

## GWAII HAANAS AGREEMENT

BETWEEN: THE GOVERNMENT OF CANADA, represented by the Minister of the Environment

AND: THE COUNCIL OF THE HAIDA NATION, for and on behalf of the Haida Nation and represented by the Vice President of the Council

Respecting the land area known variously as Gwaii Haanas and South Moresby, and generally referred to herein as "the Archipelago" (described in Section 2 below). The parties agree as follows:

### 1.0 REASONS FOR AGREEMENT

1.1 The parties maintain viewpoints regarding the Archipelago that converge with respect to objectives concerning the care, protection and enjoyment of the Archipelago, as set out in Section 1.2 below, and diverge with respect to sovereignty, title or ownership, as follows:

The Haida Nation sees the Archipelago as Haida Lands, subject to the collective and individual rights of the Haida citizens, the sovereignty of the Hereditary Chiefs, and jurisdiction of the Council of the Haida Nation. The Haida Nation owns these lands and waters by virtue of heredity, subject to the laws of the Constitution of the Haida Nation, and the legislative jurisdiction of the Haida House of Assembly.

The Haida have designated and managed the Archipelago as the "Gwaii Haanas Heritage Site", and thereby will maintain the area in its natural state while continuing their traditional way of life as they have for countless generations. In this way the Haida Nation will sustain the continuity of their culture while allowing for the enjoyment of visitors.

"Haida" means all people of Haida ancestry.

The Government of Canada views the Archipelago as Crown land, subject to certain private rights or interests, and subject to the sovereignty of her Majesty the Queen and the legislative jurisdiction of the Parliament of Canada and the Legislature of the Province of British Columbia.

By virtue of the above, the Constitution Acts and, more particularly, by an agreement between the Governments of Canada and the Province of British Columbia dated July 12, 1988, the Crown in right of Canada is or will become the owner of the Archipelago and an area within the Archipelago Marine Park Area in order that these lands may be constituted as a reserve for a National Park of Canada and a reserve for a National Marine Park of Canada respectively, to which the National Parks Act will apply. The Government of Canada intends to establish the park reserves pending the disposition of any Haida claim to any right, title or interest in or to the lands comprised therein.

For purposes of the Government of Canada's authorization and implementation of this agreement "Haida" refers to the aboriginal people of Haida Gwaii with respect to whom sub-section 35 (1) of the Constitution Act, 1982 applies.

1.2 Both parties agree that long-term protective measures are essential to safeguard the Archipelago as one of the world's great natural and cultural treasures, and that the highest standards of protection and preservation should be applied.

1.3 Notwithstanding and without prejudice to the aforesaid divergence of viewpoints, and in recognition of the convergence of viewpoints with respect to objectives for the care, protection and enjoyment of the Archipelago, the parties agree to constructively and co-operatively share in the planning, operation and management of the Archipelago, as described below.

## 2.0 DEFINITIONS AND SCOPE

2.1 In this Agreement, the names "South Moresby" and "Gwaii Haanas" each refer generally to the same area or place, and the names "Haida Gwaii" and "Queen Charlotte Islands" each refer generally to the same area or place.

2.2 The Council of the Haida Nation has designated the lands and waters in the Gwaii Haanas area of Haida Gwaii as a Haida Heritage Site, as shown on the map in Appendix 1.

2.3 The Government of Canada intends to designate as a reserve for a National Park of Canada, pursuant to the National Parks Act, certain lands and non-tidal waters in the South Moresby area of the Queen Charlotte Islands, as shown on the map in Appendix 2, as and when they become available for this purpose.

2.4 For the general purpose of simplicity of expression in this Agreement, the lands and non-tidal waters shown on the map in Appendix 2 (being part of the lands shown on the map in Appendix 1) are referred to herein as the "the Archipelago". However, the provisions of this Agreement apply only to those parts of the Archipelago which have been designated as a Haida Heritage Site, as set out in Section 2.2, and also designated as a reserve for a National Park of Canada, pursuant to the intention set forth in Section 2.3.

2.5 For the general purpose of simplicity of expression in this Agreement, the area or place known variously as the "Queen Charlotte Islands" and as "Haida Gwaii" is each referred to herein as "the Islands".

2.6 The Government of Canada also intends to designate certain waters in the South Moresby area as a reserve for a National Marine Park within the area shown on the map in Appendix 3, and this latter area is referred to herein as "the Archipelago Marine Area".

2.7 "Council of the Haida Nation" means the governing body of the Haida Nation pursuant to the Constitution of the Haida Nation.

2.8 "Government of Canada" means the Executive Government of Canada, pursuant to the Constitution Act 1867.

## 3.0 PURPOSE AND OBJECTIVES

3.1 The parties agree that the Archipelago will be maintained and made use of so as to leave it unimpaired for the benefit, education and enjoyment of future generations. More specifically, all actions related to the planning, operation and management of the Archipelago will respect the protection and preservation of the environment, the Haida culture, and the maintenance of a benchmark for science and human understanding.

3.2 The parties agree that it is an objective to sustain the continuity of Haida culture and the parties agree to contribute to the attainment of this objective in the Archipelago by providing for the continuation of cultural activities and traditional renewable resource harvesting activities as set out in section 6.1 below.

3.3 The parties agree that there will be no extraction or harvesting by anyone of the resources of the lands and non-tidal waters of the Archipelago for or in support of commercial enterprise, except for the trapping of fur-bearing animals or the cutting by Haida of selected trees for ceremonial purposes or for artistic purposes intended for public display.

3.4 This Agreement provides for the establishment of a management board, as set out in Section 4 below, whereby both parties will share and co-operate in the planning, operation and management of the Archipelago respecting both parties' designations in the spirit expressed in this Agreement.

3.5 When the final boundaries of the proposed reserve for a National Marine Park within the Archipelago Marine Area are determined, the parties intend to enter into negotiations towards a new Agreement with respect to the planning, operation and management of the waters so affected.

#### 4.0 ARCHIPELAGO MANAGEMENT BOARD

4.1 Upon the execution of this Agreement, the parties will establish the Archipelago Management Board ("AMB") the function of which will be to examine all initiatives and undertakings relating to the planning, operation and management of the Archipelago.

4.2 In a spirit of full and frank disclosure, both parties agree that they will refer any step, activity, or development that affects the planning, operation and management of the Archipelago to the AMB for deliberation as described in section 5 below.

4.3 Matters to be addressed by the AMB will also include, but not be limited to, the following:

- (a) completion of a joint Purpose and Objectives Statement and Management Plan, in consultation with the public, and amendments thereto as deemed appropriate by both parties;
- (b) with respect to Haida cultural activities and traditional renewable resource harvesting activities set out in Section 6.1 below,
  - (i) the examination of their scope and extent,
  - (ii) any proposals for related construction, including any cutting of trees which are essential for this purpose and for which there is no reasonable alternative source of materials outside the Archipelago,
  - (iii) any regulations, guidelines or directives to be enacted, having particular regard for the conservation of natural resources and cultural features and the harmonization of visitor use of the Archipelago with these Haida activities;
- (c) identification of sites of special spiritual-cultural significance to the Haida within the Archipelago, including historic habitation and burial sites, with particular reference to those lands known variously as "Gandle k'in" and "Hotspring Island", and those lands known variously as "Skung Gwaii" and "Anthony Island", and management of these sites on a case by case basis taking into account the requirements for protection of natural resources and cultural features, for Haida. cultural activities and traditional renewable resource harvesting activities set out in Section 6.1, and for visitor understanding and enjoyment;
- (d) communications with other departments and agencies of the parties which conduct or authorize activities affecting the planning, operation and management of the Archipelago;
- (e) guidelines, including the application thereof on a case by case basis, for the care, protection and enjoyment of the Archipelago concerning, among other things,

- (i) permits or licenses for commercial tour operations, research or other activities;
  - (ii) access and use by fishermen, pursuant to sub-section 7.2 below.
- (f) annual work plans setting out the work to be done and how it is to be accomplished, including staffing requirements, budgets and expenditures of both parties pertaining to the planning, operation and management of the Archipelago;
- (g) formulation of procedures in advance for dealing with possible emergencies concerning public safety and security and threats to the natural resources and cultural features of the Archipelago, recognizing that nothing in this Agreement shall preclude either party from taking appropriate action in the case of an emergency;
- (h) strategies to assist Haida individuals and organizations to take advantage of the full range of economic and employment opportunities associated with the planning, operation and management of the Archipelago, taking into account the undertakings of the parties set out in Appendix 4; and
- (i) procedures for the conduct of the business of the AMB, consistent with this Agreement.

4.4 The AMB will initially be comprised of two (2) representatives of the Government of Canada and two (2) representatives of the Council of the Haida Nation, totaling four (4) members; the total number of members may be increased or decreased by mutual agreement between the parties, provided that equal representation is maintained.

4.5 Each party will designate one of its AMB members as a co-chairperson, both of whom will be jointly in charge of calling and conducting meetings, and of authenticating minutes. The co-chairpersons may, however, agree that the responsibilities of the chair will alternate between the co-chairpersons.

4.6 Both parties may designate alternate members to the AMB as required, who may fully participate in meetings when a regular member is absent; and both parties may replace regular AMB members from time to time, on notice to the other party.

4.7 Both parties will inform the AMB of the existence and availability of data, studies, and other documents that pertain to the planning, operation and management of the Archipelago, and will provide copies on request and within a reasonable time.

## 5.0 CONSENSUS

5.1 Deliberations of the AMB on any particular proposal or initiative will strive in a constructive and co-operative manner to achieve a consensus decision of the members, which will be deemed recommendations both to the Government of Canada and the Council of the Haida Nation, by way of referral to their designated representatives, agencies or departments, as deemed appropriate by each party.

5.2 In the event of a consensus decision of AMB members on a matter, any referrals and any steps required to authorize implementation of the decision will be noted at that time in the minutes. During the course of this referral process, the AMB will, if required by either party, discuss the matter further. Upon the conclusion of the referral process, and if there is no objection by either party, the decision will be deemed to have been approved and thereby free and clear to be effected by the appropriate party(ies).

5.3 In the event of a clear and final disagreement of AMB members on a matter, related decisions and any actions arising will be held in abeyance, and will be referred to the Council of the Haida Nation and to the Government of Canada to attempt to reach agreement on the matter in good faith. The parties may request the assistance of an agreed neutral third party(ies) in attempting to reach an agreement.

5.4 Matters held in abeyance under Section 5.3 will be set aside from the normal business of the AMB until such time as the members receive instructions from the Government of Canada and the Council of the Haida Nation regarding their understanding on the matter.

5.5 Matters set aside under Section 5.4 will not reduce or fetter the obligation and ability of the AMB to continue to deliberate in good faith and to strive to achieve consensus decisions on other proposals and initiatives in accordance with Section 5.0.

## 6.0 Haida Cultural Activities and Traditional Resource Harvesting Activities on the Lands and Non-Tidal Waters

6.1 The following Haida cultural activities and sustainable, traditional renewable resource harvesting activities will continue in the Archipelago having regard for the purposes and objectives of this Agreement set out in Section 3.1 and 3.2 and subject to Section 3.3 above:

- (i) travelling into and within the Archipelago;
- (ii) gathering of traditional Haida foods;
- (iii) gathering of plants used for medicinal or ceremonial purposes;
- (iv) cutting of selected trees for ceremonial or artistic purposes;
- (v) hunting of land mammals and trapping of fur-bearing animals;
- (vi) fishing for freshwater and anadromous fish
- (vii) conducting, teaching or demonstrating ceremonies of traditional, spiritual or religious significance;
- (viii) seeking cultural and spiritual inspiration;
- (ix) use of shelter and facilities essential to the pursuit of the above activities.

## 7.0 ACCESS

7.1 Nothing in this Agreement shall prevent authorized representatives of the Government of Canada, the Council of the Haida Nation and the AMB from having free access to and within the Archipelago to carry out their duties.

7.2 Nothing in this agreement shall prevent access to and use of the Archipelago by fishermen for essential activities in support of fishing in adjacent waters, consistent with guidelines for the care, protection and enjoyment of the Archipelago.

## 8.0 AUTHORIZATION AND EXECUTION

8.1 This Agreement will be authorized and executed by both parties in the following manner:

- (a) in the case of the Council of the Haida Nation, by the Vice President upon ratification by way of a Special Resolution in accordance with the Constitution of the Haida Nation; and,
- (b) in the case of the Government of Canada, upon fulfillment of the process referred to in subparagraph 8.1(a), by the Minister of the Environment after and under the authority of legislation passed by the Parliament of Canada amending the National Parks Act and designating all or part of the Archipelago as a reserve for a National Park.

8.2 This Agreement, and any subsequent amendment thereto that has been agreed to in writing by both parties, shall:

- (i) take effect when it has been executed by both parties in the manner set out in sub-clause 8.1;

- (ii) apply to those parts of the Archipelago where the respective designations of a reserve for a National Park of Canada and Haida Heritage Site coincide:
- (iii) remain in effect until
  - (a) resolution of the divergent viewpoints of the parties with respect to sovereignty, title or ownership provides otherwise, or
  - (b) it is terminated sooner by agreement of the parties or pursuant to Section 8.3.

8.3 The parties shall jointly review this Agreement two years after it comes into effect and thereafter each five years. In addition, at any time after the initial two-year review, either party may request a special review by providing written notice to the other party. In either case, the review shall be completed within a six month period.

8.4 After the expiry of the six month review period provided for in section 8.3 above and within three months, either party may terminate the Agreement on six months' unconditional notice to the other party. Any notice to terminate shall be authorized on the part of the Council of the Haida Nation by a Special Resolution in accordance with the Constitution of the Haida Nation, and on the part of the Government of Canada by an Order of the Governor-in-Council in accordance with legislation passed by the Parliament of Canada amending the National Parks Act.

9.0 WITHOUT PREJUDICE

9.1 This Agreement represents both parties' understanding of their reciprocal good faith and common cause in the protection and preservation of the Archipelago, and is without prejudice to the viewpoint of either party respecting sovereignty, ownership or title. This Agreement shall not constitute or be deemed to constitute a land claims agreement or treaty within the meaning of Section 35 of the Constitution Act of Canada 1982, nor shall it or any actions taken pursuant to it be construed as creating, affirming, recognizing or denying any aboriginal or treaty right or as transferring any competence of either party.

9.2 Nothing in this Agreement shall fetter or limit, or be deemed to fetter or limit, in any manner the rights, jurisdiction, authority, obligations or responsibilities of either party or their representatives, except to the extent of the requirement that all reasonable efforts must have been made to reach consensus through the process set out in section 5 of this Agreement.

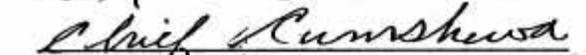
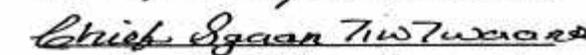
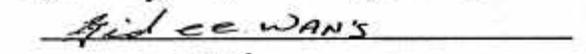
  
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 of the Haida Nation

  
 Minister of the Environment

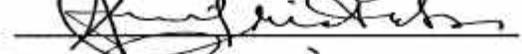
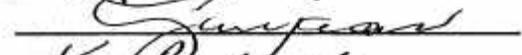
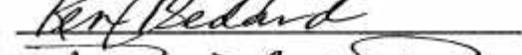
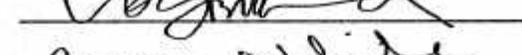
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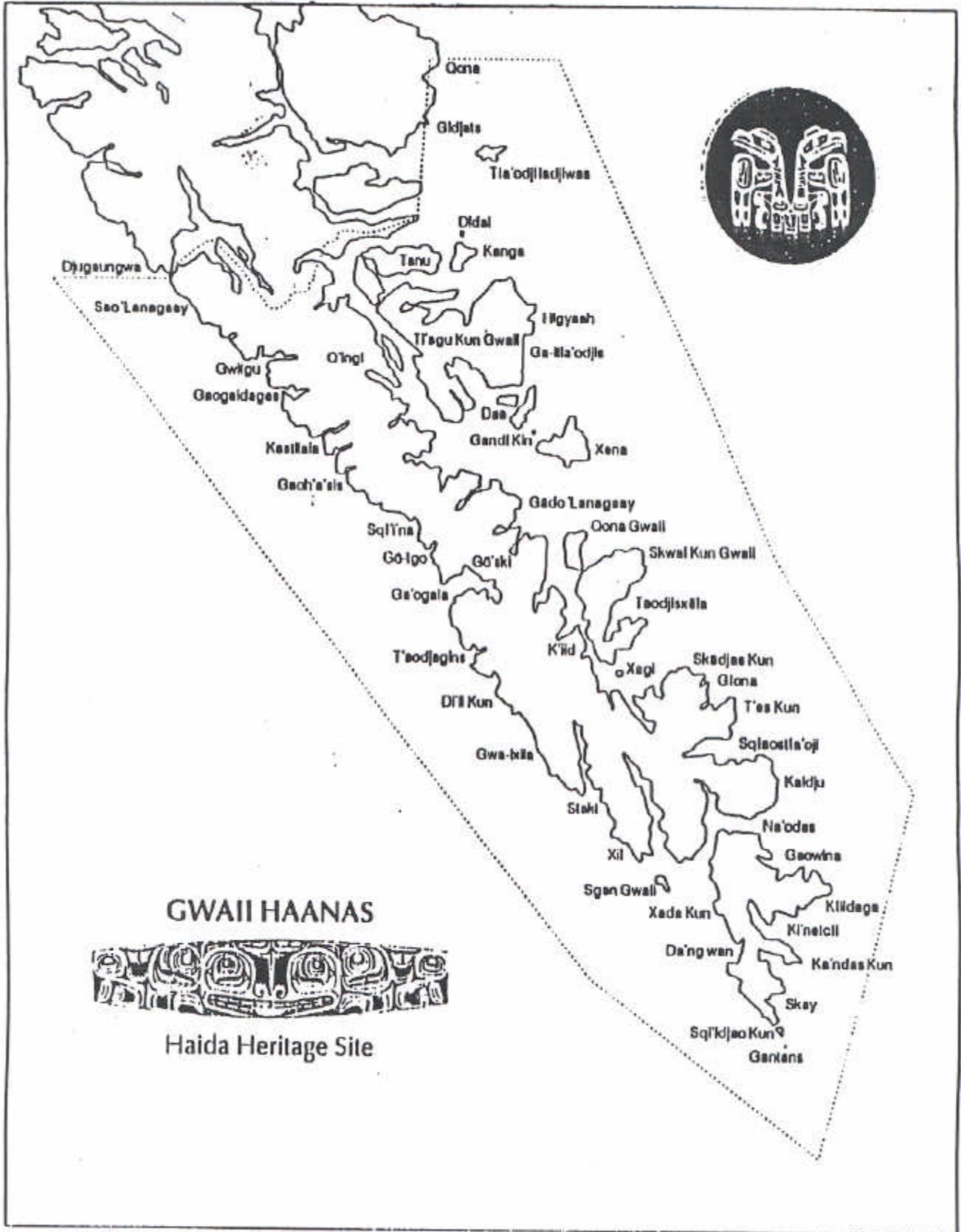
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Witnesses

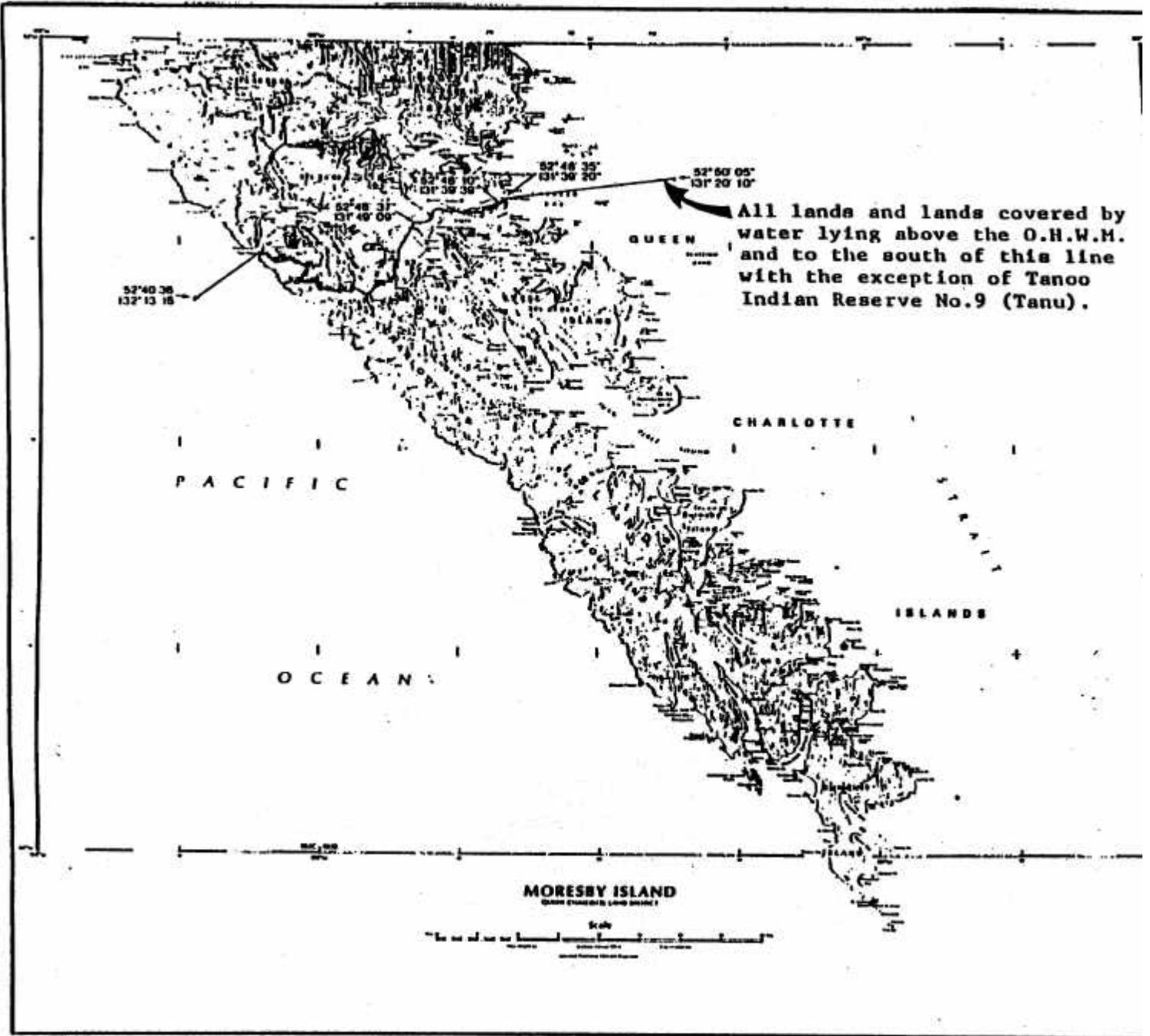
  
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 Chief Skidegate  
  
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 Chief Spawntlan  
  
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 Chief Alu-Hil  
  
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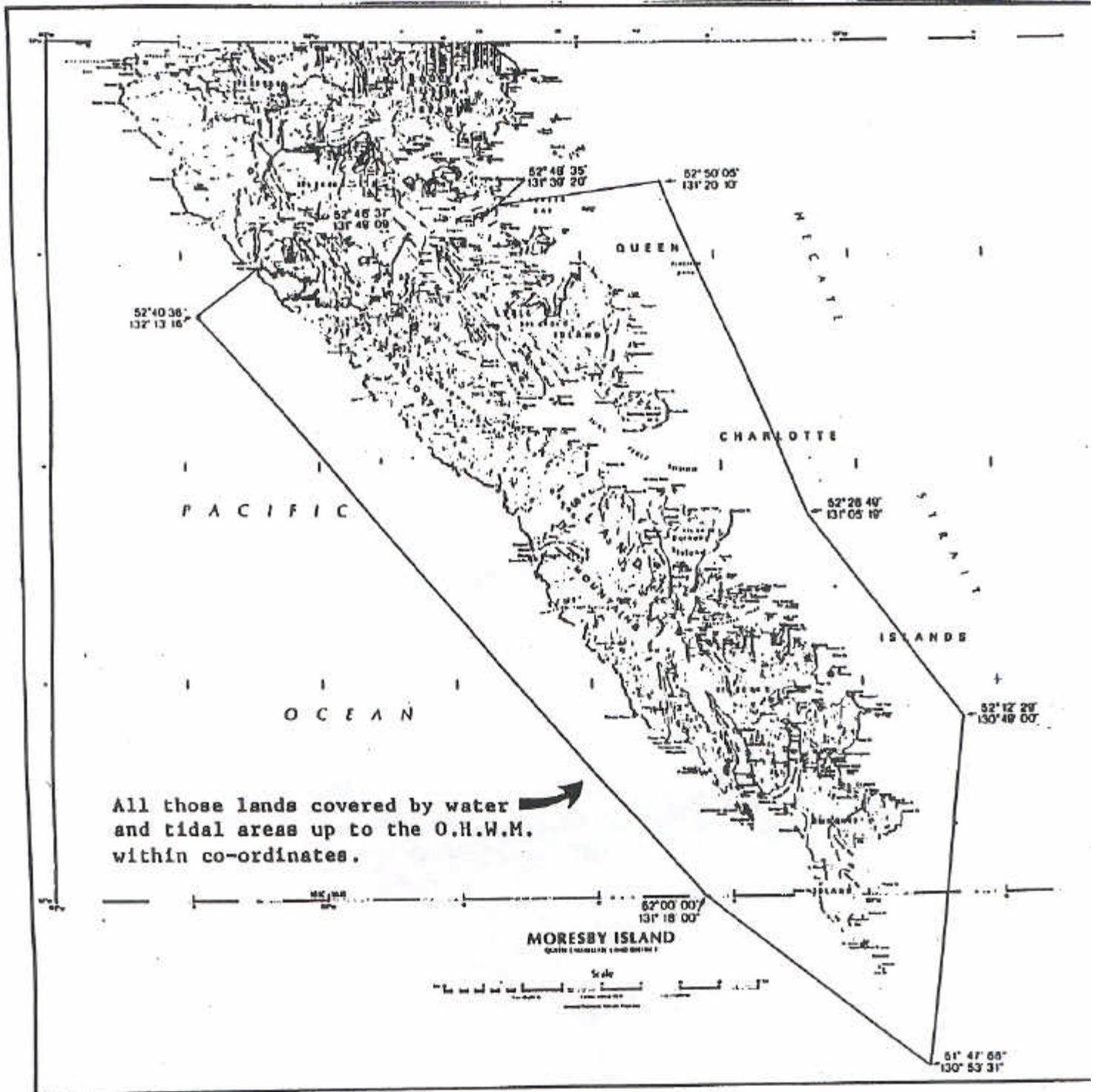
  
 Stan Morgan  
  
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 Bill Reid  
  
  
  

PROPOSED NATIONAL PARK RESERVE LAND



ARCHIPELAGO MARINE AREA



## **APPENDIX 4**

### 1.0 FUNDING

1.1 Subject to the approval of the Treasury Board, the Minister of the Environment will enter into a contribution agreement with an authorized representative of the Council of the Haida Nation, the amount of which will be negotiated to be sufficient to pay all reasonable costs pertaining to the participation of the Council of the Haida Nation in the AMB, including two members as described in Section 4.4 of this Agreement; and the nominal period of which will be up to two (2) years with terms of renewal thereafter to be negotiated as required.

1.2 The Minister of the Environment and an authorized representative of the Council of the Haida Nation may also enter into additional and separate contracts respecting provision of certain services and facilities pertaining to the operation and management of the Archipelago.

### 2.0 SELECTION OF CANADIAN PARKS SERVICE EMPLOYEES

2.1 It is the parties' objective that Haida individuals be encouraged and given opportunities for employment with the Canadian Parks Service in the Archipelago. To this end, the Government of Canada agrees, pursuant to applicable legislation and the availability of positions, to provide training to assist Haida individuals to qualify for employment opportunities.

2.2 With respect to the selection of employees for positions with the Canadian Parks Service in the Archipelago, pursuant to the applicable legislation of Canada, selection boards comprising equal numbers of representatives of the parties will be established to consider the required qualifications for the positions, assess the qualifications of the candidates and make recommendations to the designated officer of the Government of Canada.

2.3 The Government of Canada agrees that statements of qualifications for the selection of employees for positions with the Canadian Parks service in the Archipelago will recognize the importance of an ability to work effectively in support of the objectives of this Agreement and, where appropriate, will require knowledge and understanding of Haida heritage and culture.