

**NORTH VANCOUVER ISLAND MARINE PLAN
IMPLEMENTATION AGREEMENT**

BETWEEN

THE NANWAKOLAS COUNCIL SOCIETY

(the “Nanwakolas Council”)

AND

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA as represented
as represented by the
Minister of Forests, Lands and Natural Resource Operations

(“FLNRO” or the “Province”)

WHEREAS:

- A. The Nanwakolas Council is the registered society, established by the Nanwakolas First Nations to regionally pursue land and marine resource planning and management and resource-based economic development activities and has been directed and authorized by the Nanwakolas First Nations to enter into this Agreement;
- B. The Nanwakolas First Nations are a collective of First Nations with traditional territories on North Vancouver Island and the Central Coast of British Columbia and who have common language, customs, traditions and shared histories, and have Section 35 Rights within their Traditional Territories and a relationship to the land and marine environment that is important to their culture and the maintenance of their community, governance and economy;
- C. The Province and various Nanwakolas First Nations have entered into previous agreements, including the *Land Use Planning Agreement in Principle (2006)*, the *Clearinghouse Pilot Agreement (2007)*, the *Nanwakolas /British Columbia Framework Agreement (2009)*, and the *Nanwakolas Reconciliation Protocol (2011)*, the implementation of which have been coordinated by the Nanwakolas Council;

- D. The Province and the Nanwakolas Council signed a *Letter of Intent to Collaborate on Coastal and Marine Planning in the Pacific North Coast (2011)* (the "Letter of Intent") with two other coastal First Nations' organizations to develop a marine use plan for the North Vancouver Island and to enter into an agreement for the implementation of the marine use plan for North Vancouver Island;
- E. The Province and the Nanwakolas Council recognize that implementation of the North Vancouver Island Marine Plan may require cooperation with the Federal Government, and commit to seeking to work with them, where appropriate, on initiatives and priorities that may require multi-jurisdictional collaboration;
- F. On April 27, 2015 the Province and Nanwakolas Council signed a jointly developed marine plan for the North Vancouver Island sub-region; and
- G. The Parties and the Nanwakolas First Nations are of the view that implementation of the North Vancouver Island Marine Plan may increase carbon sequestration and reduce carbon emissions in the North Vancouver Island Marine Plan Area as a result of new conservation measures and changes to marine management practices, and that this may result in greenhouse gas reductions that are capable of being recognized as carbon emission offsets.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this Agreement and its Appendices:

"Aboriginal Interests" means:

- (a) asserted aboriginal rights including Aboriginal title; or
- (b) treaty rights or determined aboriginal rights including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

"Agreement" means this North Vancouver Island Marine Plan Implementation Agreement, including the appendices.

"Marine Plan Partnership" (hereinafter referred to as "MaPP") means the partnership between the Province, Nanwakolas Council, the Coastal First Nations-Great Bear Initiative, the Central Coast Indigenous Resource Alliance, and the North Coast-Skeena First Nations Stewardship Society (hereinafter "the MaPP Partners"), engaged in the development and implementation of marine plans for the region known as the North Pacific Coast of Canada, and its four sub-regions of Haida Gwaii, North Coast, Central Coast and North Vancouver Island.

“Nanwakolas First Nations” means the Mamalilikulla-Qwe’Qwa’Sot’Em, Tlowitsis, Da’naxda’xw Awaetlala, Wei Wai Kum, Kwiakah and K’ómoks First Nations.

North Vancouver Island Marine Plan” (hereinafter, the “NVI Marine Plan”) means the marine plan jointly developed between the Province and Nanwakolas Council for the NVI Marine Plan Area that provides recommendations on marine zone designations, management objectives and strategies, implementation priorities, and other matters of interest between the Parties, and signed by the Parties on April 27, 2015.

“NVI Marine Plan Area” means the marine area that is the subject of the NVI Marine Plan as shown in Appendix A.

“Parties” means the Nanwakolas Council and the Province.

“Regional Action Framework” means the document, approved by the MaPP partners, outlining actions to be taken to assist in coordinating regionally important recommendations reflected in the four marine plans produced through MaPP.

“Section 35 Rights” means asserted aboriginal rights of the Nanwakolas First Nations, including aboriginal title, and any determined aboriginal rights or treaty rights, including modern treaty rights set out in a Final Agreement in the British Columbia Treaty Commission process, recognized and affirmed by Section 35(1) of the *Constitution Act (1982)*.

“Traditional Territories” means the asserted traditional territories of the Nanwakolas First Nations as shown on the map attached as Appendix A.

2. PURPOSES OF AGREEMENT

2.1 The purposes of this Agreement are to:

- a) confirm the intention of the Parties to jointly implement the NVI Marine Plan;
- b) describe the roles and responsibilities of the Parties and the government-to-government framework that will be used to collaboratively implement the NVI Marine Plan and address marine issues; and,
- c) identify primary interests, structures and mechanisms for implementation of the NVI Marine Plan.

3. SCOPE

- 3.1 This Agreement consists of sections 1 - 12 and Appendix A.

4. LIMITATIONS

- 4.1 The Parties acknowledge that implementation of the recommendations of the NVI Marine Plan may require the Province to consult with First Nations other than the Nanwakolas First Nations who claim Aboriginal Interests within the NVI Marine Plan Area.
- 4.2 This Agreement does not:
- a) provide Nanwakolas First Nations' agreement with or support for land or resource operations, permits, licenses, authorizations or decisions in the Traditional Territories; or
 - b) displace or fulfill the Province's obligations to consult or accommodate the Nanwakolas First Nations regarding any potential impacts of Provincial land or resource operations, permits, licenses, authorizations or decisions on the Nanwakolas First Nations' Section 35 Rights in the Traditional Territories.

5. RESPONSIBILITIES AND AUTHORITIES

- 5.1 Nanwakolas Council has been mandated on behalf of the Nanwakolas First Nations to coordinate the implementation of the NVI Marine Plan within that portion of the NVI Marine Plan Area that is within the Traditional Territories.
- 5.2 FLNRO will coordinate implementation of this Agreement on behalf of ministries and agencies of the Province.
- 5.3 The Parties will ensure that their respective representatives have the necessary authority to carry out their responsibilities and will work cooperatively to implement this Agreement.
- 5.4 The Parties share the objective of maintaining local government and stakeholder engagement in implementation of the NVI Marine Plan and agree to jointly establish a North Vancouver Island Marine Plan implementation advisory committee for this purpose.

6. NVI MARINE PLAN IMPLEMENTATION PRIMARY INTERESTS

6.1 The Parties agree that their primary interests in the implementation of the NVI Marine Plan are represented by the following categories of recommendations, and agree to seek to implement these categories of recommendations as part of the development of the annual work plans referenced in subparagraph 7.1a)iii). The sequence of primary interest categories below does not imply order of importance:

- a) Recommendations on use of NVI Marine Plan zone tables, management provisions and conditions to guide application and referral processes of the Parties;
- b) Recommendations on improved Nanwakolas First Nations cultural resource inventory, management, monitoring and protection;
- c) Recommendations on strengthening sustainable marine economic development and healthy local communities;
- d) Recommendations on planning, assessment and management of protection management zones and existing provincial marine parks and conservancies;
- e) Recommendations on new and/or improved governance arrangements between the Province and the Nanwakolas First Nations;
- f) Recommendations on compliance monitoring and enforcement, reducing pollution and remediation of sites of high priority; and,
- g) Recommendations on effects of ocean climate change and on associated actions planning.

7 ORGANIZATION

7.1 The Parties will establish the following organizational structures to coordinate and support the Parties in the implementation of the NVI Marine Plan:

- a) **A Marine Plan Implementation Technical Team** (hereinafter, the “**NVI MITT**”) that will:
 - i) consist of technical representatives from the Nanwakolas Council and the Province;

- ii) meet on a monthly basis or as needed;
 - iii) prepare and submit to the Marine Plan Implementation Steering Group a terms of reference for the NVI MITT and Marine Plan Implementation Steering Group, and annual work plans that strive for a balanced representation across the priorities set out in paragraph 6.1, including the timeframe and budget for completion of the tasks;
 - iv) prepare and submit a recommendations to the Marine Plan Implementation Steering Group regarding the establishment of a process for requests from other First Nations, stakeholders and local government for variances to the NVI Marine Plan;
 - v) make all reasonable efforts to achieve consensus in their recommendations and decisions; and,
 - vi) facilitate communication between Provincial agencies and between the MaPP Partners in order to meet the objectives of the Regional Action Framework.
- b) **A Marine Plan Implementation Steering Group** (hereinafter, the “**NVI Steering Group**”) that will:
- i) consist of, a senior representative appointed by each of the Parties;
 - ii) meet quarterly or as needed;
 - iii) make all reasonable efforts to achieve consensus in their recommendations and decisions;
 - iv) provide direction on implementation issues and oversee implementation of this Agreement;
 - v) evaluate the progress and outcomes of this Agreement on an annual basis and may, by mutual agreement, recommend renewal or amendment of this Agreement to the Marine Plan Implementation Executive Committee; and,
 - vi) approve NVI Steering Group and NVI MITT terms of reference and annual work plans for NVI Marine Plan implementation, as well as appoint and oversee the NVI MITT.

- c) **A Marine Plan Implementation Executive Committee** that will:
- i) consist of the signatories to this Agreement, or, on notice to the other Party, other delegated senior representatives of the Parties; and
 - ii) meet on an as-needed basis to address relationship building and resolve problems and disputes when required.

- 7.2 The NVI MITT will prepare and submit to the NVI Steering Group a recommended NVI Steering Group and NVI MITT terms of reference and recommended initial annual work plan within ninety (90) days of signing this Agreement, and the NVI Steering Group will approve, or approve with changes, both documents within thirty (30) of receipt from the NVI MITT.
- 7.3 Where the NVI MITT and the NVI Steering Group cannot achieve consensus on their recommendations or decisions, the matter in question may be referred to dispute resolution pursuant to paragraphs 9.2 to 9.5.

8 RESOURCING

- 8.1 The Parties acknowledge that this Agreement is of mutual benefit, and agree to pursue the financial and human resources necessary to successfully implement this Agreement.
- 8.2 The Parties acknowledge and confirm that implementation of this Agreement, including any annual work plans developed pursuant to this Agreement, is subject to availability of implementation funding.
- 8.3 The Parties agree to pursue the establishment of a trust or similar arrangement that will administer and manage NVI Marine Plan implementation funding provided by third parties.
- 8.4 The Parties agree to further negotiate additional carbon offset sharing to support implementation of this Agreement.

9 DISPUTE RESOLUTION

- 9.1 The Parties recognize that successful implementation of this Agreement, and their building of cooperative working relations, will depend on their ability to recognize, explore and resolve disputes or disagreements.

- 9.2 Any dispute or disagreement relating to the interpretation or implementation of this Agreement, including any disputes that may arise regarding the finalization or implementation of an annual work plan, will be resolved in the following manner:
- a) disputes or disagreements at the NVI MITT level will be documented, with rationale and options, and presented to the NVI Steering Group for attempted resolution; and,
 - b) disputes or disagreements at the NVI Steering Group level will be documented, with rationale and options, and presented to the Marine Plan Implementation Executive Committee for attempted resolution.
- 9.3 In the event a dispute or disagreement cannot be resolved by the Marine Plan Implementation Executive Committee, the Parties may consider alternative dispute resolution measures, including mediation. If alternative dispute resolution measures are pursued, the Parties will be responsible for their own costs and will share all joint costs equally.
- 9.4 If the Executive Committee is unable to resolve the dispute or disagreement either Party may terminate this Agreement pursuant to paragraph 10.2(b).

10 TERM AND TERMINATION

- 10.1 This Agreement takes effect on the date of the last signature to this Agreement.
- 10.2 This Agreement will remain in effect until:
- a) five (5) years from the date under 10.1;
 - b) it is terminated by either Party with 30 days written prior notice to the other Party, stating date of the termination and the reasons for termination; or
 - c) the execution of other agreements, signed by both Parties, that replace or supersede this Agreement.
- 10.3 The Parties will review progress of the implementation of this Agreement in advance of the termination date under paragraph 10.2(a) and may renew or amend this Agreement to reflect the outcomes of the review.
- 10.4 In the event that a Nanwakolas First Nation ceases to be a member of Nanwakolas, Nanwakolas will advise the province of such immediately.

Withdrawal of a Nanwakolas First Nation from the Nanwakolas Council is not termination by a Party pursuant to paragraph 10.2(b).

11 GENERAL PROVISIONS

- 11.1 This Agreement does not create, recognize, define, deny, limit, abrogate or derogate from or amend the Section 35 Rights of the Nanwakolas First Nations.
- 11.2 Nothing in this Agreement limits the positions that any Party has taken or may take in legal or administrative proceedings, or in any discussions, negotiations, processes, or other forum regarding Section 35 Rights, including any positions with respect to:
- a) the application of provincial laws to Section 35 Rights; and
 - b) the adequacy of any measures taken to accommodate the potential infringement of a Section 35 Rights.
- 11.3 This Agreement does not define, deny, limit, abrogate or derogate from or amend any Aboriginal Interests of any other aboriginal group or any rights or responsibilities of the Province with respect to any other aboriginal group.
- 11.4 For the purposes of this Agreement:
- a) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
 - b) the use of the singular includes the plural and use of the plural includes the singular; and
 - c) there will be no presumption that doubtful or ambiguous expressions, terms or provisions in this Agreement are to be resolved in favour of any Party;
- 11.5 Nothing in this Agreement will be interpreted in a way that fetters the discretion of either Party or their representatives, including any legislative authority of British Columbia or the discretion given to any decision-making authority, or amends or otherwise modifies any existing protocols and agreements between the Parties, or between the Province and the Nanwakolas First Nations, on other matters.
- 11.6 This Agreement does not constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act*, 1982 (Canada).

- 11.7 Nothing in this Agreement limits the scope of discussions between Nanwakolas First Nations, the Government of Canada and the Province under the auspices of the British Columbia Treaty Commission Process.
- 11.8 This Agreement may be amended by the Parties in writing.
- 11.9 This Agreement may be executed in counterparts by signing a separate copy, including an emailed, photocopied or faxed copy and delivering it to the other Parties.

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

SIGNED ON BEHALF OF THE NANWAKOLAS COUNCIL:

· Original signed by:

Dallas W. Smith, President
Nanwakolas Council

SIGNED ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Ministry of Forests, Lands and Natural Resource Operations:

Original signed by:

Honourable Steve Thomson
Minister of Forests, Lands and Natural Resource Operations

Dated August 3, 2016

APPENDIX A – MAP OF THE NANWAKOLAS FIRST NATIONS TRADITIONAL TERRITORIES AND NVI MARINE PLAN AREA



