

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

Date: 19 Nov 14
CLIFF # 35644

File: 280-20

I Prepared for the **DECISION** of Honourable John Rustad, Minister

II ISSUE:

Amending the Nisga'a Final Agreement for the purposes of natural gas pipeline construction

III BACKGROUND:

CN/ED____
ADM____
DM____

The Nisga'a Final Agreement (Nisga'a Treaty) came into effect on May 11, 2000. Under the Nisga'a Treaty, BC and the Nisga'a Nation jointly manage Anhluut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a (Nisga'a Memorial Lava Bed Park). The park boundary description is set out in Appendix G-1 of the Nisga'a Treaty and as a schedule to the *Protected Areas of British Columbia Act (Act)*. The Nisga'a Treaty has paramountcy over provincial law.

In August 2014, Prince Rupert Gas Transmission Ltd. (PRGT) submitted a Stage 2 boundary modification application to the Ministry of Environment (MOE) to modify the boundary of the Nisga'a Memorial Lava Bed Park in support of its proposed Prince Rupert Gas Transmission Pipeline Project (Pipeline). Modifying the park boundary will require both an amendment to the *Act* as well as an amendment to the Nisga'a Treaty. Amending the Nisga'a Treaty will require an agreement (Amending Agreement No. 3) between BC and the Nisga'a Nation as well as the consent of the Legislature. The Legislature consents to amending the Nisga'a Treaty by resolution.

IV DISCUSSION:

To enable the construction of the proposed Pipeline, the Minister of Environment will introduce an amendment to the *Act* that will remove approximately 63.5 hectares of land from the Nisga'a Memorial Lava Bed Park during the Fall 2014 session of the Legislature. The *Act*, however, will not be given effect until after the Nisga'a Treaty has been amended. Additionally, BC and the Nisga'a Nation have concluded negotiations on Amending Agreement No.3 based on the new description of the Nisga'a Memorial Lava Bed Park boundary set out in the amendment to the *Act*. Consent of the Legislature to amend the Nisga'a Treaty will be sought during the Spring 2015 session.

Waiting for the Spring 2015 session to seek consent of the Legislature to amend the Nisga'a Treaty will allow for the Ministers of Environment and of Natural Gas Development to make a decision on whether or not to issue an Environmental Assessment Certificate to PRGT. Signing Amending Agreement No.3 in advance of

the ministers' decision will provide PRGT with some certainty leading up to their Final Investment Decision deadline.

BC will bring the *Act* into force only after the resolution of the Legislature so as to provide sufficient time to complete all the necessary regulatory processes to approve the Pipeline in advance of construction and so as to avoid a breach of the Nisga'a Treaty. Because the Nisga'a Treaty has paramountcy over provincial legislation, if the *Act* were brought into force in advance of the resolution of the Legislature there would be a conflict in law where the description of the Nisga'a Memorial Lava Bed Park as currently set out in Appendix G-1 would prevail over the amended description in the schedule to the *Act*. Should BC authorize any construction of the Pipeline in an area still defined by the Nisga'a Treaty, BC would be in breach of the treaty. In other words, the *Act* will only come into force if the Pipeline has received regulatory approval and the Legislature has consented to amending the Nisga'a Treaty.

V OPTIONS:

OPTION 1: Sign Amending Agreement No. 3.

s.13; s.16

OPTION 2: Do not sign Amending Agreement No. 3.

s.13; s.16

VI RECOMMENDATION:

Option 1 is recommended.

Honourable John Rustad, Minister
Ministry of Aboriginal Relations and Reconciliation

Date

Attachment: 1 – 35644 Attachment 1 Nisga'a Final Agreement Amending Agreement (No 3)

**NISGA'A FINAL AGREEMENT
AMENDING AGREEMENT
(No. 3)**

**NISGA'A FINAL AGREEMENT
AMENDING AGREEMENT
(No. 3)**

THIS AMENDING AGREEMENT is dated for reference October 29, 2014.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as
represented by the Minister of Aboriginal Relations and Reconciliation**

("British Columbia")

AND

**THE NISGA'A NATION, as represented by the Nisga'a Lisims Government
Executive**

("Nisga'a Nation").

WHEREAS:

- A.** On May 11, 2000 the Nisga'a Final Agreement came into effect.
- B.** The Nisga'a Final Agreement provides for its amendment and specifies requirements for amendment of various of its provisions.
- C.** The parties to the Nisga'a Final Agreement previously agreed to make certain amendments to the Nisga'a Final Agreement so as to alter the boundaries of *Anhluut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a*, also known as the Nisga'a Memorial Lava Bed Park (the "Park"), by removing certain lands from the Park and specifying the requirements for making alterations to the boundaries of the Park in paragraph 104 of Chapter 3 – Lands.
- D.** The Parties have determined that under paragraph 104 of Chapter 3 – Lands (as amended), only the consents of the Nisga'a Nation and British Columbia are required to

alter the boundaries of the Park, and that the processes set out in paragraphs 38 and 40 of Chapter 2 – General Provisions apply to the amendments proposed in this Amending Agreement.

- E. The Parties now propose additional amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement to further alter the boundaries of the Park by removing certain lands from the Park.
- F. The alterations to the boundaries of the Park set out in Part II of this Amending Agreement will also be included in amendments proposed to Schedule "D" to the *Protected Areas of British Columbia Act*, S.B.C. 2000, c. 17 (the "Protected Areas Amendment").
- G. The Parties acknowledge that the amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement should precede the Protected Areas Amendment.

NOW THEREFORE the Parties agree that:

- a) the proposed amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement be recommended
 - i. by the Nisga'a Lisims Government Executive to Wilp Si'ayuukhl Nisga'a, and
 - ii. by the Minister of Aboriginal Relations and Reconciliation to the Legislature of British Columbia; and
- b) British Columbia will not bring the Protected Areas Amendment into force until the proposed amendments set out in Part II of this Amending Agreement take effect in accordance Part III of this Amending Agreement.

PART I – DEFINITIONS

- 1. In this Amending Agreement:
 - a) "Nisga'a Final Agreement" means the Nisga'a Final Agreement among the Nisga'a Nation, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, as it took effect on May 11, 2000, as amended;
 - b) "Appendices" means the part of the Nisga'a Final Agreement containing the Introduction and Appendices A - M, and includes the table of contents to that part;

- c) "Parties" means the parties to this Amending Agreement and "Party" means any one of them;
 - d) a reference to a Chapter by number or name is a reference to the chapter of that number or name in the part of the Nisga'a Final Agreement containing the Preamble and Chapters 1 - 22; and
 - e) a reference to an Appendix by letter or number is a reference to the Appendix of that letter or number in the Appendices.
2. Words and expressions appearing in this Amending Agreement that are not defined in this Amending Agreement but are defined in the Nisga'a Final Agreement have the meanings ascribed to them in the Nisga'a Final Agreement.

PART II – AMENDMENTS REQUIRING CONSENT

3. Appendix G-1 is deleted, and the document entitled "Appendix G-1" and the map following that document attached to this Amending Agreement are substituted.

PART III – PROCEDURES

4. The proposed amendments set out in Part II of this Amending Agreement will take effect in accordance with paragraph 41 of Chapter 2 — General Provisions, on the date that the last Party required to consent to the amendments gives its consent.
5. This Amending Agreement may be signed in one or more counterparts. A signed counterpart may be delivered by one Party to another Party by facsimile transmission and a facsimile so transmitted will constitute an original document. Signed counterparts held by a Party, taken together, will constitute one and the same instrument.

FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by the Minister of Aboriginal Relations and Reconciliation, signed this 27th day of November, 2014.



The Honourable John Rustad, Minister of
Aboriginal Relations and Reconciliation

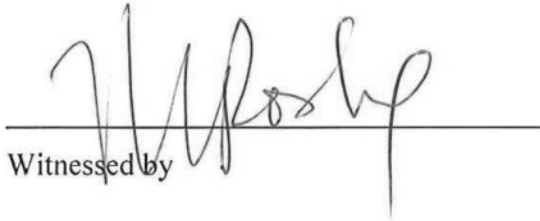


Witnessed by

FOR THE NISGA'A NATION, as represented by the Nisga'a Lisims Government Executive, signed this 27th day of November, 2014.



H. Mitchell Stevens, President



Witnessed by

Schedule

APPENDIX G PARKS AND ECOLOGICAL RESERVE

Appendix G-1 Map and description of *Anhluut 'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a*, the Nisga'a Memorial Lava Bed Park

INSERT MAP AND DESCRIPTION

ANHLUUT'UKWSIM LAXMIHL ANGWINGA'ASANSKWHL NISGA'A

All those parcels or tracts of Crown land, together with all that foreshore or land covered by water, situated within the Province of British Columbia and contained within the following described boundaries, the UTM Coordinates herein being in UTM Zone 9 and referred to the NAD83(CSRS) Datum:

Commencing at post #54 as shown on Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, being the southeast corner of District Lot 1093, Cassiar District;
thence following the survey boundary of Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, to post #53 as shown on Plan NR72 Lisims Land Registry, Plan 11TU1997 Crown Land Registry;
thence following the survey boundaries of Plan NR72 Lisims Land Registry, Plan 11TU1997 Crown Land Registry, through post #52WT to corner #52 on the left natural boundary of Nass River;
thence northeasterly along the left natural boundary of Nass River to the southerly boundary of District Lot 1094, Cassiar District;
thence easterly and northerly along the southerly and easterly boundaries of District Lot 1094 to the southerly boundary of District Lot 7283, Cassiar District;
thence easterly and northerly along the southerly and easterly boundaries of District Lot 7283 to the left natural boundary of the channel of Nass River lying to the south and east of District Lot 7282, Cassiar District;
thence northeasterly along the left natural boundary of the channel of Nass River lying to the south and east of District Lot 7282, and continuing along the left natural boundary of Nass River to the southerly boundary of District Lot 5287, Cassiar District;
thence easterly and northerly along the southerly and easterly boundaries of District Lot 5287 to the left natural boundary of Nass River;
thence northeasterly along the left natural boundary of Nass River to the left natural boundary of Ksi Sii Aks;
thence easterly along the left natural boundary of Ksi Sii Aks to the westerly rectilinear boundary of District Lot 4827, Cassiar District;
thence easterly along the northerly boundary of District Lot 4827 to corner #51 on the left natural boundary of Ksi Sii Aks and being on a line drawn parallel to and 460 metres perpendicularly distant northerly from the southerly boundary of the Northwest $\frac{1}{4}$ of District Lot 4011;
thence easterly along the line drawn parallel to and 460 metres perpendicularly distant northerly from the southerly boundary of the Northwest $\frac{1}{4}$ of District Lot 4011 to corner #50 on the right natural boundary of Ksi Sii Aks;
thence southeasterly along the right natural boundary of Ksi Sii Aks to the southerly boundary of Block I of District Lot 4012, Cassiar District;
thence easterly along the southerly boundary of Block I of District Lot 4012 to a line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks;
thence southeasterly along the line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks to the easterly boundary of District Lot 4012;
thence southerly along the easterly boundary of District Lot 4012 to the right natural boundary of Ksi Sii Aks;
thence southeasterly along the right natural boundary of Ksi Sii Aks to the southerly boundary of District Lot 2627, Cassiar District;
thence easterly along the southerly boundary of District Lot 2627 to a line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks;
thence southeasterly along the line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks to the southerly prolongation of the easterly boundary of District Lot 4014, Cassiar District;
thence northerly along the southerly prolongation of the easterly boundary of District Lot 4014, and continuing northerly along the easterly boundary of District Lot 4014 to post #49 as shown on Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry;
thence following the survey boundaries of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #48A;
thence continuing along the survey boundary of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #48;
thence southeasterly in a straight line to UTM Coordinate N 6112925m E 499804m;
thence southeasterly in a straight line to UTM Coordinate N 6112589m E 500022m;
thence southeasterly in a straight line to UTM Coordinate N 6112150m E 500040m;
thence southeasterly in a straight line to UTM Coordinate N 6111090m E 500820m;
thence southeasterly in a straight line to UTM Coordinate N 6110730m E 501215m;
thence southeasterly in a straight line to UTM Coordinate N 6110470m E 501400m;
thence southeasterly in a straight line to UTM Coordinate N 6109910m E 501500m;
thence southwesterly in a straight line to UTM Coordinate N 6109430m E 501490m;
thence southeasterly in a straight line to UTM Coordinate N 6109080m E 501745m;

thence southeasterly in a straight line to UTM Coordinate N 6108410m E 502030m;
 thence southeasterly in a straight line to UTM Coordinate N 6105640m E 502240m;
 thence northeasterly in a straight line to UTM Coordinate N 6106630m E 504175m;
 thence northeasterly in a straight line to UTM Coordinate N 6107335m E 505113m;
 thence northeasterly in a straight line to UTM Coordinate N 6110426m E 505181m;
 thence northwesterly in a straight line to UTM Coordinate N 6111417m E 504577m;
 thence northeasterly in a straight line to UTM Coordinate N 6112611m E 505055m;
 thence northwesterly in a straight line to UTM Coordinate N 6113901m E 504110m;
 thence northwesterly in a straight line to UTM Coordinate N 6114207m E 503173m;
 thence northeasterly in a straight line to post #47 as shown on Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry;
 thence following the survey boundaries of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #46;
 thence continuing along the survey boundaries of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #45;
 thence continuing along the survey boundary of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #44A on the summit of Mount Priestley, being on the easterly boundary of the watershed of Ksi Sgasginist;
 thence in a general southerly direction along the easterly boundary of the watershed of Ksi Sgasginist to the northerly boundary of the watershed of Crater Creek;
 thence in a general southerly direction along the boundary of the watershed of Crater Creek to UTM Coordinate N 6102930m +/-, E 507313m;
 thence northerly in a straight line to the middle thread of an unnamed creek at UTM Coordinate N 6103385m +/-, E 507313m;
 thence in a general northwesterly direction along the middle thread of the unnamed creek to UTM Coordinate N 6105600m +/-, E 505299m;
 thence southwesterly in a straight line to the intersection of the middle thread of Jay Creek with the centreline of Nisga'a Highway No. 113;
 thence northwesterly in a straight line to a point on a line drawn parallel to and 10 metres perpendicularly distance westerly from the centreline of Nisga'a Highway No. 113 at UTM Coordinate N 6104605m, E 501840m +/-;
 thence southerly along the line drawn parallel to and 10 metres perpendicularly distant westerly from the centreline of Nisga'a Highway No. 113 to the northerly boundary of Plan 6TU1870 Crown Land Registry;
 thence westerly and southerly along the northerly and westerly survey boundaries of Plan 6TU1870 Crown Land Registry, to UTM Coordinate N 6094791m, E 499777m +/-;
 thence westerly in a straight line to the left natural boundary of Ksi Sii Aks at UTM Coordinate N 6094791m, E 499582m +/-;
 thence northwesterly in a straight line to a line drawn parallel to and 100 metres perpendicularly distant westerly from the westerly natural boundary of the west arm of Lava Lake at UTM Coordinate N 6095700m, E 498566m +/-;
 thence in a general northerly direction along a line drawn parallel to and 100 metres perpendicularly distant westerly from the westerly natural boundary of Lava Lake to the middle thread of Aquila Creek;
 thence westerly along the middle thread of Aquila Creek to UTM Coordinate N 6102897m +/-, E 500175m;
 thence northeasterly in a straight line to UTM Coordinate N 6104060m E 500390m;
 thence northwesterly in a straight line to UTM Coordinate N 6105128m E 500328m;
 thence northeasterly in a straight line to UTM Coordinate N 6105650m E 501440m;
 thence northwesterly in a straight line to UTM Coordinate N 6106440m E 501215m;
 thence northerly in a straight line to UTM Coordinate N 6107140m E 501215m;
 thence northwesterly in a straight line to UTM Coordinate N 6107505m E 501015m;
 thence northeasterly in a straight line to UTM Coordinate N 6108130m E 501065m;
 thence northwesterly in a straight line to UTM Coordinate N 6108600m E 500865m;
 thence northwesterly in a straight line to UTM Coordinate N 6109125m E 500510m;
 thence northwesterly in a straight line to UTM Coordinate N 6109340m E 500475m;
 thence northerly in a straight line to UTM Coordinate N 6110070m E 500475m;
 thence northwesterly in a straight line to UTM Coordinate N 6110420m E 500040m;
 thence northwesterly in a straight line to UTM Coordinate N 6111020m E 499640m;
 thence northwesterly in a straight line to UTM Coordinate N 6111235m E 499430m;
 thence northwesterly in a straight line to UTM Coordinate N 6111885m E 499050m;
 thence northwesterly in a straight line to UTM Coordinate N 6112110m E 499000m;
 thence northeasterly in a straight line to UTM Coordinate N 6112295m E 499030m;
 thence northwesterly in a straight line to UTM Coordinate N 6112600m E 498860m;
 thence northwesterly in a straight line to corner #64 as shown on Plan NR52 Lisims Land Registry, Plan 13TU1896 Crown Land Registry;

thence following the survey boundaries of Plan NR52 Lisims Land Registry, Plan 13TU1896 Crown Land Registry, through post #64 Wt, corner 63b, and corner 63a to post #63;

thence following the survey boundaries of Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, through post #62, post #61, corner 60a, post #60, corner 59a, post #59, corner 58a, and post #58 Wt to corner #58 on the left natural boundary of Ksi Ts'oohl Ts'ap;

thence westerly along the left natural boundary of Ksi Ts'oohl Ts'ap to corner #57 as shown on Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry;

thence following the survey boundaries of Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, through post #57 Wt, post 56a, post #56 and post #55 to post #54, being the point of commencement;

except:

firstly, the branch of Nisga'a Highway No. 113 shown as road on Plan 11TU1711 Crown Land Registry, and those lands lying between two lines drawn parallel to and 12.5 metres perpendicularly distant from and on opposite sides of the centre lines of all other branches of Nisga'a Highway No. 113 lying northerly of the middle line of Jay Creek;

secondly, all lands related to Nisga'a Highway No. 113 on which a provincial public undertaking, as defined in the *Transportation Act*, is located;

thirdly, all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, contained within the following described boundaries and containing 0.858 hectares more or less: a 30 metre wide corridor centred on a line commencing 12.5 metres perpendicularly distant northeasterly from the centre line of Nisga'a Highway No. 113 at UTM Coordinate N 6115786m; thence to UTM Coordinate North 6115955m E 494491m; thence to UTM Coordinate N 6115971m E 494963m; thence to UTM Coordinate N 6115971m E 494999m; thence along a grid bearing of 118° 13' 00" to the boundary of Nisga'a Lands, and the said line produced;

fourthly, all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, contained within the following described boundaries and containing 10.5 hectares more or less: commencing at the intersection of the northerly boundary of the park, the limits of which are defined by UTM Coordinates N 6105640m E 502240m and N 6106630m E 504175m, and a line having a grid bearing of 159° 46' 28" through UTM Coordinate N 6106080.8m E 503099.3m; thence northeasterly along the said northerly boundary of the park 40.28 metres; thence on a grid bearing of 159° 46' 28" a distance of 169.1 metres; thence on a grid bearing of 69° 46' 28" a distance of 12.0 metres; thence on a grid bearing of 159° 46' 28" a distance of 897 metres more or less to the intersection with a portion of the southerly boundary of the park; thence southwesterly along the portion of the said southerly boundary to a line drawn parallel to and perpendicularly distant 104 metres from the last described line bearing 159° 46' 28"; thence on a grid bearing of 339° 46' 28" a distance of 889 metres more or less to a point lying on a grid bearing of 249° 46' 28" from the southerly limit of the 169.1 metre boundary described above; thence on a grid bearing of 69° 46' 28" a distance of 22.0 metres; thence on a grid bearing of 339° 46' 28" a distance of 161 metres more or less to the said northerly boundary of the park; thence northeasterly and along the said northerly boundary of the park a distance of 30.2 metres more or less to the point of commencement;

fifthly, all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, contained within the described boundaries as shown on Plan 14TU2010 Crown Land Registry; and

sixthly, that portion of unsurveyed Crown land shown as road (now known as Anlaw Road) on Plan 11TU1711 Crown Land Registry, lying southeasterly of the Nass River.

The whole park containing approximately 17 717 hectares.

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

Date: 19 Nov 14
CLIFF # 35644

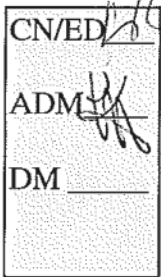
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I Prepared for the **DECISION** of Honourable John Rustad, Minister

II **ISSUE:**

Amending the Nisga'a Final Agreement for the purposes of natural gas pipeline construction

III **BACKGROUND:**



The Nisga'a Final Agreement (Nisga'a Treaty) came into effect on May 11, 2000. Under the Nisga'a Treaty, BC and the Nisga'a Nation jointly manage Anhlut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a (Nisga'a Memorial Lava Bed Park). The park boundary description is set out in Appendix G-1 of the Nisga'a Treaty and as a schedule to the *Protected Areas of British Columbia Act (Act)*. The Nisga'a Treaty has paramouncy over provincial law.

In August 2014, Prince Rupert Gas Transmission Ltd. (PRGT) submitted a Stage 2 boundary modification application to the Ministry of Environment (MOE) to modify the boundary of the Nisga'a Memorial Lava Bed Park in support of its proposed Prince Rupert Gas Transmission Pipeline Project (Pipeline). Modifying the park boundary will require both an amendment to the *Act* as well as an amendment to the Nisga'a Treaty. Amending the Nisga'a Treaty will require an agreement (Amending Agreement No. 3) between BC and the Nisga'a Nation as well as the consent of the Legislature. The Legislature consents to amending the Nisga'a Treaty by resolution.

IV **DISCUSSION:**

To enable the construction of the proposed Pipeline, the Minister of Environment will introduce an amendment to the *Act* that will remove approximately 63.5 hectares of land from the Nisga'a Memorial Lava Bed Park during the Fall 2014 session of the Legislature. The *Act*, however, will not be given effect until after the Nisga'a Treaty has been amended. Additionally, BC and the Nisga'a Nation have concluded negotiations on Amending Agreement No.3 based on the new description of the Nisga'a Memorial Lava Bed Park boundary set out in the amendment to the *Act*. Consent of the Legislature to amend the Nisga'a Treaty will be sought during the Spring 2015 session.

Waiting for the Spring 2015 session to seek consent of the Legislature to amend the Nisga'a Treaty will allow for the Ministers of Environment and of Natural Gas Development to make a decision on whether or not to issue an Environmental Assessment Certificate to PRGT. Signing Amending Agreement No.3 in advance of

the ministers' decision will provide PRGT with some certainty leading up to their Final Investment Decision deadline.

BC will bring the *Act* into force only after the resolution of the Legislature so as to provide sufficient time to complete all the necessary regulatory processes to approve the Pipeline in advance of construction and so as to avoid a breach of the Nisga'a Treaty. Because the Nisga'a Treaty has paramountcy over provincial legislation, if the *Act* were brought into force in advance of the resolution of the Legislature there would be a conflict in law where the description of the Nisga'a Memorial Lava Bed Park as currently set out in Appendix G-1 would prevail over the amended description in the schedule to the *Act*. Should BC authorize any construction of the Pipeline in an area still defined by the Nisga'a Treaty, BC would be in breach of the treaty. In other words, the *Act* will only come into force if the Pipeline has received regulatory approval and the Legislature has consented to amending the Nisga'a Treaty.

V OPTIONS:

OPTION 1: Sign Amending Agreement No. 3.

s.13; s.16

OPTION 2: Do not sign Amending Agreement No. 3.

s.13; s.16

VI RECOMMENDATION:

Option 1 is recommended.

Honourable John Rustad, Minister
Ministry of Aboriginal Relations and Reconciliation

Date

Attachment: 1 – 35644 Attachment 1 Nisga'a Final Agreement Amending Agreement (No 3)

**NISGA'A FINAL AGREEMENT
AMENDING AGREEMENT
(No. 3)**

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AMENDING AGREEMENT
(No. 3)**

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("British Columbia")

AND

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WHEREAS:

- A.** On May 11, 2000 the Nisga'a Final Agreement came into effect.
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- C.** The parties to the Nisga'a Final Agreement previously agreed to make certain amendments to the Nisga'a Final Agreement so as to alter the boundaries of *Anhluut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a*, also known as the Nisga'a Memorial Lava Bed Park (the "Park"), by removing certain lands from the Park and specifying the requirements for making alterations to the boundaries of the Park in paragraph 104 of Chapter 3 – Lands.
- D.** The Parties have determined that under paragraph 104 of Chapter 3 – Lands (as amended), only the consents of the Nisga'a Nation and British Columbia are required to

alter the boundaries of the Park, and that the processes set out in paragraphs 38 and 40 of Chapter 2 – General Provisions apply to the amendments proposed in this Amending Agreement.

- E. The Parties now propose additional amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement to further alter the boundaries of the Park by removing certain lands from the Park.
- F. The alterations to the boundaries of the Park set out in Part II of this Amending Agreement will also be included in amendments proposed to Schedule "D" to the *Protected Areas of British Columbia Act*, S.B.C. 2000, c. 17 (the "Protected Areas Amendment").
- G. The Parties acknowledge that the amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement should precede the Protected Areas Amendment.

NOW THEREFORE the Parties agree that:

- a) the proposed amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement be recommended
 - i. by the Nisga'a Lisims Government Executive to Wilp Si'ayuukhl Nisga'a, and
 - ii. by the Minister of Aboriginal Relations and Reconciliation to the Legislature of British Columbia; and
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 - a) "Nisga'a Final Agreement" means the Nisga'a Final Agreement among the Nisga'a Nation, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, as it took effect on May 11, 2000, as amended;
 - b) "Appendices" means the part of the Nisga'a Final Agreement containing the Introduction and Appendices A - M, and includes the table of contents to that part;

- c) "Parties" means the parties to this Amending Agreement and "Party" means any one of them;
 - d) a reference to a Chapter by number or name is a reference to the chapter of that number or name in the part of the Nisga'a Final Agreement containing the Preamble and Chapters 1 - 22; and
 - e) a reference to an Appendix by letter or number is a reference to the Appendix of that letter or number in the Appendices.
2. Words and expressions appearing in this Amending Agreement that are not defined in this Amending Agreement but are defined in the Nisga'a Final Agreement have the meanings ascribed to them in the Nisga'a Final Agreement.

PART II – AMENDMENTS REQUIRING CONSENT

3. Appendix G-1 is deleted, and the document entitled "Appendix G-1" and the map following that document attached to this Amending Agreement are substituted.

PART III – PROCEDURES

4. The proposed amendments set out in Part II of this Amending Agreement will take effect in accordance with paragraph 41 of Chapter 2 — General Provisions, on the date that the last Party required to consent to the amendments gives its consent.
5. This Amending Agreement may be signed in one or more counterparts. A signed counterpart may be delivered by one Party to another Party by facsimile transmission and a facsimile so transmitted will constitute an original document. Signed counterparts held by a Party, taken together, will constitute one and the same instrument.

FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by the Minister of Aboriginal Relations and Reconciliation, signed this 27th day of November, 2014.



The Honourable John Rustad, Minister of
Aboriginal Relations and Reconciliation

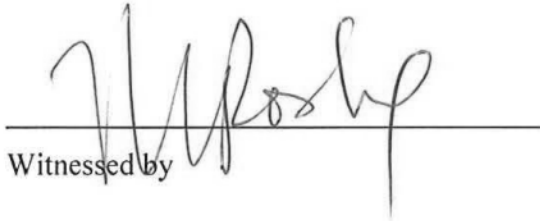


Witnessed by

FOR THE NISGA'A NATION, as represented by the Nisga'a Lisims Government Executive, signed this 27th day of November, 2014.



H. Mitchell Stevens, President



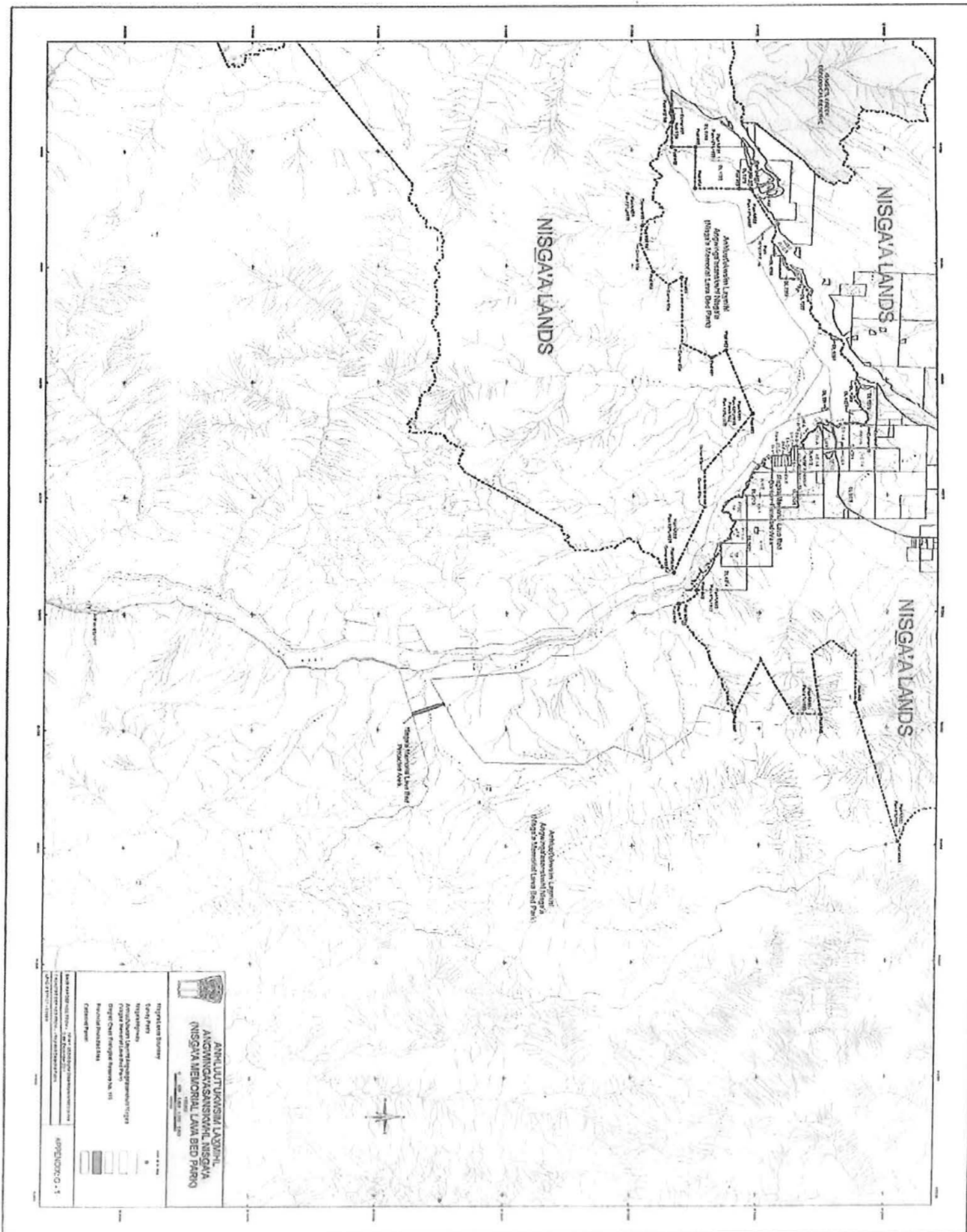
Witnessed by

Schedule

APPENDIX G PARKS AND ECOLOGICAL RESERVE

Appendix G-1 Map and description of *Anhluut 'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a*, the Nisga'a Memorial Lava Bed Park

INSERT MAP AND DESCRIPTION



ANHLUUT'UKWSIM LAXMIHL ANGWINGA'ASANSKWHL NISGA'A

All those parcels or tracts of Crown land, together with all that foreshore or land covered by water, situated within the Province of British Columbia and contained within the following described boundaries, the UTM Coordinates herein being in UTM Zone 9 and referred to the NAD83(CSRS) Datum:

Commencing at post #54 as shown on Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, being the southeast corner of District Lot 1093, Cassiar District;
thence following the survey boundary of Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, to post #53 as shown on Plan NR72 Lisims Land Registry, Plan 11TU1997 Crown Land Registry;
thence following the survey boundaries of Plan NR72 Lisims Land Registry, Plan 11TU1997 Crown Land Registry, through post #52WT to corner #52 on the left natural boundary of Nass River;
thence northeasterly along the left natural boundary of Nass River to the southerly boundary of District Lot 1094, Cassiar District;
thence easterly and northerly along the southerly and easterly boundaries of District Lot 1094 to the southerly boundary of District Lot 7283, Cassiar District;
thence easterly and northerly along the southerly and easterly boundaries of District Lot 7283 to the left natural boundary of the channel of Nass River lying to the south and east of District Lot 7282, Cassiar District;
thence northeasterly along the left natural boundary of the channel of Nass River lying to the south and east of District Lot 7282, and continuing along the left natural boundary of Nass River to the southerly boundary of District Lot 5287, Cassiar District;
thence easterly and northerly along the southerly and easterly boundaries of District Lot 5287 to the left natural boundary of Nass River;
thence northeasterly along the left natural boundary of Nass River to the left natural boundary of Ksi Sii Aks;
thence easterly along the left natural boundary of Ksi Sii Aks to the westerly rectilinear boundary of District Lot 4827, Cassiar District;
thence easterly along the northerly boundary of District Lot 4827 to corner #51 on the left natural boundary of Ksi Sii Aks and being on a line drawn parallel to and 460 metres perpendicularly distant northerly from the southerly boundary of the Northwest ¼ of District Lot 4011;
thence easterly along the line drawn parallel to and 460 metres perpendicularly distant northerly from the southerly boundary of the Northwest ¼ of District Lot 4011 to corner #50 on the right natural boundary of Ksi Sii Aks;
thence southeasterly along the right natural boundary of Ksi Sii Aks to the southerly boundary of Block I of District Lot 4012, Cassiar District;
thence easterly along the southerly boundary of Block I of District Lot 4012 to a line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks;
thence southeasterly along the line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks to the easterly boundary of District Lot 4012;
thence southerly along the easterly boundary of District Lot 4012 to the right natural boundary of Ksi Sii Aks;
thence southeasterly along the right natural boundary of Ksi Sii Aks to the southerly boundary of District Lot 2627, Cassiar District;
thence easterly along the southerly boundary of District Lot 2627 to a line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks;
thence southeasterly along the line drawn parallel to and 60 metres perpendicularly distant easterly from the right natural boundary of Ksi Sii Aks to the southerly prolongation of the easterly boundary of District Lot 4014, Cassiar District;
thence northerly along the southerly prolongation of the easterly boundary of District Lot 4014, and continuing northerly along the easterly boundary of District Lot 4014 to post #49 as shown on Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry;
thence following the survey boundaries of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #48A;
thence continuing along the survey boundary of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #48;
thence southeasterly in a straight line to UTM Coordinate N 6112925m E 499804m;
thence southeasterly in a straight line to UTM Coordinate N 6112589m E 500022m;
thence southeasterly in a straight line to UTM Coordinate N 6112150m E 500040m;
thence southeasterly in a straight line to UTM Coordinate N 6111090m E 500820m;
thence southeasterly in a straight line to UTM Coordinate N 6110730m E 501215m;
thence southeasterly in a straight line to UTM Coordinate N 6110470m E 501400m;
thence southeasterly in a straight line to UTM Coordinate N 6109910m E 501500m;
thence southwesterly in a straight line to UTM Coordinate N 6109430m E 501490m;
thence southeasterly in a straight line to UTM Coordinate N 6109080m E 501745m;

thence southeasterly in a straight line to UTM Coordinate N 6108410m E 502030m;
 thence southeasterly in a straight line to UTM Coordinate N 6105640m E 502240m;
 thence northeasterly in a straight line to UTM Coordinate N 6106630m E 504175m;
 thence northeasterly in a straight line to UTM Coordinate N 6107335m E 505113m;
 thence northeasterly in a straight line to UTM Coordinate N 6110426m E 505181m;
 thence northwesterly in a straight line to UTM Coordinate N 6111417m E 504577m;
 thence northeasterly in a straight line to UTM Coordinate N 6112611m E 505055m;
 thence northwesterly in a straight line to UTM Coordinate N 6113901m E 504110m;
 thence northwesterly in a straight line to UTM Coordinate N 6114207m E 503173m;
 thence northeasterly in a straight line to post #47 as shown on Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry;
 thence following the survey boundaries of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #46;
 thence continuing along the survey boundaries of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #45;
 thence continuing along the survey boundary of Plan NR50 Lisims Land Registry, Plan 4TU1893 Crown Land Registry, to post #44A on the summit of Mount Priestley, being on the easterly boundary of the watershed of Ksi Sgasginist;
 thence in a general southerly direction along the easterly boundary of the watershed of Ksi Sgasginist to the northerly boundary of the watershed of Crater Creek;
 thence in a general southerly direction along the boundary of the watershed of Crater Creek to UTM Coordinate N 6102930m +/-, E 507313m;
 thence northerly in a straight line to the middle thread of an unnamed creek at UTM Coordinate N 6103385m +/-, E 507313m;
 thence in a general northwesterly direction along the middle thread of the unnamed creek to UTM Coordinate N 6105600m +/-, E 505299m;
 thence southwesterly in a straight line to the intersection of the middle thread of Jay Creek with the centreline of Nisga'a Highway No. 113;
 thence northwesterly in a straight line to a point on a line drawn parallel to and 10 metres perpendicularly distance westerly from the centreline of Nisga'a Highway No. 113 at UTM Coordinate N 6104605m, E 501840m +/-;
 thence southerly along the line drawn parallel to and 10 metres perpendicularly distant westerly from the centreline of Nisga'a Highway No. 113 to the northerly boundary of Plan 6TU1870 Crown Land Registry;
 thence westerly and southerly along the northerly and westerly survey boundaries of Plan 6TU1870 Crown Land Registry, to UTM Coordinate N 6094791m, E 499777m +/-;
 thence westerly in a straight line to the left natural boundary of Ksi Sii Aks at UTM Coordinate N 6094791m, E 499582m +/-;
 thence northwesterly in a straight line to a line drawn parallel to and 100 metres perpendicularly distant westerly from the westerly natural boundary of the west arm of Lava Lake at UTM Coordinate N 6095700m, E 498566m +/-;
 thence in a general northerly direction along a line drawn parallel to and 100 metres perpendicularly distant westerly from the westerly natural boundary of Lava Lake to the middle thread of Aquila Creek;
 thence westerly along the middle thread of Aquila Creek to UTM Coordinate N 6102897m +/-, E 500175m;
 thence northeasterly in a straight line to UTM Coordinate N 6104060m E 500390m;
 thence northwesterly in a straight line to UTM Coordinate N 6105128m E 500328m;
 thence northeasterly in a straight line to UTM Coordinate N 6105650m E 501440m;
 thence northwesterly in a straight line to UTM Coordinate N 6106440m E 501215m;
 thence northerly in a straight line to UTM Coordinate N 6107140m E 501215m;
 thence northwesterly in a straight line to UTM Coordinate N 6107505m E 501015m;
 thence northeasterly in a straight line to UTM Coordinate N 6108130m E 501065m;
 thence northwesterly in a straight line to UTM Coordinate N 6108600m E 500865m;
 thence northwesterly in a straight line to UTM Coordinate N 6109125m E 500510m;
 thence northwesterly in a straight line to UTM Coordinate N 6109340m E 500475m;
 thence northerly in a straight line to UTM Coordinate N 6110070m E 500475m;
 thence northwesterly in a straight line to UTM Coordinate N 6110420m E 500040m;
 thence northwesterly in a straight line to UTM Coordinate N 6111020m E 499640m;
 thence northwesterly in a straight line to UTM Coordinate N 6111235m E 499430m;
 thence northwesterly in a straight line to UTM Coordinate N 6111885m E 499050m;
 thence northwesterly in a straight line to UTM Coordinate N 6112110m E 499000m;
 thence northeasterly in a straight line to UTM Coordinate N 6112295m E 499030m;
 thence northwesterly in a straight line to UTM Coordinate N 6112600m E 498860m;
 thence northwesterly in a straight line to corner #64 as shown on Plan NR52 Lisims Land Registry, Plan 13TU1896 Crown Land Registry;

thence following the survey boundaries of Plan NR52 Lisims Land Registry, Plan 13TU1896 Crown Land Registry, through post #64 Wt, corner 63b, and corner 63a to post #63;

thence following the survey boundaries of Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, through post #62, post #61, corner 60a, post #60, corner 59a, post #59, corner 58a, and post #58 Wt to corner #58 on the left natural boundary of Ksi Ts'oohl Ts'ap;

thence westerly along the left natural boundary of Ksi Ts'oohl Ts'ap to corner #57 as shown on Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry;

thence following the survey boundaries of Plan NR51 Lisims Land Registry, Plan 12TU1896 Crown Land Registry, through post #57 Wt, post 56a, post #56 and post #55 to post #54, being the point of commencement;

except:

firstly, the branch of Nisga'a Highway No. 113 shown as road on Plan 11TU1711 Crown Land Registry, and those lands lying between two lines drawn parallel to and 12.5 metres perpendicularly distant from and on opposite sides of the centre lines of all other branches of Nisga'a Highway No. 113 lying northerly of the middle line of Jay Creek;

secondly, all lands related to Nisga'a Highway No. 113 on which a provincial public undertaking, as defined in the *Transportation Act*, is located;

thirdly, all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, contained within the following described boundaries and containing 0.858 hectares more or less: a 30 metre wide corridor centred on a line commencing 12.5 metres perpendicularly distant northeasterly from the centre line of Nisga'a Highway No. 113 at UTM Coordinate N 6115786m; thence to UTM Coordinate North 6115955m E 494491m; thence to UTM Coordinate N 6115971m E 494963m; thence to UTM Coordinate N 6115971m E 494999m; thence along a grid bearing of 118° 13' 00" to the boundary of Nisga'a Lands, and the said line produced;

fourthly, all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, contained within the following described boundaries and containing 10.5 hectares more or less: commencing at the intersection of the northerly boundary of the park, the limits of which are defined by UTM Coordinates N 6105640m E 502240m and N 6106630m E 504175m, and a line having a grid bearing of 159° 46' 28" through UTM Coordinate N 6106080.8m E 503099.3m; thence northeasterly along the said northerly boundary of the park 40.28 metres; thence on a grid bearing of 159° 46' 28" a distance of 169.1 metres; thence on a grid bearing of 69° 46' 28" a distance of 12.0 metres; thence on a grid bearing of 159° 46' 28" a distance of 897 metres more or less to the intersection with a portion of the southerly boundary of the park; thence southwesterly along the portion of the said southerly boundary to a line drawn parallel to and perpendicularly distant 104 metres from the last described line bearing 159° 46' 28"; thence on a grid bearing of 339° 46' 28" a distance of 889 metres more or less to a point lying on a grid bearing of 249° 46' 28" from the southerly limit of the 169.1 metre boundary described above; thence on a grid bearing of 69° 46' 28" a distance of 22.0 metres; thence on a grid bearing of 339° 46' 28" a distance of 161 metres more or less to the said northerly boundary of the park; thence northeasterly and along the said northerly boundary of the park a distance of 30.2 metres more or less to the point of commencement;

fifthly, all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, contained within the described boundaries as shown on Plan 14TU2010 Crown Land Registry; and

sixthly, that portion of unsurveyed Crown land shown as road (now known as Anlaw Road) on Plan 11TU1711 Crown Land Registry, lying southeasterly of the Nass River.

The whole park containing approximately 17 717 hectares.

Delete this box after following instructions below
SAVE AS A NEW DOCUMENT ON YOUR BRANCH/DIVISION LAN DRIVE
– DO NOT SAVE OVER THIS DOCUMENT –
LENGTH OF BNS: MAXIMUM 2 PAGES (USE APPENDICES FOR LENGTHY INFO)

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

File: 280-20

Date: Prepared
Ref. No. cliff#

- I Prepared for the **DECISION** of Honourable John Rustad, Minister
- II ISSUE: Nisga'a Final Agreement Amending Agreement No. 3 requires signing
- III BACKGROUND:

Prince Rupert Gas Transmission Ltd. (PRGT) submitted a Stage 2 boundary modification application to the Ministry of Environment (MOE) to modify the boundary of the Anhlut'ukwsim Laxmihl Angwinga'asanskwhl Nisga'a (Nisga'a Memorial Lava Bed Park) in support of its proposed Prince Rupert Gas Transmission Pipeline Project (Pipeline). The Nisga'a Memorial Lava Bed Park is jointly managed by both BC and the Nisga'a Nation and a description of the park boundary is set out in Appendix G-1 of the Nisga'a Final Agreement (Nisga'a Treaty). Modification to the park boundary will require both an amendment to the *Protected Areas of British Columbia Act (Act)* as well as an amendment to the Nisga'a Treaty. The Minister of Environment will introduce an amendment to the *Act* during the fall session of the Legislature that will remove approximately 63.5 hectares of land from the Nisga'a Memorial Lava Bed Park to enable the construction of the proposed Pipeline. BC and the Nisga'a Nation have concluded negotiations on an amending agreement (Amending Agreement No. 3) to the Nisga'a Treaty based on the new description of the park boundary set out in the amendment to the *Act*.

IV DISCUSSION:

In accordance with the provisions set out in the Nisga'a Treaty, BC and the Nisga'a Nation have negotiated and reached agreement on amending the Nisga'a Treaty. Amending Agreement No. 3 sets out the new description for the Nisga'a Memorial Lava Bed Park and corresponding map for Appendix G-1 and the timing for BC to bring the *Act* into force. Under Amending Agreement No. 3 BC agrees to bring the *Act* into force by giving its consent to the amendment of the Nisga'a Treaty by resolution of the Legislature during the Spring session. Waiting for the Spring session amend the Nisga'a Treaty will allow for the Nisga'a Lisims Government (NLG) to give its consent to amend the Nisga'a Treaty and will allow for Ministers of Environment and of Natural Gas Development to make a decision on issuing an Environmental Assessment Certificate for PRGT.

Officers of NLG will be attending the Legislature for the debates on the MOE legislation and Ministry of Aboriginal Relations and Reconciliation (MARR) legislation to amend the *Nisga'a Final Agreement Act* giving effect to the recently signed Real Property Tax Coordination Agreement (RPTCA). With the Officers of NLG in Victoria, Amending Agreement No. 3 could be signed in person demonstrating support for the opportunities presented to both parties by development

CN/ED _____
ADM _____
DM _____

of the liquefied natural gas (LNG) industry.

V OPTIONS:

OPTION 1: Agree to the amendment set out in Amending Agreement No. 3 and sign the agreement.

s.13; s.16

OPTION 2: Do not agree to the amendment set out in Amending Agreement No. 3.

s.13; s.16

VI RECOMMENDATION:

Option 1 is recommended.

Appendix **OR** Attachment: (if applicable) include # of attachments, list name of attachments

Drafter's name, title, phone number, File path