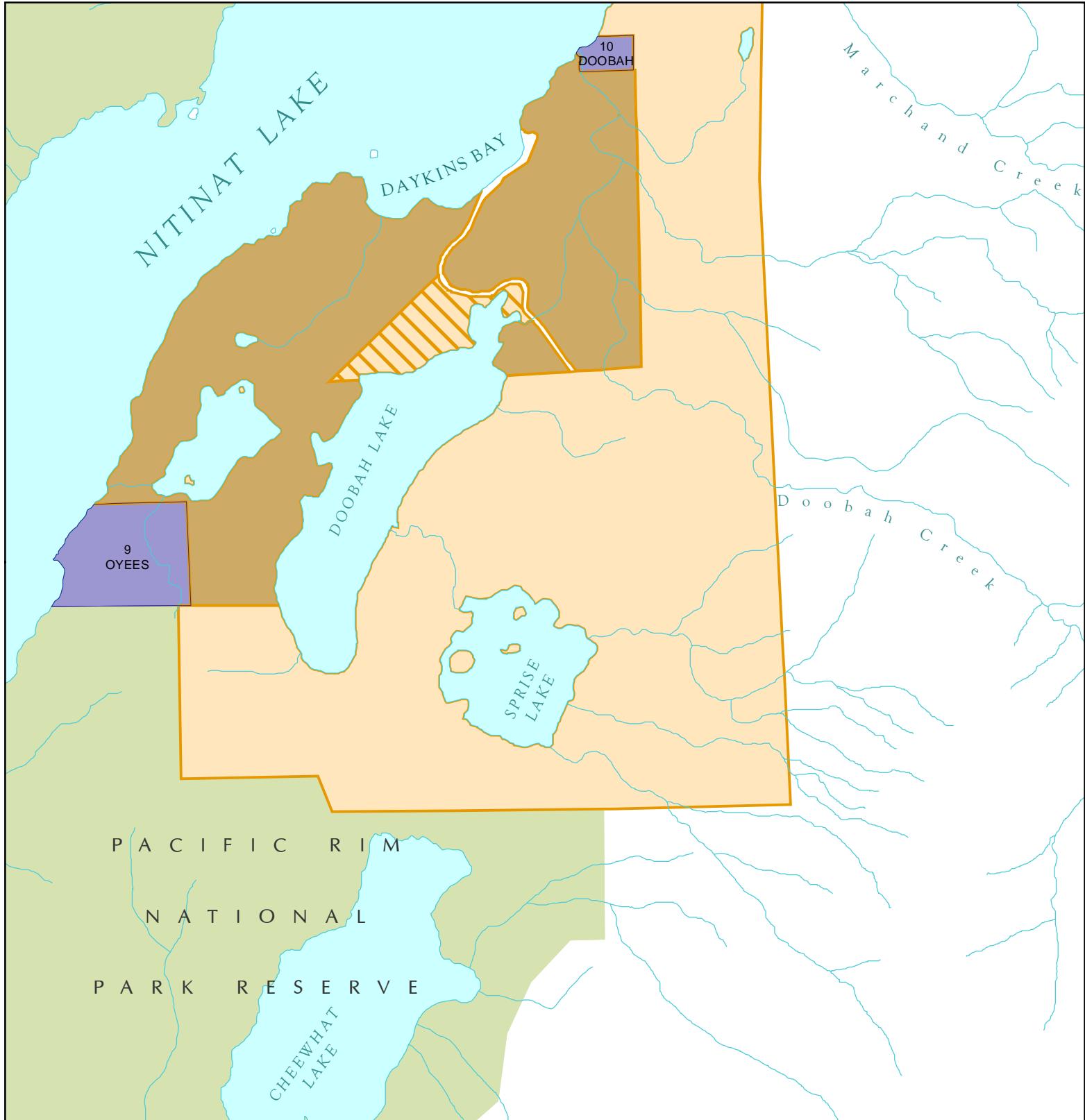


Appendix A2 - Maps of Ditidaht Lands  
Map 5 of 6

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.

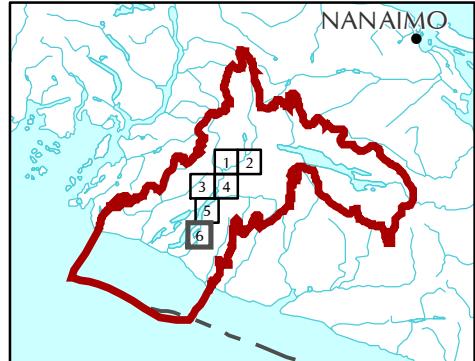




Appendix A2 - Maps of Ditidaht Lands  
Map 6 of 6

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.





Appendix A3 – Map of Former Ditidaht Indian Reserves

- Ditidaht Statement of Intent
- Former Ditidaht Indian Reserve - (Total 751.32 Ha)
- Federal Protected Area
- Provincial Protected Area
- Highway



Government  
of Canada



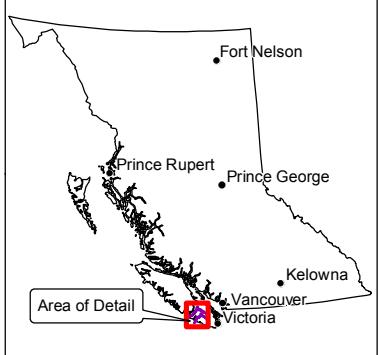
Gouvernement  
du Canada

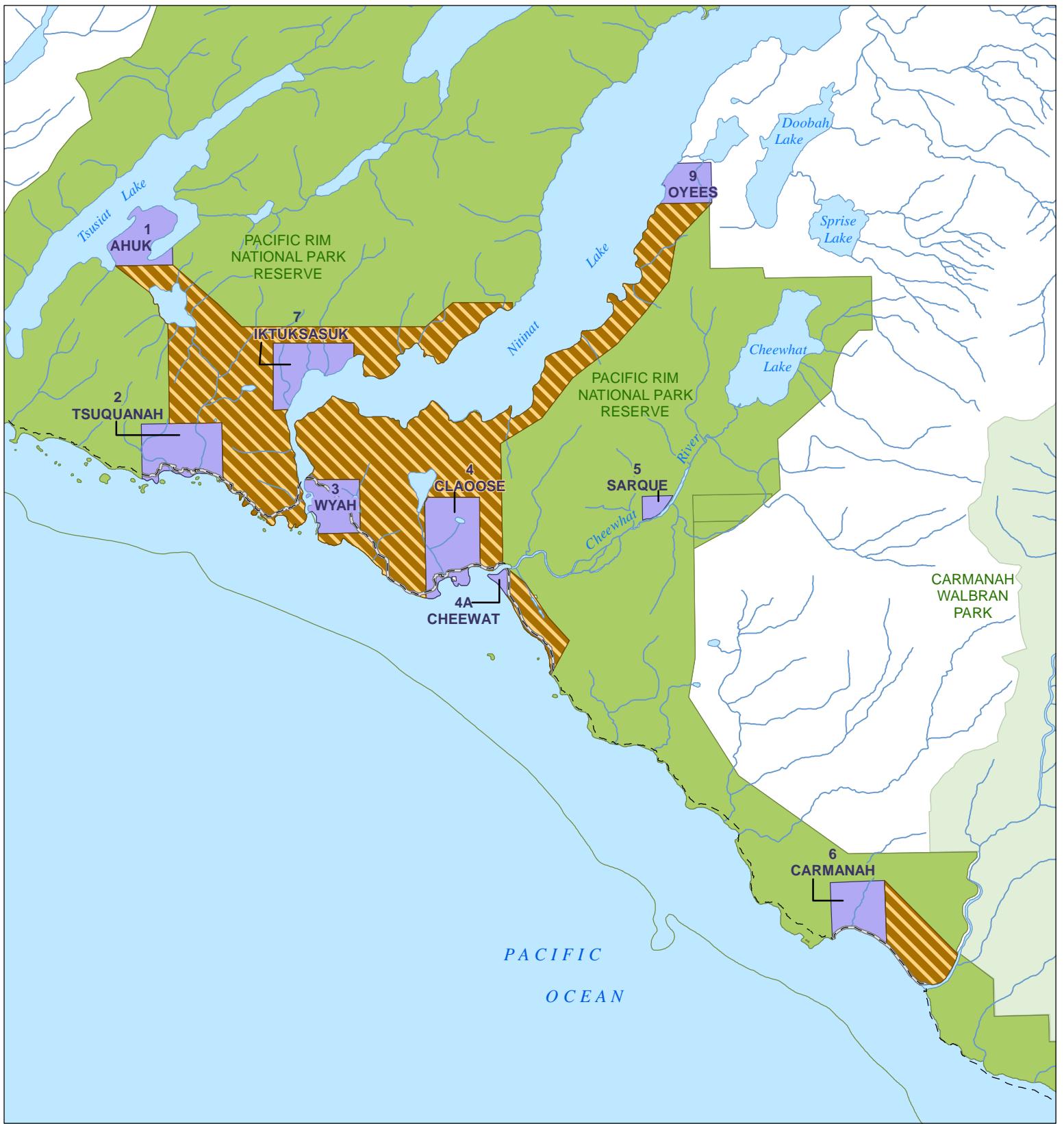
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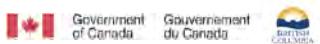
April 11, 2019





Appendix A4 - Map of Ditidaht PRNPR Lands

- Ditidaht Statement of Intent
- Former Ditidaht Indian Reserves
- Proposed Ditidaht PRNPR Lands
- - West Coast Trail
- West Coast Trail 20 metre right of way
- Federal Protected Area
- Provincial Protected Area



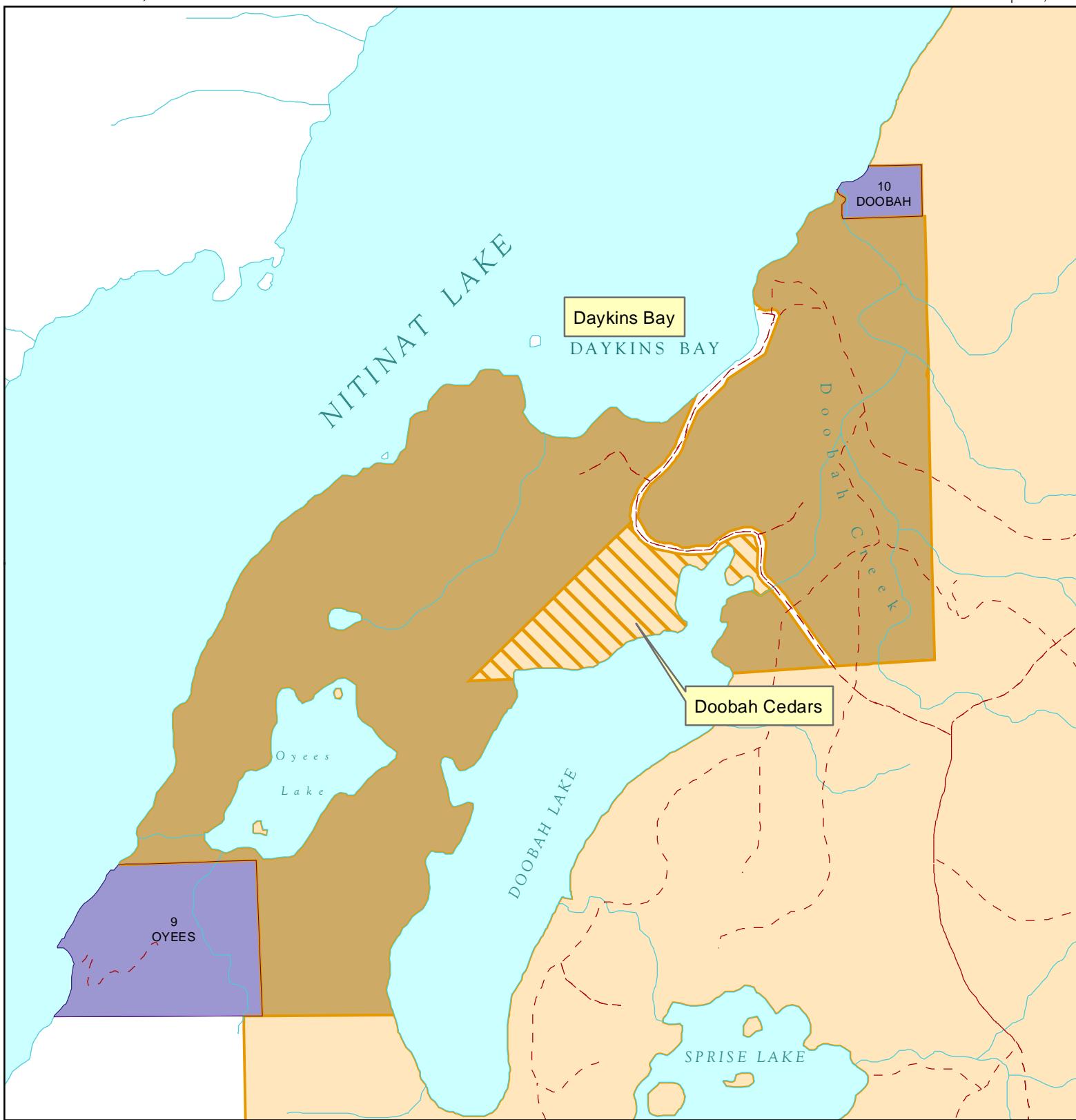
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April 23, 2019





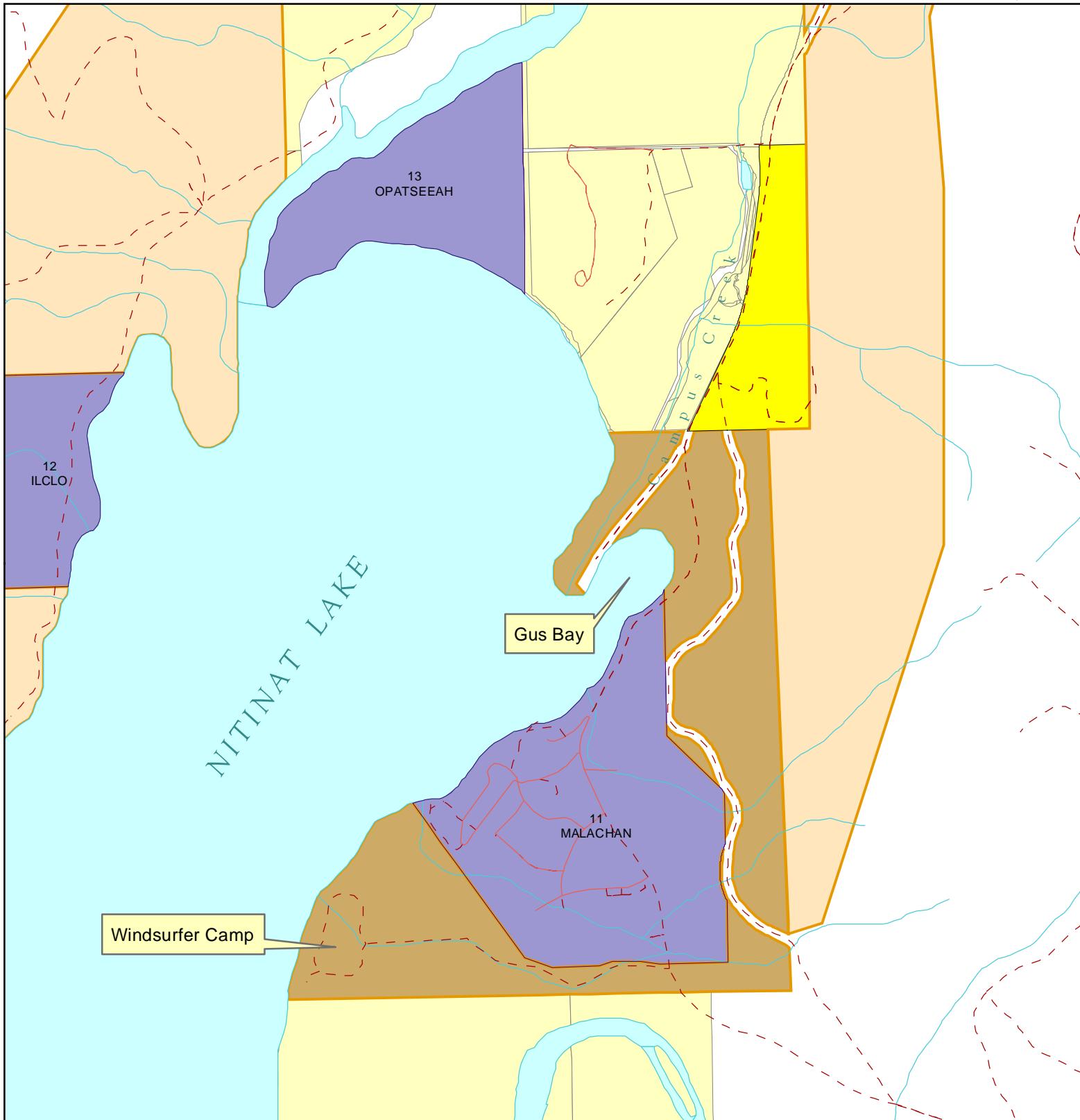
Appendix A5 - Maps of Ditidaht Lands  
with Specific Considerations

Map 1

- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



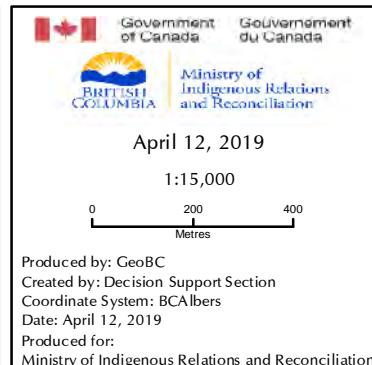


#### Appendix A5 - Maps of Ditidaht Lands with Specific Considerations

Map 2

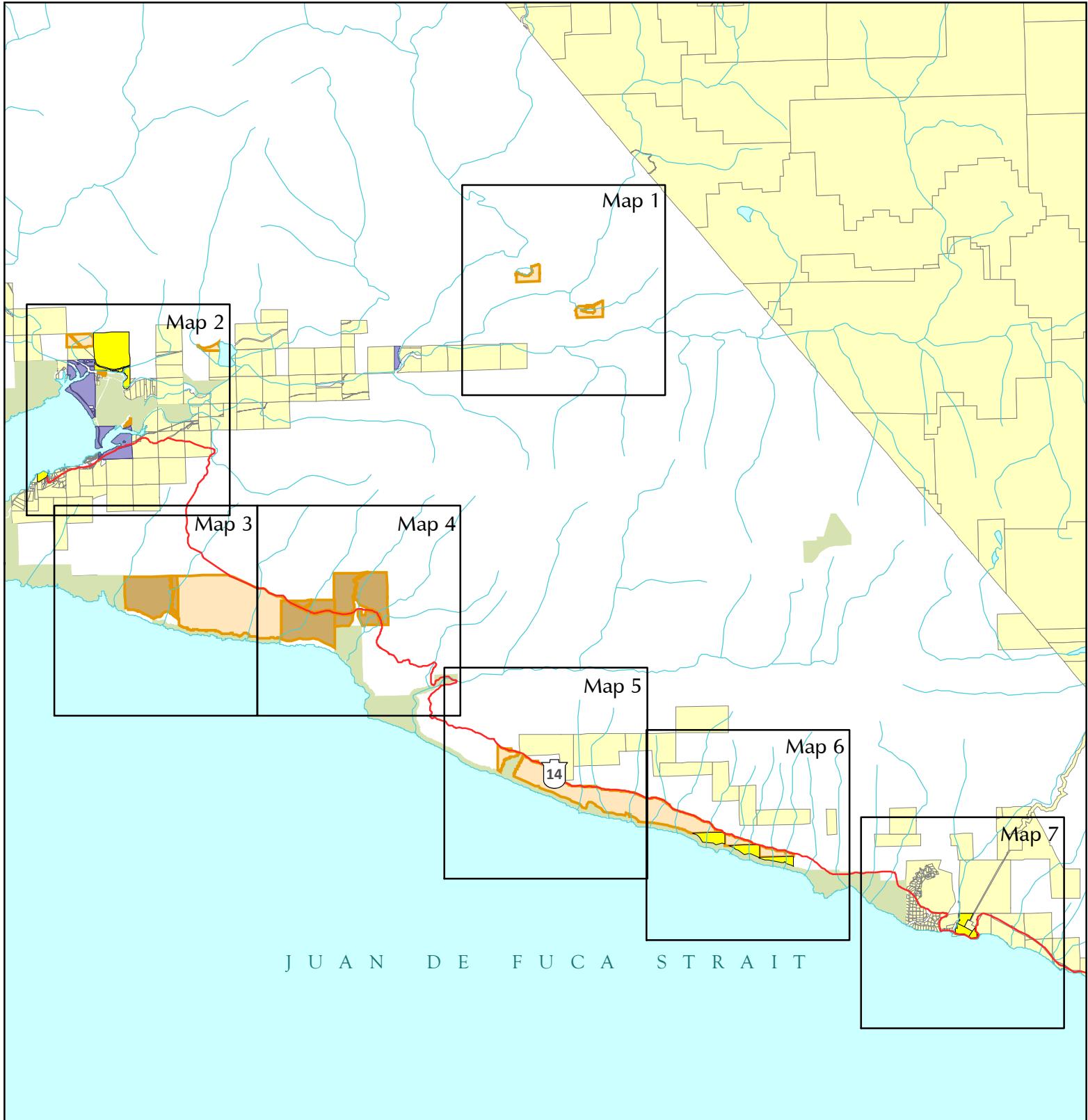
- Ditidaht Lands
- Ditidaht ITA Land
- Lands to be Considered at Treaty
- Former Ditidaht Indian Reserve
- Ditidaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



## **APPENDIX B – PACHEEDAHT LANDS**

Note: These maps are for illustrative purposes only. The Parties will update the appendices before concluding the Treaty.

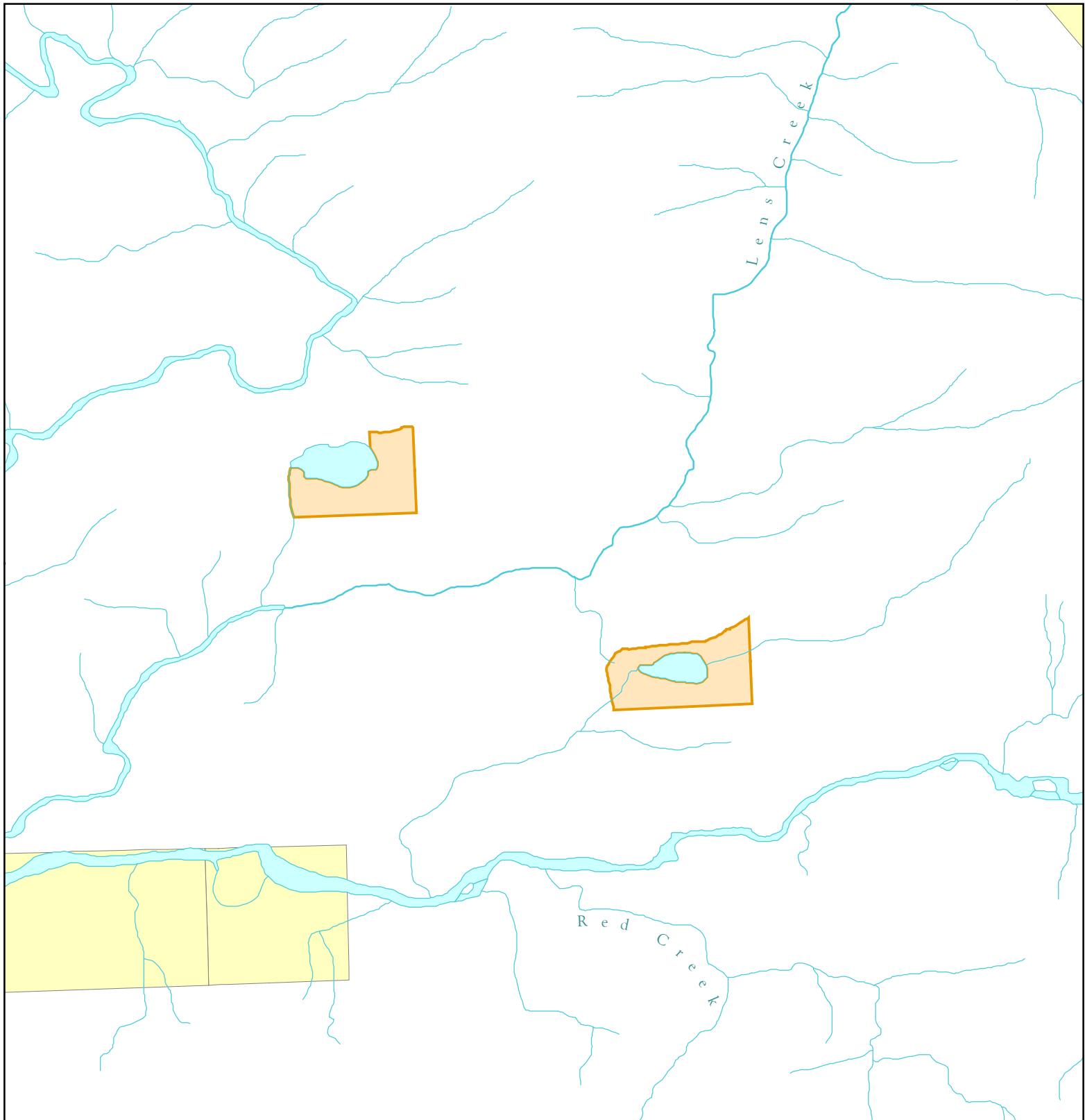


## Appendix B1 - Maps of Pacheedah Lands Overview

- Pacheedah Lands
- Pacheedah ITA Land
- Lands to be Considered at Treaty
- Former Pacheedah Indian Reserve
- Pacheedah Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.





### Appendix B2 - Maps of Pacheedaht Lands

#### Map 1 of 7

- Pacheedaht Lands
- Pacheedaht ITA Land
- Lands to be Considered at Treaty
- Former Pacheedaht Indian Reserve
- Pacheedaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



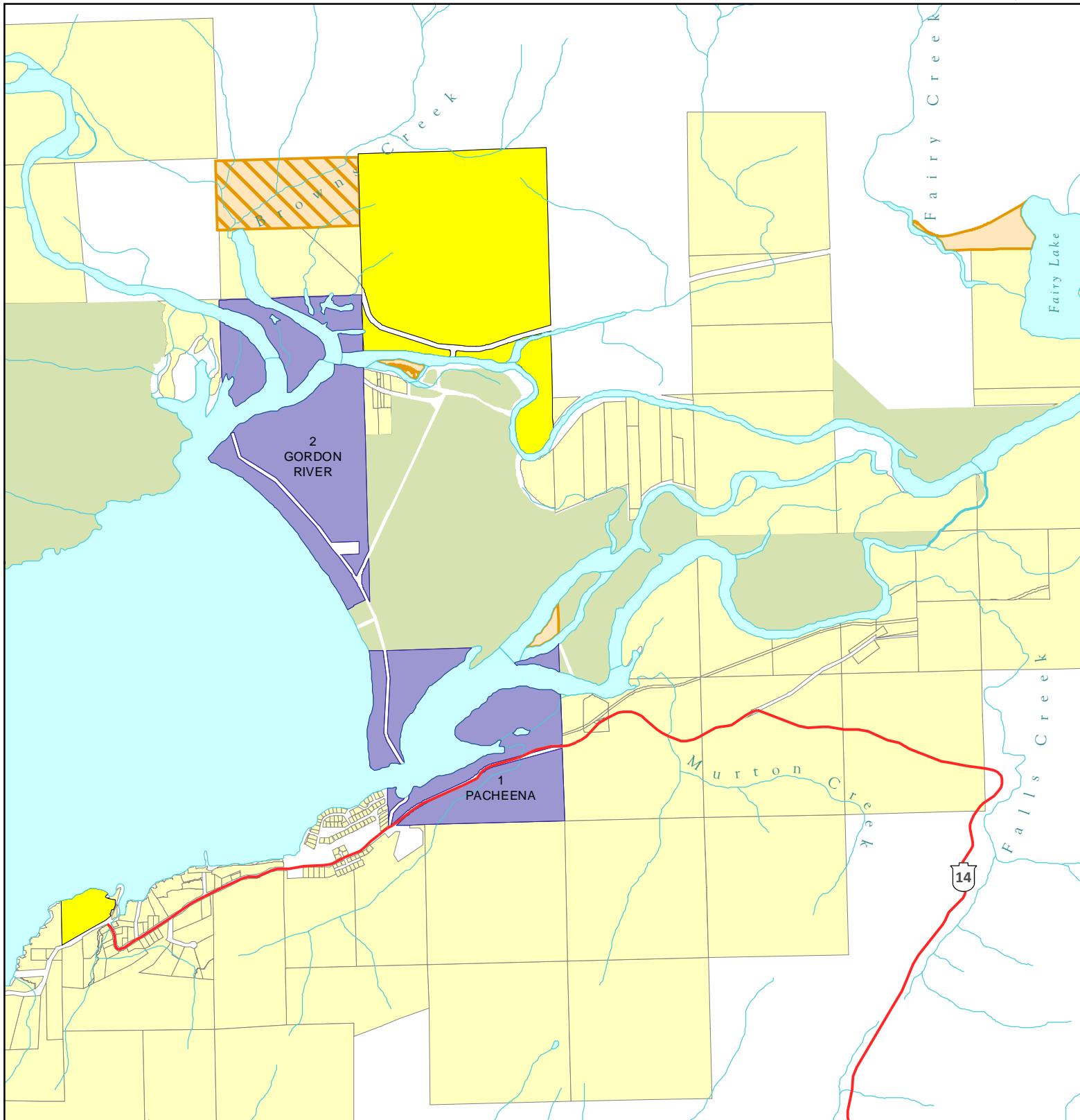
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Produced for:  
Ministry of Indigenous Relations and Reconciliation



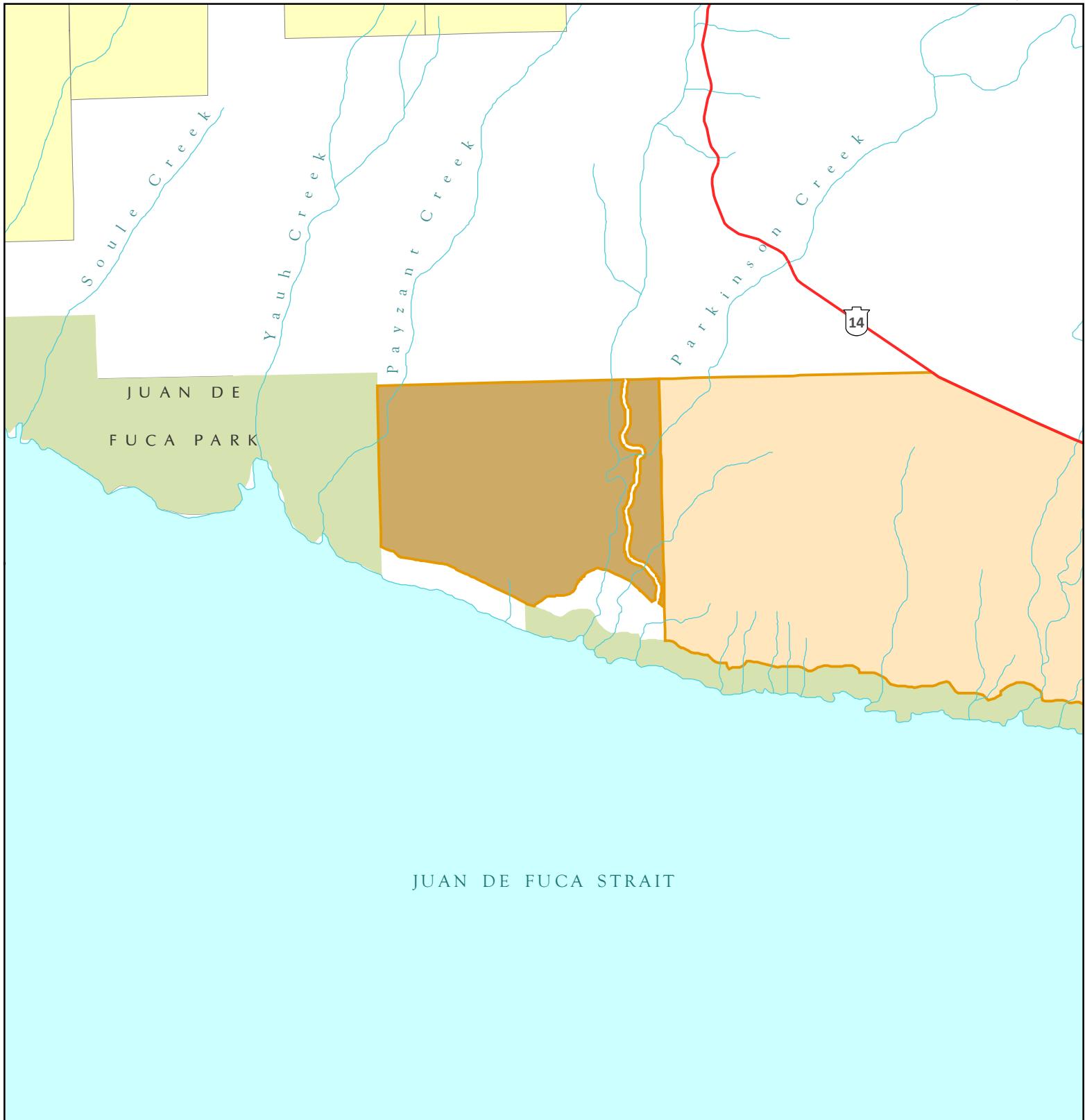


**Appendix B2 - Maps of Pacheedaht Lands**  
**Map 2 of 7**

- [Orange Box] Pacheedaht Lands
- [Brown Box] Pacheedaht ITA Land
- [Diagonal Stripes Box] Lands to be Considered at Treaty
- [Purple Box] Former Pacheedaht Indian Reserve
- [Yellow Box] Pacheedaht Fee Simple Private Land
- [Light Yellow Box] Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



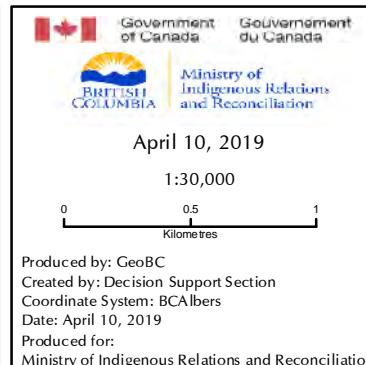


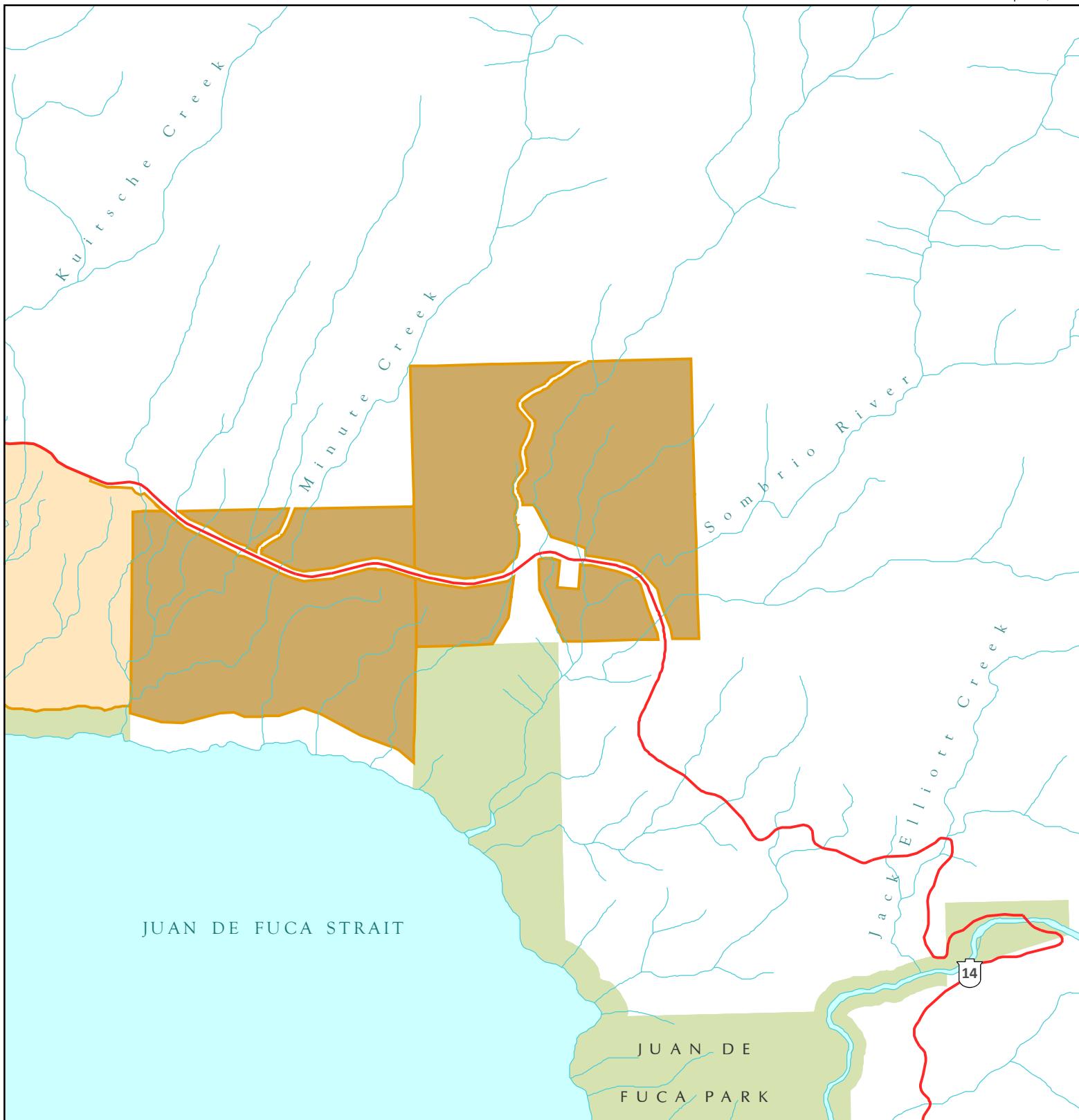
### Appendix B2 - Maps of Pacheedaht Lands

#### Map 3 of 7

- Pacheedaht Lands
- Pacheedaht ITA Land
- Lands to be Considered at Treaty
- Former Pacheedaht Indian Reserve
- Pacheedaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.



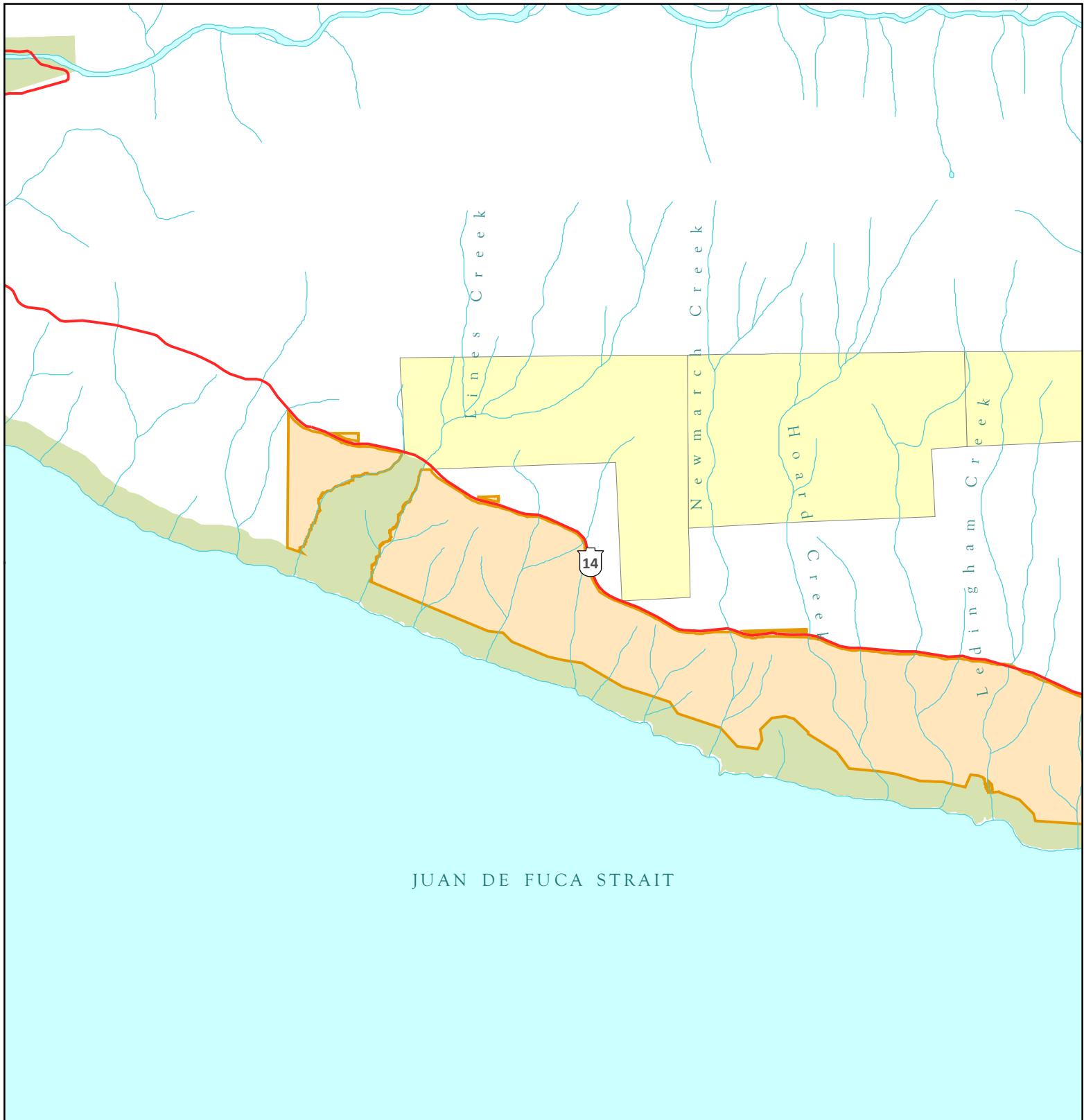


### Appendix B2 - Maps of Pacheedaht Lands Map 4 of 7

- Pacheedaht Lands
- Pacheedaht ITA Land
- Lands to be Considered at Treaty
- Former Pacheedaht Indian Reserve
- Pacheedaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.





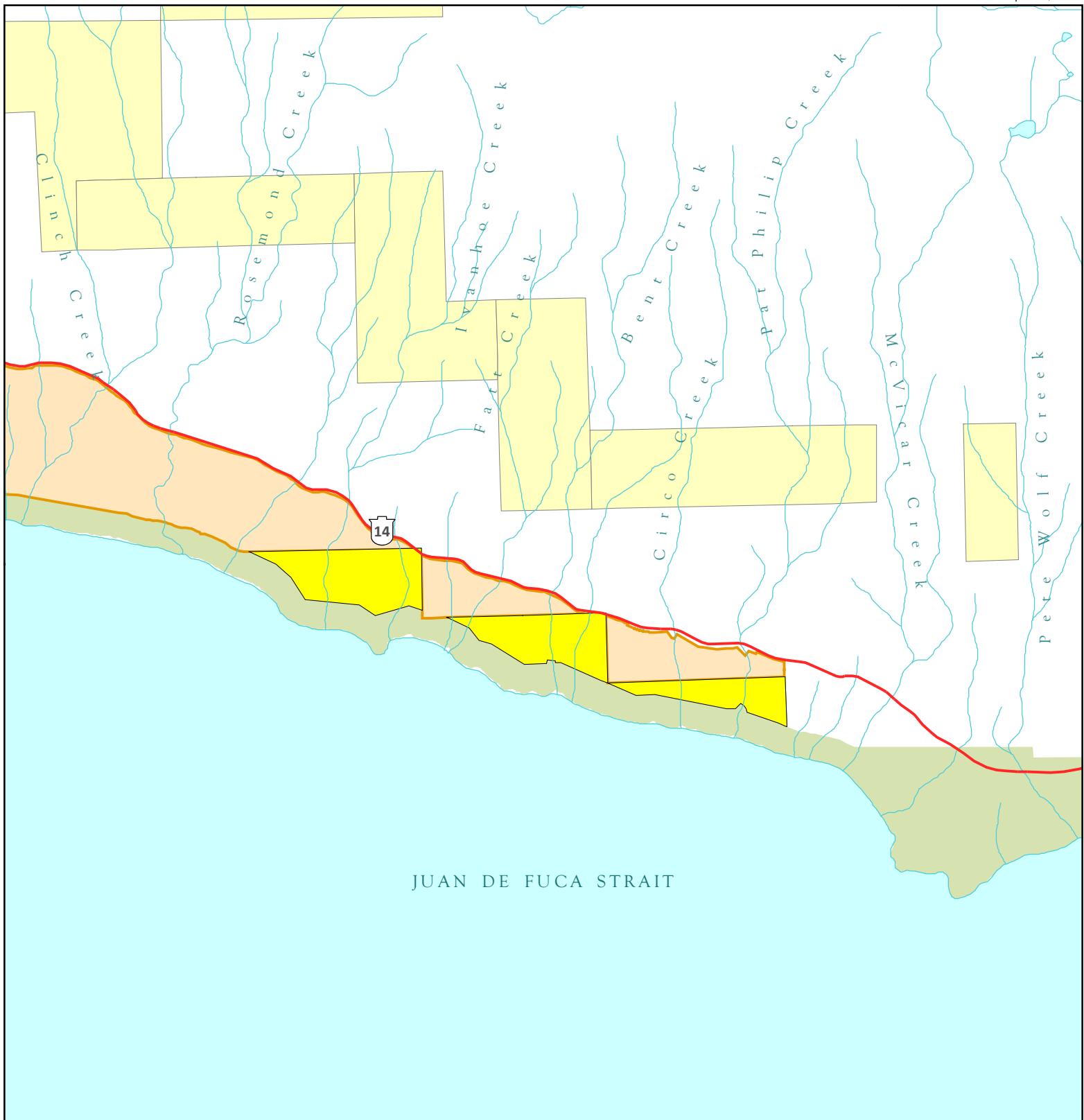
### Appendix B2 - Maps of Pacheedaht Lands

#### Map 5 of 7

- Pacheedaht Lands
- Pacheedaht ITA Land
- Lands to be Considered at Treaty
- Former Pacheedaht Indian Reserve
- Pacheedaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.





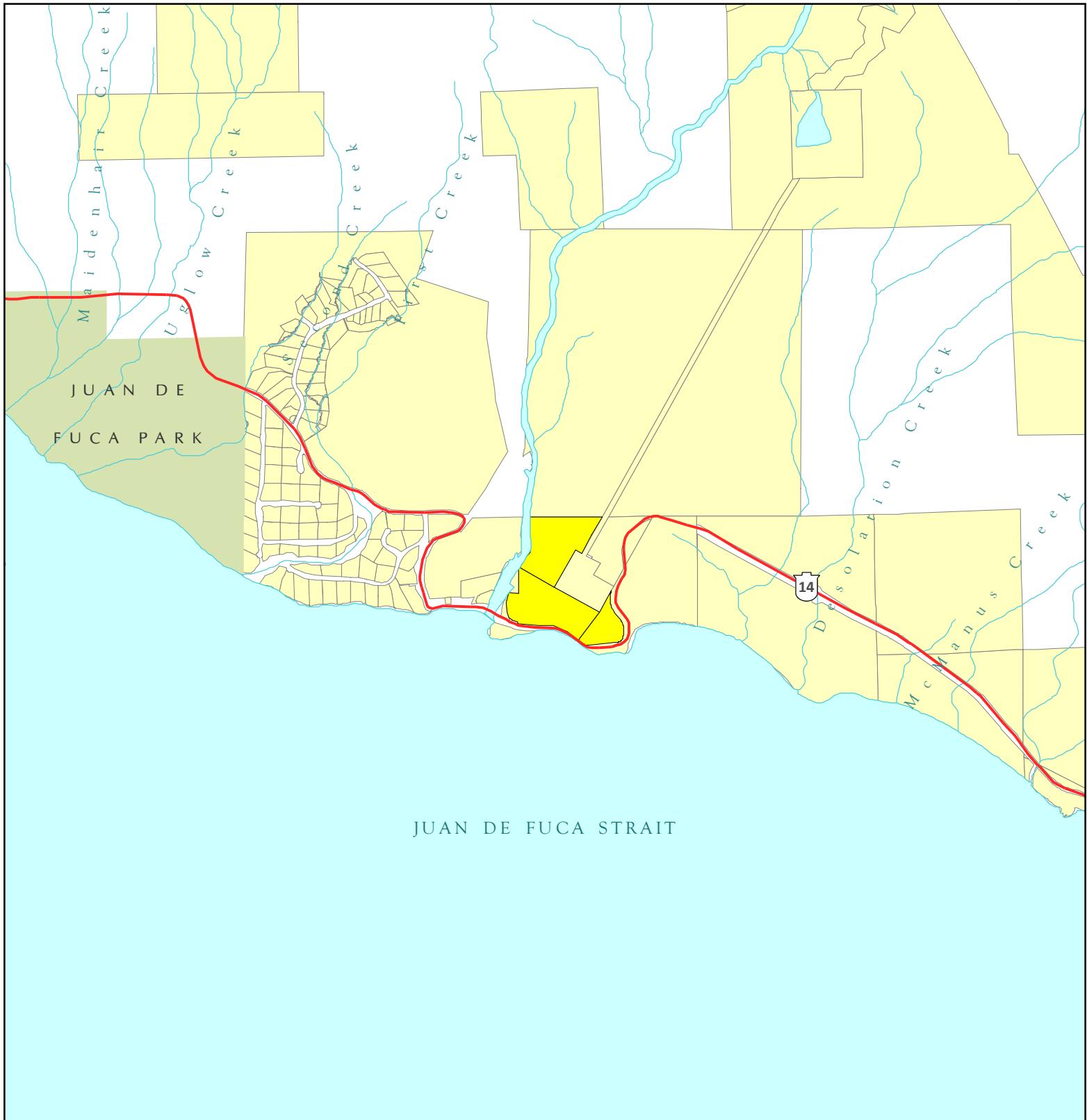
### Appendix B2 - Maps of Pacheedaht Lands

#### Map 6 of 7

- Pacheedaht Lands
- Pacheedaht ITA Land
- Lands to be Considered at Treaty
- Former Pacheedaht Indian Reserve
- Pacheedaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.





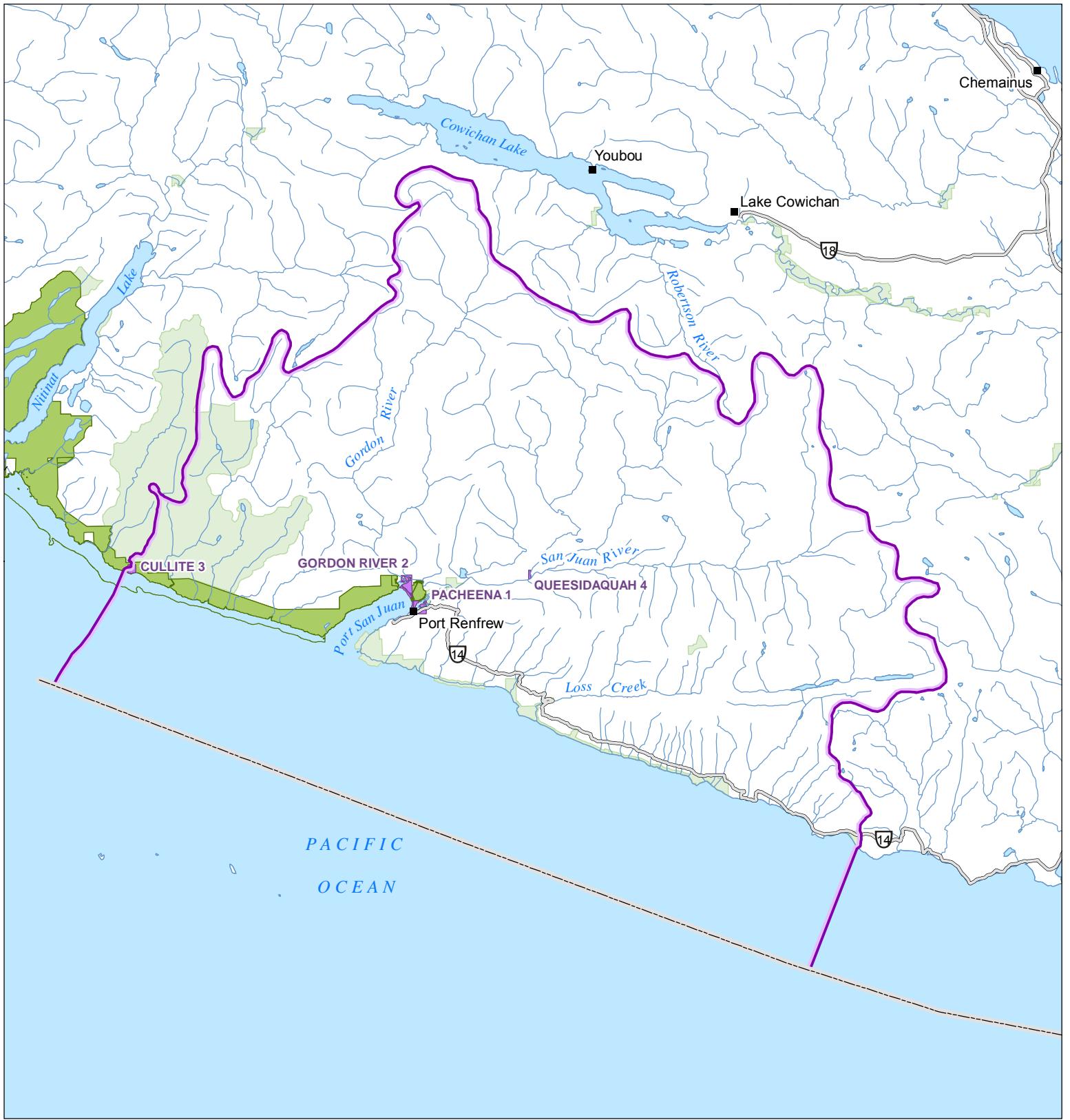
### Appendix B2 - Maps of Pacheedaht Lands

#### Map 7 of 7

- Pacheedaht Lands
- Pacheedaht ITA Land
- Lands to be Considered at Treaty
- Former Pacheedaht Indian Reserve
- Pacheedaht Fee Simple Private Land
- Known Private (Surface)

The information presented on this map is provided without prejudice for the purposes of treaty negotiations, may be subject to further revisions, and does not constitute a legal definition.





Appendix B3 – Map of Former Pacheedaht Indian Reserves

- Pacheedaht Statement of Intent
- Former Pacheedaht Indian Reserve - (Total 175.90 Ha)
- [Green Box] Federal Protected Area
- [Light Green Box] Provincial Protected Area
- [Highway Icon] Highway

Government of Canada Gouvernement du Canada

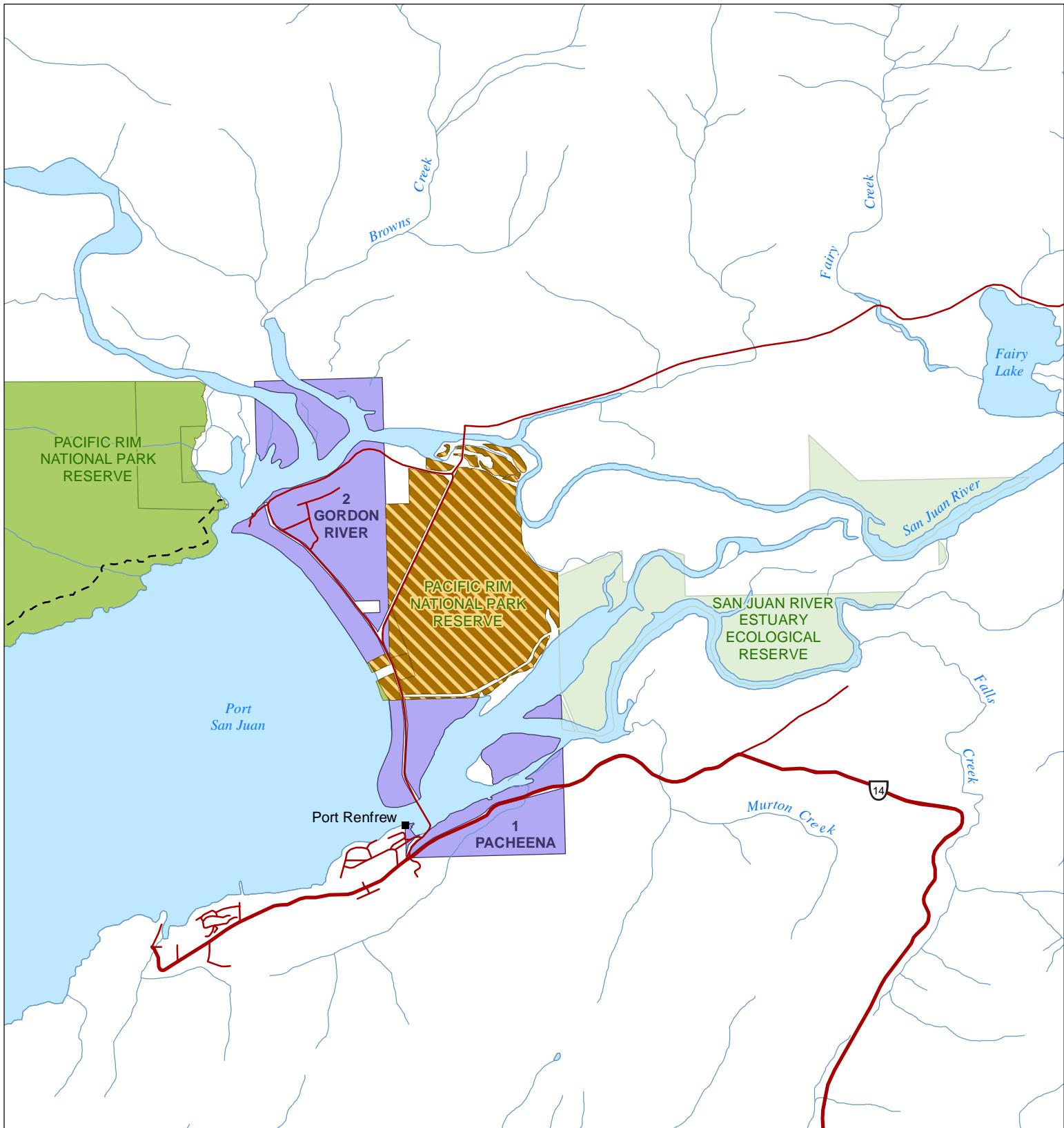
Produced by the Community Infrastructure Directorate, Indigenous Services Canada (ISC) under the Information Sharing Protocol for Treaties and Aboriginal Government (Crown-Indigenous Relations) and the Ministry of Indigenous Relations and Reconciliation.

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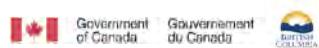
April 11, 2019





Appendix B4 - Map of Pacheedaht PRNPR Lands

- Pacheedaht Statement of Intent
- Former Pacheedaht Indian Reserves
- Proposed Pacheedaht PRNPR Lands
- Road (Paved)
- Federal Protected Area
- Provincial Protected Area
- - West Coast Trail



Produced by the Community Infrastructure Directorate, Indigenous Services Canada (ISC) under the Information Sharing Protocol for Treaties and Aboriginal Government (Crown-Indigenous Relations) and the Ministry of Indigenous Relations and Reconciliation.

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Kilometres

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April 12, 2019



## **APPENDIX X – DISPUTE RESOLUTION**

Before concluding the Treaty, the Parties will discuss the dispute resolution language to be included in the appendices to the Treaty.