



816-1175 Douglas Street

Victoria BC V8W 2E1

T 250 405 3460

F 250 381 8567

[www.jfklaw.ca](http://www.jfklaw.ca)

April 6, 2021

**Via Email**  
**(Commission.Secretary@bcuc.com)**

British Columbia Utilities Commission (BCUC  
Commission)  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Erin Thomson-Leach**

*~She/Hers/Her*

Associate

Direct Line: 250 405 1864

C 778-679-1739

E [ethomson-leach@jfklaw.ca](mailto:ethomson-leach@jfklaw.ca)

File No. 1426-001

**Attention:** Commission Secretary

**Re: Kyuquot Power Ltd. (“KPL”) – Investigation into the Safety and Reliability of the KPL System [“Investigation”] – KCFN Reply Submissions on Reconsideration Request (the “Reconsideration Request”)**

---

1. We are counsel to Ka:yu:'k't'h' / Che:k'tles7et'h' First Nations (“KCFN”) and write on their behalf. KCFN is pleased to provide these reply submissions and hope that they assist the Commission to consider this matter in its proper context. As KCFN has explained throughout the Investigation into KPL’s system, KCFN is concerned that KPL has not maintained its power system in a safe and reliable manner. The safety of KCFN’s community is always its top priority. It is also important that any entities seeking to do business with KCFN or operate on KCFN Treaty Lands, understand the nature and scope of KCFN’s jurisdiction over its lands and resources. This is crucial information for the Commission as it concludes this aspect of the KPL Investigation.
2. This matter, particularly the Commission’s order respecting mediation (Order G-65-21, the “**Mediation Directive**”) raises an important jurisdictional issue, which we appreciate the opportunity to clarify. Through the rest of these submissions we will describe the reconciliation context for this Investigation and the Commission’s role within it, address certain points in KPL’s recent submissions on the Reconsideration Request, and clarify the relevant facts respecting KPL and KCFN’s power systems and infrastructure within KCFN territory.

## The Reconciliation Context

3. It is clear from its submission on the Reconsideration Request that KPL fundamentally misunderstands the nature of its relationship with KCFN and the legal basis for its ongoing operations near to and on KCFN Treaty Lands. We will not repeat everything KCFN has already put on the record in this proceeding; rather, we highlight key information for the Commission to fully appreciate KCFN's perspective and jurisdiction.
4. While the Commission and KPL are both aware that KCFN is a self-governing Nation and a signatory to the Maa-nulth Treaty,<sup>1</sup> it is important to fully understand the significance of this fact. KCFN's Treaty is not just a contract. It is a constitutionally protected, sacred agreement that lays out a map for reconciliation between KCFN, Canada and British Columbia. Far from the historical treaties Canada entered with First Nations as European settlers made their way west across Canada, which sketched out the surrender of lands on vague terms, the Maa-nulth Treaty affirms KCFN's *inherent right to self-government*. The Treaty then expresses this right in a broad suite of law-making authority over KCFN's Treaty Lands.<sup>2</sup>
5. The nature of KCFN's Treaty Lands is something more than fee simple. Unlike a private landowner, KCFN has law-making jurisdiction throughout its Treaty lands. Unlike its previous authority over its former reserve land, KCFN's jurisdiction is comprehensive and not derived from the *Indian Act*.

## Government to Government Relationship

6. The Treaty establishes that Canada, British Columbia, and KCFN have a government-to-government relationship based on mutual respect. The Treaty provides a basis for reconciliation and is both a land claim and self-government agreement. It is a promise by Canada and British Columbia to work in partnership with KCFN, and to respect KCFN as an equal partner – not as a government that is subordinate to other levels of government.
7. The Federal Government's *Statement of Principles on the Federal Approach to Modern Treaty Implementation* affirms that:

---

<sup>1</sup> The Maa-nulth Treaty (the "Treaty") is a tripartite comprehensive land claim agreement within the meaning of s.35 of the *Constitution Act 1982*. It was executed in 2007, and effective in 2011. During the period before effective date, the Parties undertook implementation work, including the work to formalize interests over KCFN's Treaty Lands, such as the Right of Way Agreement between KCFN and KPL. The Treaty and appendices are available [online](#), and are given the force of law through provincial and federal legislation.

<sup>2</sup> KCFN's Treaty Lands are set out in Appendix B-2 of the Maa-nulth Treaty

- Modern treaties are a key component of Canadian nation building. They promote strong and sustainable Aboriginal communities, and create enduring intergovernmental relationships between treaty partners.
- Modern treaties are reconciliation in action.
- Modern treaties must be implemented in a manner that upholds the honour of the Crown. Treaty provisions are to be interpreted in a reasonable and purposive manner, which requires giving effect to the common intention of the parties at the time the treaties were made. [emphasis added]

8. The BC government has stated that a modern treaty intends to achieve certainty and facilitate strong and workable relationships between First Nations and other governments including federal, provincial and local governments:

Treaties bring certainty with respect to a First Nation's rights to use, own and manage lands and resources throughout its claimed traditional territory, as well as provide the treaty First Nation with modern governance tools to develop sustainable, healthy and resilient communities. When ownership and use of lands and resources is clear, there is increased predictability for continued development and growth in the province.<sup>3</sup> [emphasis added]

9. All three governments intend KCFN's Treaty to provide certainty and to ensure that KCFN's jurisdiction and governance over its community is not relegated to an inferior position. The primacy of a treaty relationship must always inform decisions made by the Crown and Crown actors when making decisions that impact a treaty Nation, lest the reconciliation, certainty, and aspiration of the modern treaty process be undermined.

10. The Supreme Court of Canada has set out similar principles for interpreting modern treaties. In ***First Nation of Nacho Nyak Dun v Yukon*** the Court cautioned that:

...a modern treaty will not accomplish its purpose of fostering positive, long-term relationships between Indigenous peoples and the Crown if it is interpreted 'in an ungenerous manner or as if it were an everyday commercial contract' (*Little Salmon* at para 10)... Furthermore, while courts must "strive to respect [the] handiwork" of the parties to a modern treaty, this is always "subject to such constitutional limitations as the honour of the Crown."<sup>4</sup>

11. This is the context in which the dispute regarding GOLB S3 arises. Although KCFN recognizes the Commission's role in regulating KPL's activities, the Mediation Directive as drafted raises some issues, which we will discuss in the remainder of these submissions.

---

<sup>3</sup> See the BC Government website on Treaty Nations and consultation [here](#)

<sup>4</sup> *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58 (CanLII), [2017] 2 SCR 576 at para 37. See also *Beckman v Little Salmon/Carmacks First Nation* 2010 SCC 53 (CanLII), [2010] 3 SCR 103 at para 10 where the Court emphasized that the treaty "is as much about building relationships as it is about the settlement of ancient grievances. The future is more important than the past. A canoeist who hopes to make progress faces forwards, not backwards."

- i. First, the Commission’s order raises a question of jurisdiction. It is important the Commission be mindful of KCFN’s authority as a self-governing Nation and be focused on what is necessary to regulate KPL’s activities. For example, in the Mediation Directive the Commission appears to request that, pending the resolution of the dispute, KCFN provide KPL a key to GOLB S3 (paragraph 3) and notify KPL before KCFN accesses GOLB S3 (paragraph 4). As we explain below, this is not appropriate in this situation.
- ii. Second, the Mediation Directive appears to be based on misinterpreted facts respecting the application of the Right of Way agreement between KCFN and KPL, which we clarify further below.

### **The Jurisdictional Issue**

12. Chapter 13 of the Treaty affirms KCFN’s right to self-government and law-making authority.<sup>5</sup>

In order to give meaning to the reconciliation objectives of the Treaty, it is crucial that the Crown, and any Crown delegated agencies or authorities, interpret the Treaty purposively (as noted in Canada’s principles on modern treaty implementation), and interpret its own legislation in a complementary manner. Among many other things, the Treaty provides KCFN the authority to make laws respecting:

- a. the use, possession and management of assets owned by KCFN or a KCFN Public Institution or Corporation – located both on and off KCFN Treaty Lands (part 13.12.0);
- b. the use and management of KCFN’s Treaty Lands (part 13.14.0);
- c. public safety and emergency preparedness on KCFN Treaty Lands (parts 13.25.0 and 13.26.0); and
- d. public works and related services (part 13.27.0).

13. The Commission’s Indigenous Utilities Inquiry Final Report (“**Indigenous Utilities Report**”) references the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (“**DRIPA**”), which “affirms the application of the United Nations Declaration on the Rights of Indigenous Peoples<sup>6</sup> to the laws of British Columbia, contributes to its implementation and supports the affirmation of and development of relationships with Indigenous governing bodies.”

---

<sup>5</sup> See para 13.1.1

<sup>6</sup> See the schedule to *DRIPA*. The full text is also available online [here](#) (“**UNDRIP**”)

14. Each of the UNDRIP articles cited in the Indigenous Utilities Report provides a legal basis for KCFN to make decisions respecting its lands and for the Commission to consider the state's obligation to remove existing barriers to self-determination and autonomy.
15. In this precise context, the Commission and KCFN are able to engage in cooperative governance, respecting each other's jurisdiction, and ensure that the KPL power system is operated in a safe and reliable manner. This is consistent with the Commission's own approach in its Indigenous Utilities Report:

"While the exercise to ensure the laws of BC are consistent with UNDRIP is not yet complete, the Panel has been persuaded to incorporate the policies and the principles reflected in the DRIPA into the Final Report recommendations. ... as an independent regulatory agency, the BCUC considers all applicable government policy and legislative directives, including both the Reconciliation Principles and the DRIPA, in carrying out its mandate." (p 15 (PDF p 25)).

As the Commission itself noted, the Reconciliation Principles<sup>7</sup> describe the government's responsibility in several areas:

- changes in operating practices and processes to recognize self-determination and self-government;
- the conduct expected of government employees dealing with Indigenous peoples;
- the need for treaties, agreements and other constructive arrangements to be based on recognition of inherent rights and respect; and
- collaborative and constructive approaches to achieving free, prior and informed consent to actions by the provincial government that affect Indigenous people and Indigenous rights and other principles." (p 14 (PDF p 24))

16. These Principles are then embedded in Recommendation 34 from the Indigenous Utilities Report: "*We recommend that the BCUC modify its regulatory policies and procedures to better reflect the objectives of reconciliation in its proceedings.*"

17. Given the underlying purposes of the Treaty, including broad objectives of reconciliation between the Crown and KCFN, the Commission must support KCFN's ability to determine the conditions under which it will provide KPL access to KCFN infrastructure. This includes KCFN's requirement that KPL enter into an agreement that provides clear mechanisms for KCFN to ensure its community's safety.

#### KCFN Duty to the Public

18. As a government, KCFN has a duty to act in the best interest of its citizens. KCFN must always strive to ensure its decisions are in the public interest. Due to ongoing safety and

---

<sup>7</sup> See the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples* [here](#)

reliability problems with KPL's power services, KCFN will only grant KPL access to GOLB S3 if KPL enters into a joint operating agreement on terms satisfactory to KCFN. KCFN has a principled reason to require a joint operating agreement for GOLB S3 before providing KPL a key as KPL has repeatedly demonstrated gaps in safety and in communication with KCFN.

19. KCFN's concerns about providing KPL a key are warranted given KPL's documented safety issues throughout this proceeding. Generally speaking, KCFN has been concerned about KPL's management of its system:

- a. they lack clear operating procedures;
- b. there do not appear to be qualified professionals representing KPL; and
- c. KPL has yet to engage in a meaningful way with KCFN respecting the system or infrastructure.

Please see the Primary Engineering report included in [Exhibit D-16](#) and the TEBurns Engineering report included in [Exhibit A2-6](#), for examples of deficiencies in KPL's system and infrastructure that illustrate KCFN's concerns.

20. With respect to the specific concerns respecting GOLB S3, KCFN contractors installed the switch to respond to safety concerns, according to TEBurns Engineering Site Instruction #3.<sup>8</sup> This Site Instruction details why this switch was installed: to be able to rapidly de-energize the downstream power system in the case of an emergency where energized conductors are on the ground. Any approach to operating this switch that requires a second key or otherwise delays KCFN's ability to take immediate steps in this regard would negate the switch's purpose and sterilize KCFN's ability to respond to immediate threats to its community.<sup>9</sup>

21. KCFN, like BCUC, has demonstrated through this process that it views public safety as a chief concern. KPL, however, is not a government or a governmental entity, and thus lacks the same overarching duty to the public. In this regard, it would be incompatible with KCFN's duty to the public, and with its broad self-government powers under Treaty, if it were to be ordered to provide a key to KPL without KCFN oversight to ensure KPL's access to KCFN infrastructure cannot negatively affect the community.

#### KCFN specific concerns about providing KPL a key prematurely

---

<sup>8</sup> See BCUC Exhibit A2-11 Attachment #25 – January 7, 2020 TEBurns Site Instruction #3 – Installation of a new Sectionalizing GOLB Switch on KCFN structure P010

<sup>9</sup> Please note the Site Instruction erroneously referred to the field phase as KPL conductor. This conductor is owned by KCFN but transmits KPL energy. To KCFN's knowledge there is no agreement in place for KPL's use of this conductor.

22. As noted, KCFN is generally open to providing KPL with a key to access KCFN's power pole and related infrastructure, *if* KCFN is satisfied there is an appropriate agreement in place to govern safe access and communication. We do not accept KPL's assertion that KCFN will use a "customer installed device"<sup>10</sup> to interrupt power to KPL's customers downstream of KCFN's community. More than just a "customer," KCFN, as a neighbouring community and self-governing nation, understands that KPL customers have a strong interest in safe and reliable power service and this interest is protected by KCFN operating according to principles of good governance and mutual respect for its non-Indigenous neighbours.
23. As a neighbour to the downstream customers of KPL, KCFN has an ongoing relationship with the residents and school, beyond the corporate ratepayer/supplier interactions between customers and utility companies. KCFN takes its obligations as a Treaty partner very seriously and has no wish to negatively impact its neighbouring communities. KCFN has no motive to turn off power capriciously or otherwise affect the other users of the power system. In fact, one of the reasons this situation has taken so long to resolve is that KCFN does not want to take any actions that may negatively impact other users. There is absolutely no justification to give greater weight to the baseless and unsupported suggestion that KCFN may suddenly decide to act in a manner detrimental to downstream customers than to KCFN's Treaty rights, including its right to self-governance.
24. In contrast, KCFN providing a key to KPL without a joint operator agreement would unduly prejudice KCFN, since it would undermine KCFN's ability to ensure the agreement provides sufficient measure to protect the community.
25. Moreover, any need to coordinate with KPL to access the switch, which would be necessary under KPL's requested two-lock system on GOLB S3, is inappropriate and unsafe. Any delay or lag time on behalf of KPL would disproportionately affect the First Nation community in waiting for another key to show up. For example, KCFN may have to quickly turn off power due to a fallen line or other emergency situation. In these situations, KCFN could not afford a delay.

#### KCFN's interests in a Joint Operating Agreement for GOLB S3

26. While KCFN is encouraged that the BCUC appears to be supporting KCFN's view that a single-lock joint operating agreement be entered into for the operation of GOLB S3, it must be understood that decision making powers surrounding the terms of this joint operating agreement must rest with KCFN.

---

<sup>10</sup> KPL final argument page 13

27. As noted above, KCFN approached BCUC due to safety complaints. In order to fulfill its obligations as a government, it is imperative that if KCFN provides a key to KPL it is only on KCFN's terms and after KCFN is satisfied that the proper mechanism have been put in place to ensure the KCFN government can fulfill its duty to its community. KCFN has told KPL that it is willing to bear the full costs of negotiating a joint access agreement.
28. Until an agreement is in place, KCFN holding the only keys to the infrastructure it owns is the practical way KCFN can maintain the control it requires to fulfil its governmental functions and duties. KCFN staff and contractors are local and can respond quickly should KPL need to access the power pole, especially where KPL provides adequate notice. In the case of an emergency, KCFN is best positioned to respond, given its location and that the safety of its community would be implicated in any emergency.
29. There is no principled reason to have concern about KCFN maintaining the keys to GOLB S3 until an agreement is executed that would provide a basis and set out the terms for KPL's attached infrastructure. Preserving KCFN's right to keep its key until KPL has entered into a satisfactory agreement means KCFN is able to maintain an oversight role of access to the power pole. This ensures that KCFN is informed of activities affecting its infrastructure and energy supply to KCFN lands.
30. KCFN has already considered draft terms that would be reasonable to include in a joint operating agreement for GOLB S3. Although the precise terms are to be negotiated by the parties, at a minimum KCFN expects that the terms of the joint operating agreement would include:
  - a. a description of the purpose of GOLB S3 - similar to the content of the Site Instruction;
  - b. a description (or list) of the emergency events under which GOLB S3 could be operated by either party without notice;
  - c. detailed instructions as to how the operation of GOLB S3 must occur (such as the exact switching sequence, this is one of the reasons that KPL needs to have a qualified professional engineer sign the joint operating agreement);
  - d. a list of who is qualified to operate GOLB S3; and
  - e. details of the communication and approval process that would be required for S3 to be operated in non-emergency (ie: planned) outage situation.
31. A joint operating agreement as above could be used to facilitate significant maintenance outages. KCFN notes that, despite KPL's stated concerns about GOLB S3, it actually provides KPL with significant operational flexibility that they did not have before the installation. For example, if KPL needs to take a safety protection guarantee on any of their assets on SD84 property or Walters Island and the outer islands (including the submarine cables) this can

be done with GOLB S3. Prior to this the KPL crews would have had to drive all the way to Chamiss Bay to open the switch at that location.

### Clarifying the Facts

32. In response to KPL’s submissions on KCFN’s reconsideration request, KPL misunderstands KCFN’s concerns about the validity of the Right of Way Agreement KPL and KCFN executed in 2011 (the “ROW Agreement”). Again, the Treaty context is important here and KPL’s submissions draw incorrect assumptions based on excerpted language from the ROW Agreement.

33. Under the ROW Agreement, KCFN grants KPL different types of access over two types of areas as defined in the agreement – the “Right of Way Area” and the “Lands.” Neither of these types of areas includes “Excluded Crown Corridors.” KPL can access the Right of Way Area to construct, operate, make repairs etc. KPL can access the Lands for the purpose of accessing the Right of Way Area and to cut trees etc. that may pose hazards to safe operation etc.<sup>11</sup>

34. In the relevant area, the following two sketches show the differences in these two types of areas under the ROW Agreement:

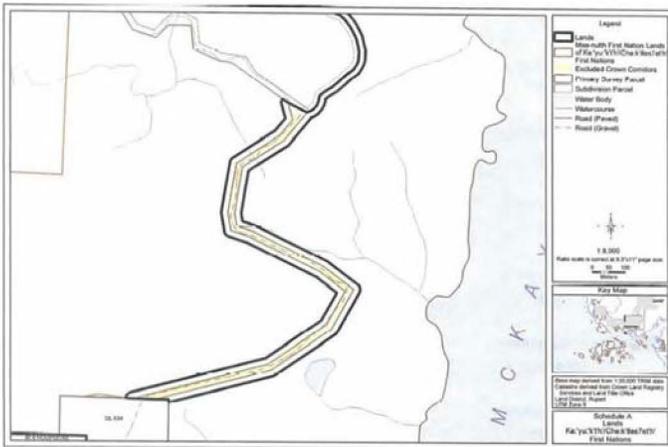


Figure 1 - The "Lands" in ROW Agreement

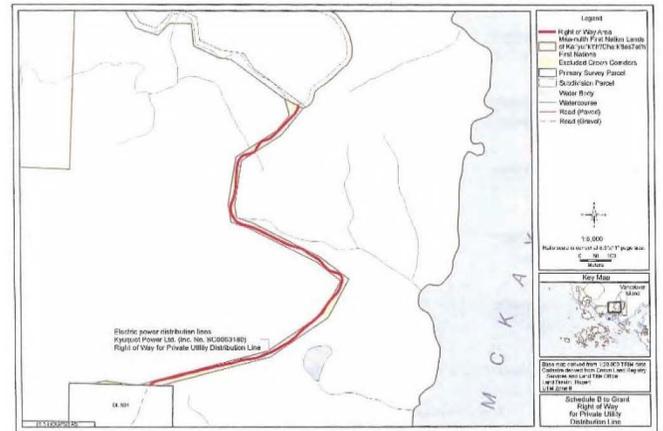


Figure 2- The "Right of Way Area" in ROW Agreement

35. The sketches do not include a survey of the precise location of each power pole through KCFN Treaty Lands or through the Crown Corridor; just the general right of way. The heavy black outline on Figure 1 shows the “Lands” for the purposes of the ROW Agreement. These are the specific parts of KCFN Treaty Lands where KPL was granted the right of access

<sup>11</sup> (see paras 2.1(a) and (b) of the ROW Agreement).

for the purposes described above. The red line on Figure 2 shows the Right of Way Area. In both of these sketches, the yellow corridor is identified as “Excluded Crown Corridors.”

36. As a result of the imprecise sketches on the ROW Agreement, the initial impression was that KCFN had somehow granted KPL a right of way over the lands on which GOLB S3 reside. Upon further review, KCFN has determined this is not the case as it is located within the “Excluded Crown Corridor.”
37. KPL apparently opposes KCFN’s Reconsideration Request because KCFN did not raise this issue earlier in the proceedings. First – the precise boundaries of the lands under the ROW Agreement were not relevant until the commission issued its mediation directive. Second – we emphasize that nothing about the ROW Agreement has changed. The Excluded Crown Corridors have always been clearly identified in the sketch plan, as above and thus were never included in the ROW Area. While KPL has requested that KCFN provide a copy of its own right of way agreement with the Province of BC for the Crown Corridor (attached as Schedule B), it is not relevant to this issue.
38. For clarity the facts respecting the ROW Agreement are:
  - a. the ROW Agreement does not apply to Excluded Crown Corridors;
  - b. GOLB S3 is located on a section of KCFN constructed and KCFN owned power line which is located within the Excluded Crown Corridor; and
  - c. the mediation provisions of the ROW Agreement therefore do not apply to the dispute regarding GOLB S3 as KPL has no right of way access to KCFN’s infrastructure here.
39. Further, in response to KPL’s letter of March 22, 2021, it is not inconsistent that KCFN has jurisdiction over Treaty Settlement Lands (TSL) and that this particular power pole is not on TSL. The power pole stands at the edge of TSL and is used to provide power to KCFN, which implicates KCFN’s duty and authority to service its lands and to provide for its community. Any past communications about the ROW agreement does not change the factual reality that the power pole is in the Excluded Crown Corridor and therefore not subject to the ROW Agreement.
40. In addition, KPL’s inference that KCFN believes the ROW Agreement is invalid over Treaty Lands is unsupported and incorrect. KCFN does, however, expect that KPL will take steps immediately to negotiate legal access for all of KPL’s operations regardless of its location.
41. Finally, as we have described above, this reconsideration request raises more significant issues than whether the mediation under the ROW Agreement is applicable. This matter involves KCFN’s governance, self-determination, and Treaty rights; indeed, the ROW is itself

an appendix to the Treaty.<sup>12</sup> KPL has completely ignored the context of reconciliation and drawn inaccurate assumptions based on a misunderstanding of the facts.

### KCFN Infrastructure

42. Although KCFN has described the pole on which GOLB S3 is installed as a “joint use pole,” the relevant structure is a KCFN owned power pole and is connected to KCFN owned conductors.<sup>13</sup> Several years ago, KPL converted KCFN infrastructure from a 3-phase line to parallel 1-phase lines. KPL then began transmitting energy on one of the phases owned by KCFN. KCFN has no record of KPL ever purchasing any interest in the power pole that GOLB S3 was installed on or purchasing or leasing any of the lines to which the switch is connected.
43. This situation is distinct from others where a public utility’s infrastructure is connected to privately owned infrastructure. In this case, the power pole at issue stands at the gateway to Treaty lands. As such, this power pole and related KCFN infrastructure plays a core role in KCFN’s ability to manage the energy supplied within its Treaty lands. It is imperative that no decisions be made that may negatively impact KCFN’s ability to manage the resources on its Treaty lands.
44. Essentially, when KPL hooked up its system to KCFN’s infrastructure it did not have a legal right to do so. Indeed, prior to KCFN’s Treaty, KPL simply had no tenure agreement for its infrastructure over KCFN Lands and, still, apparently lacks a tenure with the Province over the relevant area in this matter. To the extent that KPL seeks to rely on a KCFN Band Council Resolution from 2006,<sup>14</sup> that form of KCFN government was replaced when KCFN’s Treaty came into effect. All of the terms of that Band Council Resolution are superseded by the ROW Agreement with respect to KCFN Treaty Lands. We also note that even the 2006 Band Council Resolution was specific to KCFN reserve lands and would not have included any right to access or occupy Crown corridors or any infrastructure installed on provincial Crown land.
45. It appears that KPL has misinterpreted an agreement to which it is a party and now seeks to rely on the BCUC safety complaint process against it to undermine KCFN’s rights to control access to its infrastructure and, ultimately, KCFN’s authority over its Treaty Lands and its duty to ensure its community is not detrimentally affected by KPL actions. In this regard, we do not accept KPL’s assertion in its March 24, 2021 correspondence that KCFN has “not complied” with paragraph 3 of the Mediation Directive. Rather, KCFN continues to exercise

---

<sup>12</sup> See Appendix E-10

<sup>13</sup> For more information, please see the TEBurns Engineering Site Instruction #3.

<sup>14</sup> See KPL response to intervener submissions, [Exhibit D-28](#), page 5.

its own jurisdiction over its lands and resources; particularly in light of the facts and arguments we have set out in these submissions.

**Conclusion: Clarify Nature of BCUC Order**

46. Based on the above discussion, it appears that KPL has misapprehended the facts of the ROW Agreement. It follows that the Commission's order was based on a misapprehension of the facts. As such, the Commission's order must be amended. KCFN therefore offers the following recommendations for the Commission's amended order:

- a. Remove any reference to KCFN providing a key to KPL or any other requirement or condition on KCFN's access to its own infrastructure;
- b. To the extent KPL seeks a key to GOLB S3, the Commission should direct KPL to enter into negotiations with KCFN for a Joint Operating Agreement;
- c. Require that KPL have a qualified electrical engineer execute the Joint Operating Agreement under seal; and
- d. Require that KPL retain a qualified professional engineer to represent KPL on all technical matters related to KCFN. KCFN is hopeful that this be an ongoing condition of KPL's Certificate of Public Convenience and Necessity.

47. KCFN believes that this process provides an opportunity for BCUC and KCFN to work together in a display of collaborative governance and reconciliation in action. KCFN appreciates BCUC's role in regulating KPL and in ensuring the safety issues that have occurred in the past do not continue.

Yours truly,

**JFK Law Corporation**

Per:  Digitally signed by Erin Theresa Thomson-Leach 3BE8MA  
Date: 2021.04.06 16:27:03 -07'00'

Erin Thomson-Leach  
ETL/RP/ct

## Schedule A

**AND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



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

Ka:'yu:'k't'h/Che:k:tles7et'h' First Nation  
General Delivery

File #1408860 Document #V844811

Kyuquot

BC V0P 1J0

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
{PID} [LEGAL DESCRIPTION]

**000-562-858 DISTRICT LOT 534, RUPERT DISTRICT, AS SHOWN ON ATTACHED SKETCH**

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

**Statutory Right of Way - Crown Land**

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

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

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

**KA:'YU:'K'T'H/CHE:K:TLES7ET'H' FIRST NATION**

GENERAL DELIVERY

KYUQUOT

BRITISH COLUMBIA

V0P 1J0

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

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

Officer Signature(s)

ELIZABETH DE MUNCK

Commissioner for Taking Affidavits in BC

370 S. Dogwood St.

Campbell River, BC V9W 6Y7

Execution Date

Y	M	D
14	08	28

Transferor(s) Signature(s)

HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA,  
by its authorized signatory

ROMONA BLACKWELL

OFFICER CERTIFICATION:

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



**AND TITLE ACT  
FORM E**

**SCHEDULE**

PAGE 3 OF 3 PAGES

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

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Forests, Lands and Natural Resource Operations, 370 S. Dogwood St., Campbell River, BC V9W 6Y7



Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

**TERMS OF INSTRUMENT - Part 2**

WHEREAS this statutory right of way, issued under section 40(1)(a) of the *Land Act*, is necessary for the operation and maintenance of the Transferee's undertaking.

For valuable consideration, the parties agree as follows:

**ARTICLE 1 - INTERPRETATION**

1.1 In this Agreement

“**Agreement**” means this General Instrument;

“**Commencement Date**” means January 21, 2006;

“**disposition**” has the meaning given to it in the *Land Act* and includes a licence of occupation;

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

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

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

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

“**Land**” means that part of the land described in item 2 of Part 1 of this General Instrument as shown outlined in bold on Plan No. VIP76620;

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

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

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

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

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

**“you” or “your”** refers to the Transferee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
  - 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
  - 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
  - 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
  - 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
  - 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
-

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such guideline of general application.

## **ARTICLE 2 - GRANT AND TERM**

- 2.1 On the terms and conditions of this Agreement, we grant you, your employees, agents and contractors a statutory right of way over the Land only for the purposes of excavating for, constructing, operating, removing, replacing, reconstructing, repairing and safeguarding the Improvements necessary for constructing, operating and maintaining wells, pump house, water pipeline, powerline and reservoir and for telecommunications equipment necessary for the operation of such Improvements.

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

- 2.2 The term of this Agreement is 60 years, commencing on the Commencement Date. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

### **ARTICLE 3 - FEES**

- 3.1 The Fee for the Term is \$1.00, the receipt of which we acknowledge.

### **ARTICLE 4 - COVENANTS**

- 4.1 You must
- (a) pay, when due,
    - (i) the Fees to us at the address set out in Article 10,
    - (ii) the Realty Taxes, and
    - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you, on your behalf or with your permission;
  - (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
  - (c) observe, abide by and comply with
    - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and
    - (ii) the provisions of this Agreement;
  - (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our
-

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;

- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (h) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act* for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not cut or remove timber on or from the Land without
  - (i) our prior written consent, and
  - (ii) being granted the right under the *Forest Act* to harvest Crown timber on the Land;
- (k) obtain our prior written consent, which consent may be unreasonably withheld, before permitting any other person to use the Land or the Improvements (including without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (l) obtain our prior written consent, which consent may be unreasonably withheld, before using the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

- 
- (m) if any soil is disturbed by you as a result of your construction or maintenance of the Improvements, at your expense, restore the surface of the Land to a condition satisfactory to us;
  - (n) agree to develop the land in a diligent and workmanlike manner in accordance with the management plan on file at our office;
  - (o) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
  - (p) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;
  - (q) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of
    - (i) your breach, violation or non-performance of a provision of this Agreement,
    - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
    - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and
  - (r) on the termination of this Agreement,
    - (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
-

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

- (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
- (v) restore the surface of the Land to the condition that the Land was in on the Commencement Date, but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

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

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

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

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
  - (d) we have given our prior written approval to such storage, disposal, release or other use
-

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 We will not do anything on the Land that will interfere materially with the Improvements or your use of the Improvements, or that creates a public hazard.

4.5 Despite any other provision of this Agreement you must:

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

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

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.6 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

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

#### ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) in addition to the other reservations and exceptions expressly provided in this Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), (d) and (e);
- (d) we may make other dispositions of or over the Land, or any part of it, to any person, including a Crown agency or ministry, provided any such disposition is made subject to your interest which is created by this Agreement
- (e) with your consent (which you will not withhold unreasonably) we may make other dispositions of or over the Land, or any part of it, to any person, and upon such consent being given you will, if required by us, execute and deliver to us such instrument as may be necessary to subordinate your rights under this Agreement to such disposition;

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

- (f) for the purpose of subsection (e), you will be deemed to have reasonably withheld your consent if a disposition made under that subsection would have a material adverse impact on your use of the Land under this Agreement;
- (g) if a proposed disposition under subsection (e) will not have a material impact on your use of the Land under this Agreement you must not require any payment, whether as compensation or any other charge, as a condition of your consent to that disposition;
- (h) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land under this Agreement that arises as a result of any use of, or impact on the Land arising from the lawful exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b) (d) and (e);
- (i) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b) or any other applicable enactment;
- (j) you will not without our prior written consent, which consent may be unreasonably withheld, permit any other person to use the Land or the Improvements (including, without limitation, any copper, coaxial, fibre optic or similar material or device) for any telecommunications purpose;
- (k) you will not without our prior written consent, which consent may be unreasonably withheld, use the Land or the Improvements for any telecommunications purpose other than a telecommunications purpose which is necessary for your operation of the Improvements;
- (l) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (m) any interest you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(r)(ii), (iii) or (iv) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(r)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(r)(iii); and
- (n) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

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

#### ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$0.00 which will
- (a) guarantee the performance of your obligations under this Agreement;
  - (b) be in the form required by us; and
  - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
  - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;
- and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
  - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

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

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

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

#### ARTICLE 7 - ASSIGNMENT

7.1 You must not assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.

7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.6.

#### ARTICLE 8 - TERMINATION

8.1 You agree with us that

(a) if you

(i) default in the payment of any money payable by you under this Agreement, or

(ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and your default or failure continues for 60 days after we give written notice of the default or failure to you,

(b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;

(c) if you

(i) become insolvent or make an assignment for the general benefit of your creditors,

(ii) commit an act which entitles a person to take action under the *Bankruptcy and*

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

*Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
  - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

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

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

## ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Campbell River, British Columbia, and if we or our authorized representative have no office in Campbell River, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Campbell River, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

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

to us

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
370 S. DOGWOOD ST  
CAMPBELL RIVER, BC V9W 6Y7;

to you

KYUQUOT BAND COUNCIL  
GD  
Kyuquot, BC V0P 1J0;

or at such other address as a party may, from time to time, direct in writing, and any such notice

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

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

#### ARTICLE 11 - MISCELLANEOUS

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

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

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

11.6 You acknowledge and agree with us that

- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
- (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
  - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
  - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
  - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
  - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
  - (v) the application of any federal or Provincial enactment or law to the Land;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site profile” under the *Environmental Management Act* or any regulations made under that act;

---

Right of Way No.: V844811

File No.: 1408860

Disposition No.: 844811

---

- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
  - (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.
- 11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.
- 11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

**END OF DOCUMENT**