shíshálh swiya Dock Management Plan

1.0 INTENT OF DOCK MANAGEMENT PLAN

The shíshálh swiya Dock Management Plan (the DMP) is an instrument of policy that provides guidance in relation to Docks authorized or proposed under the *Land Act* within the swiya, as identified in Appendix A.

2.0 PRINCIPLES AND OBJECTIVES

In addition to the principles and objectives outlined in other applicable provincial Operational Land Use Policies, the objective of the Dock Management Plan is to promote responsible and appropriate Dock development by:

- Helping to minimize and mitigate impacts to marine resource values;
- Protecting archaeological resources from disturbance;
- Contributing to address impacts, including cumulative impacts, of dock development on Aboriginal interests; and
- Advancing collaborative management between the shíshálh Nation and the Province of British Columbia.

3.0 DEFINITIONS

"**Applicable Laws**" means any legislation, regulations, rules, codes, guidelines, and standards of any federal, provincial, regional, municipal, or other governmental authority having jurisdiction, as may be amended from time to time;

"**Aquatic Crown Land**" means that land below the visible high water mark of a body of water extending offshore to the recognized limit of provincial jurisdiction, including the Foreshore;

"**Authorization**" means a licence, lease, permit, authorization or other approval issued by the Province of BC pursuant to the *Land Act;*

"**Best Management Practices**" means the practices set out in Section 8 and Section 9 of this Dock Management Plan;

"**Boathouse**" means a structure for the storage of boats and does not include a dwelling unit;

"**Commercial Dock**" means a Dock operated year-round or seasonally as ancillary to a commercial operation and may include breakwaters and Boathouses;

"Dock" means a system of one or more components which permits access from (a boat at) the water surface to the nearby uplands. It typically consists of three main components:

(a) 'Pier';
(b) 'Ramp';
(c) 'Float';

and includes Private Moorage Facilities, Group Moorage Facilities, Strata Title or Condominium Moorage Facilities, Commercial Docks and Marinas, but does not include Industrial Docks;

"Dock Footprint" means the area that lies directly under the Dock, and the area impacted/influenced by the shadow as determined by the Qualified Professional;

"***Fisheries Act* (Canada)**" means *Fisheries Act* (R.S.C., 1985, c. F-14) as may be amended or replaced;

"Float" means a buoyant structure on the water surface which is secured by anchors, pilings, or similar means to locate it in a relatively fixed position in order to permit boat access and/or mooring;

"Float Fingers" means additional floats attached perpendicular to the main float to provide additional mooring and pedestrian access to and from moored boats in multi-berth moorage facilities;

"Foreshore" means that land in tidal areas lying between the high tide and the mean low tide and that land in non-tidal areas that is alternatively covered by water and exposed with the normal rise and fall of the level of the body of water, i.e. that land between the ordinary high and low water mark;

"Group Moorage Facility" means a multi-berth moorage similar to a private moorage facility but for the personal use of a group or association of residents from the surrounding community;

"Habitat" means habitat that is important for: (a) sustaining a subsistence, commercial, or recreational fishery, or (b) any species at risk (e.g. terrestrial or aquatic red and blue-listed species, those designated by the Committee on the Status of Endangered Wildlife in Canada, or species listed under Schedule 1 of the Federal Species at Risk Act (SARA)), (c) its relative rareness, productivity, or sensitivity (e.g. eelgrass meadows, kelp forests, foreshore salt marsh vegetation, herring spawning habitat, and potential forage fish spawning beach habitat); or (d) sustaining area biodiversity and the recovery of native coastal flora in the marine riparian area;

"Industrial Dock" means a dock providing moorage that is ancillary to an upland general industrial use as defined under the Province's General Industrial Use Land Use Policy;

“kalpilin (Pender Harbour) Management Area” means the kalpilin Pender Harbour area identified in Appendix B;

“kalpilin (Pender Harbour) Dock Management Zones” means those zones within the kalpilin (Pender Harbour) Management Area and as depicted in Appendix C;

“Length Overall” means the length of the hull of a boat, including rear deck extensions (platforms). This is measured from the tip of the bow in a straight line to the stern of the vessel;

“Management Plan” means the management plan as described in Section 7;

“Marina” means a Dock providing moorage on a fee for service basis, and includes ancillary uses such as marine way; boat ramp and may include the sale of gasoline, groceries, or supplies to the boating public whether provided on the dock or on the upland; and provision of scheduled service by float plane companies;

"Natural Boundary" means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water, a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

“Pier” means the portion of a dock affixed to the land, which may overhang the water, especially at high tides. It is often also referred to as a jetty, although the latter term is more correctly a solid structure projecting into the sea and intended to influence currents and/or provide shelter;

“**Preliminary Archaeological Field Reconnaissance**” means a field survey that is designed to assess the archaeological resource potential of the study area, and to identify the need and appropriate scope of further field studies and is performed by a Professional Archaeologist;

“Private Moorage Facility” means a Dock that is:

(a) Permanently affixed to Aquatic Crown Land and any ancillary structures such as a boat lift and anchor lines; and
(b) Is for the personal and private use by one or a number of individuals or a family unit for boat moorage and does not include a Group Moorage Facility, as defined;

“Qualified Professional” means an applied scientist or technologist, including a Registered Professional Biologist or Registered Biological Technician, acting alone or together with another Qualified Professional, if:

(a) The individual is registered and in good standing in BC with an appropriate professional organization constituted under an Act, acting under that associations’ code of ethics and subject to disciplinary action by that association, and
(b) The individual is acting within that individual’s area of expertise;

“Ramp” means the hinged section of a dock which connects a Pier to a Float, and the slope of which varies with tidal conditions;

"Replacement Tenure" means a subsequent Tenure issued to the Tenure holder for the same area and purpose as under the original Tenure;

"Riparian" means the vegetated transitional area between terrestrial and aquatic ecosystems, and is delineated from the Natural Boundary upland for a distance of 15 metres;

"Strata Title or Condominium Moorage Facility" means a multi-berth moorage similar to a Private Moorage Facility but used by the residents of a waterfront strata or condominium development;

"swiya" means lands, birthplace, world, "Territory" of the shíshálh Nation defined in Appendix A;

"Tenure" means:

(a) Any interest in Crown land that is granted or otherwise established under a prescribed instrument, or

(b) A prescribed designation or other status that, under an enactment, is given to, conferred on, or made or otherwise established in relation to Crown land;

and includes those Tenures which terms may have expired but are authorized by the Province to continue on a month-to-month basis;

"Tenure Area" means the area approved under an existing Tenure, or the area under application for a Tenure under the *Land Act*;

"Tenured Dock" means a Dock that is authorized by a Tenure;

"Total Length" means the total length of the dock from the high-water mark to the end of the structure including the three main components as outlined in the definition of "Dock."

4.0 APPLICATION OF shíshálh swiya DOCK MANAGEMENT PLAN

4.1 This Dock Management Plan applies within the swiya for Authorizations of:

(a) The construction of a new Dock;

(b) The relocation of a Tenured Dock within a Tenure Area;

(c) Changes to the dimensions of a Tenured Dock;

(d) An existing Dock that was not previously authorized under Tenure;

(e) A Replacement Tenure as per Section 6.2.

4.2 The repair or rebuilding of Tenured Docks damaged or destroyed by fire, explosion, flood, or other casualty must meet the Best Management Practices (BMPs) for the issuance of a new Dock Tenure.

4.3 This Dock Management Plan does not apply to applications for:

(a) An assignment of a Tenure to a different Tenure holder;

(b) A consent to mortgage; and

(c) The modification of the provisions of a Tenure.

5.0 kalpilin (Pender Harbour) MANAGEMENT AREA

5.1 In addition to the shíshálh swiya BMPs, kalpilin (Pender Harbour) has specific dock zoning to address specific environmental and archaeological concerns within kalpilin. The kalpilin (Pender Harbour) Dock Management Zones within the kalpilin (Pender Harbour) Management Area are shown in Appendix C.

5.2 The Province will apply the management objectives for each Dock Management Zone set out in Table 1 when making decisions regarding Authorizations subject to this Dock Management Plan.

Table 1 – kalpilin (Pender Harbour) Dock Management Zones		
Zone	**Management Objectives**	**Description**
1	Not allow new Dock applications in this zone due to the significant natural and cultural resources.	New applications for Docks for Tenure will not be accepted.
2	Limit new Dock applications to those that can be shared by multiple parties or used for commercial purposes, and which are consistent with this Dock Management Plan, in order to reduce the impact on the natural and cultural resources in the area.	New applications for Group Moorage Facilities or Commercial Moorage Facilities for Tenure will be considered provided the application meets the Dock Management Plan. New applications for Private Moorage Facilities will not be accepted. The application must demonstrate that the Dock does not impact/influence Habitat.
3	Allow new Dock Applications of all types provided that they are consistent with the Dock Management Plan and the Dock Footprint does not impact/influence Habitat or cultural resources.	New Dock applications for Tenure consistent with this Dock Management Plan will be considered for approval. The application must demonstrate that the Dock does not impact/influence Habitat. In order to reduce the environmental impact of multiple Private Moorages, residents will be encouraged to pursue Group Moorage Facilities or Strata Title Moorage Facilities.

6.0 APPLICATION REQUIREMENTS

6.1 APPLICATIONS FOR NEW TENURES

When an applicant applies for a Tenure for the purpose of a Dock, the Province will:

(a) Encourage prospective applicants to engage with the shíshálh Nation early. The applicant may wish to engage the shíshálh Nation prior to submitting an application;

(b) Require the applicant to provide the following information as part of the application:

(i) The identification of any Habitat within the Tenure Area and Dock Footprint and the plan for the protection of any identified Habitat, completed by a Registered Professional Biologist or Registered Biological Technician in good standing with the BC College of Applied Biology and other Qualified Professionals if required/as needed;

(ii) A Preliminary Archaeological Field Reconnaissance assessment of archaeological resources in the Foreshore area of the Tenure Area. If the Preliminary Archaeological Field Reconnaissance identifies new archeological sites, then the provincial process under the *Heritage Conservation Act* applies.

(iii) A Management Plan, including specifications regarding the design of the Dock and describe how ongoing maintenance activities will be consistent with the Best Management Practices set out in Section 8.0 for Private Moorage and Section 9.0 for Commercial Moorage, supported by a Registered Professional Biologist or Registered Biological Technician in good standing with the BC College of Applied Biology and other Qualified Professionals if required/as needed;

(c) Initiate First Nation consultation on the application once it receives the information identified in Section 6.1 (b);

(d) For new Docks, and Docks rebuilt under Section 4.2, an applicant must submit written confirmation by a Registered Professional Biologist or Registered Biological Technician and other Qualified Professionals if required that the Dock was constructed in accordance with the approved Management Plan, meets the Dock Management Plan Best Management Practices identified in Section 8.0 for Private Moorage and Section 9.0 for Commercial Moorage and meets *Fisheries Act* (Canada) requirements.

6.2 APPLICATIONS FOR REPLACEMENT TENURES

Where an applicant seeks a Replacement Tenure the Province will:

(a) Encourage the prospective applicant to engage early with the shíshálh Nation. The applicant may engage the shíshálh Nation prior to submitting an application;

(b) Require the applicant to provide the following information as part of the application:

(i) Require the tenure holder to submit a Preliminary Archaeological Field Reconnaissance assessment of archeological resources in the Foreshore area of the Tenure Area prepared by a Registered Archeologist as part of the application for a Replacement Tenure where one has not been completed in the past;

(ii) Require a Management Plan identified in Section 7.0 to be submitted in support of a Replacement Tenure supported by a Registered Professional Biologist or Registered Biological Technician and other Qualified Professionals if required.

(c) Initiate First Nation consultation on the application once it receives the information identified in Section 6.1 (b);

6.3 Where the opinion of a Qualified Professional is required under this Dock Management Plan with respect to Habitat, the opinion must be given by a Registered Professional Biologist.

6.4 The Province may require the applicant to submit additional archaeological assessments depending on the results of a Preliminary Archaeological Field Reconnaissance of the Tenure Area and the potential impact of the proposal on First Nation interests.

6.5 Cultural materials recovered during the course of archaeological investigations should be deposited to the *shíshálh* Nation *tems swiya* Museum, subject to the requirements of the *Heritage Conservation Act*.

6.6 TERM OF TENURE

Any approved new Dock Tenures and Replacement Tenures will be subject to the following terms:

(a) Subject to subsection (b), approved new Dock Tenures and Replacement Tenures other than Marina and Commercial Docks will not exceed a term of ten (10) years; and

(b) Approved new Dock Tenures and Replacement Tenures granted for a Marina and Commercial Docks will not exceed a term of 30 years.

6.7 Applications must comply with all Applicable Laws including but not limited to the *Fisheries Act*, *Canadian Navigable Waters Act*, *Riparian Areas Protection Act* and *Species at Risk Act*.

7.0 MANAGEMENT PLAN REQUIREMENTS

7.1 A Management Plan for a proposed Dock or Replacement Tenure must demonstrate the following:

(a) Structures will not unduly block access along the Foreshore for public access, or for First Nations harvesting of marine resources for food, social and ceremonial purposes;

(b) Dock construction will not include the use of native beach materials (e.g. boulders, cobble, gravel, sand and logs);

(c) Filling, dredging, or blasting will not be undertaken within the Tenure Area;

(d) The Dock and Tenure Area will be kept in a safe, clean and sanitary condition; all work, including dock construction, dock use, refueling of machinery and washing of buckets and hand tools, will be conducted in a manner that will not result in the deposit of toxic or deleterious substances (e.g. sediment, un-cured concrete, fuel, lubricants, paints and stains), into the water in accordance with Applicable Laws, including the *Fisheries Act* (Canada) and in accordance with Best Management Practices; and

(e) Ongoing maintenance activities will be consistent with the Best Management Practices and supported by the opinion of a Registered Professional Biologist or Registered Biological Technician in good standing with the BC College of Applied Biology and other Qualified Professionals if required/as needed. The design of the New Docks will be consistent with the Best Management Practices set out in Section 8.0 for Private Moorage and Section 9.0 for Commercial Moorage and supported by the opinion of a Qualified Professional.

(f) Annual inspections are required to be completed by the tenure holder for the dock and tenure area as per approved template (see Appendix D). Inspections are required to be submitted at time of replacement or as requested by the Province and retained for the duration of the Tenure.

8.0 DOCK CONSTRUCTION AND MAINTENANCE GUIDELINES – BEST MANAGEMENT PRACTICES – PRIVATE MOORAGE

8.1 Wherever possible applicants for Tenured Docks are encouraged to develop dock facilities that can facilitate numerous upland owners. In pursuing multi-owner/use facilities the Dock Footprint on marine habitats is minimized. These types of facilities also help to alleviate potential cumulative impacts from high density, individual dock infrastructures.

8.2 Habitats should be avoided within the Dock Footprint. Docks must not be installed over Habitats unless the design mitigates for potential impacts and does not result in losses to Habitats.

8.3 Design of a Dock should not include components that block the free movement of water along the shoreline. Crib foundations or solid core structures made of cement or steel sheeting must be avoided as these types of structures result in large areas of vegetation removal and erosion in Riparian areas.

8.4 The bottom of all Floats must be a minimum of 1.5 metres above the seabed during the lowest tide. Dock height above lowest water level must be increased if deep draft vessels are to be moored at the Dock. The Dock and the vessel to be moored at the Dock must not come to rest on the seabed during the lowest tide of the year.

8.5 The size of all Docks should be minimized in the following ways:

a) Ramps, walkways and Piers should be a minimum of 1.0 metre above the highest high-water mark of the tide.

b) Ramps and walkways should not exceed a maximum width of 1.8 metres.

c) Floats should not exceed a maximum area of 30 square metres.

d) Docks, including the Pier, Ramp and Float combined should not exceed a maximum Total Length of 50 metres.

8.6 All improvements should be a minimum of 5.0 metres from the side property line (6.0 metres if adjacent to a dedicated public beach access or park) and at least 10 metres from any existing dock or structures, consistent with Federal requirements under Transport Canada's *Canadian Navigable Waters Act*.

8.7 Docks must be constructed to allow light penetration under the entire structure. Docks, inclusive of all components, must allow for minimum of 43% open space allowing for light penetration to the water surface under the structure. Light transmitting materials may be made of various materials shaped in the form of grids, grates, and lattices to allow for light passage.

8.8 Docks should be aligned in a north-south direction, perpendicular to the shoreline, to the maximum extent that is practicable given site-specific conditions. This orientation increases the potential for adequate light penetration under the Dock to the water surface.

8.9 Concrete, steel, treated (except creosote) or recycled timber are acceptable piling materials, although steel is preferred. Detailed information on treated wood options can be obtained on-line from the Fisheries and Oceans Canada website (*Guidelines to Protect Fish and Fish Habitat from Treated Wood Used in the Aquatic Environment in the Pacific Region*).

8.10 Access to the Foreshore for construction purposes should be from the adjacent upland property wherever possible. If heavy equipment is required to work on the Foreshore or access is required along the Foreshore then the advice of a Qualified Professional or

Fisheries and Oceans Canada should be obtained.

8.11 Works along the Foreshore should be conducted when the site is not wetted by the tide.

8.12 The upland design of the Dock, including anchor points, should avoid disturbing Riparian vegetation adjacent to the Dock Footprint due to its role in bank stabilization and erosion control.

8.13 Pile driving is the preferred method of pile installation. All pile driving must meet current Fisheries and Oceans regulations.

8.14 The use of Styrofoam to keep Docks afloat is prohibited for new construction and repairs unless the foam is encapsulated. Encapsulated foam is defined as 'foam which is fully enclosed in a solid, molded shell to prevent breakdown and discharge into the environment.' Styrofoam Floats on existing docks that are showing evidence of breakdown must be replaced using an alternative material.

8.15 Docks must be constructed in accordance with requirements under the *Canadian Navigable Waters Act* and *Fisheries Act* as may be amended or replaced from time to time.

8.16 The use of outdoor lighting on all Dock structures must be minimized and should be on a timer or motion activated.

9.0 DOCK CONSTRUCTION AND MAINTENANCE GUIDELINES – BEST MANAGEMENT PRACTICES – COMMERCIAL MOORAGE

9.1 Wherever possible applicants for Commercial Docks are encouraged to develop Commercial Dock facilities that can facilitate numerous vessels. These types of facilities also help to alleviate potential cumulative impacts from high density, individual dock infrastructures.

9.2 Habitats should be avoided within the Dock Footprint. Commercial Docks must not be installed over Habitats unless the design mitigates for potential impacts and does not result in losses to Habitats.

9.3 Design of a Commercial Dock should not include components that block the free movement of water along the shoreline. Crib foundations or solid core structures made of cement or steel sheeting must be avoided as these types of structures result in large areas of vegetation removal and erosion in Riparian areas.

9.4 The bottom of all Floats must be a minimum of 1.5 metres above the seabed during the lowest tide. Dock height above the lowest water level must be increased if deep draft vessels are to be moored at the Commercial Dock. The Commercial Dock and the vessel to be moored at the Dock must not come to rest on the seabed during the lowest tide of the year.

9.5 The size of all Commercial Docks should be minimized in the following ways:

a) Ramps, walkways and Piers should be a minimum of 1.0 metre above the highest high-water mark of the tide.
b) Ramps, walkways and Piers should not exceed a maximum width of 1.8 metres.
c) Floats should not exceed a maximum area of 40 square metres per vessel up to 12.2 metres (40 feet) Length Overall.
d) Docks, including the Pier, Ramp, and Float combined should not exceed a maximum Total Length of 60 metres.
e) The main Float should not exceed a width of 3.0 metres and Float Fingers should not exceed a width of 1.5 metres.

9.6 All improvements should be a minimum of 5.0 metres from the side property line (6.0 metres if adjacent to a dedicated public beach access or park) and at least 10 metres from any existing dock or structures, consistent with Federal requirements under Transport Canada's *Canadian Navigable Waters Act*.

9.7 Commercial Docks must be constructed to allow light penetration under the entire structure. All Docks, inclusive of all components, must allow for minimum of 43% open space allowing for light penetration to the water surface under the structure. Light transmitting materials may be made of various materials shaped in the form of grids, grates, and lattices to allow for light passage.

9.8 Commercial Docks should be aligned in a north-south direction, perpendicular to the shoreline, to the maximum extent that is practicable given site-specific conditions. This orientation increases the potential for adequate light penetration under the Dock to the water surface.

9.9 Concrete, steel, treated (except creosote) or recycled timber are acceptable piling materials, although steel is preferred. Detailed information on treated wood options can be obtained on-line from the Fisheries and Oceans Canada website (*Guidelines to Protect Fish and Fish Habitat from Treated Wood Used in the Aquatic Environment in the Pacific Region*).

9.10 Access to the Foreshore for construction purposes should be from the adjacent upland property wherever possible. If heavy equipment is required to work on the Foreshore or access is required along the Foreshore then the advice of a Qualified Professional or Fisheries and Oceans Canada should be obtained.

9.11 Works along the Foreshore should be conducted when the site is not wetted by the tide.

9.12 The upland design of the Commercial Dock, including anchor points, should avoid disturbing Riparian vegetation adjacent to the Dock Footprint due to its role in bank stabilization and erosion control.

9.13 Pile driving is the preferred method of pile installation. All pile driving must meet current Fisheries and Oceans regulations.

9.14 The use of Styrofoam to keep Commercial Docks afloat is prohibited for new construction and repairs unless the foam is encapsulated. Encapsulated foam is defined as 'foam which is fully enclosed in a solid, molded shell to prevent breakdown and discharge into the environment.' Styrofoam Floats on existing Commercial Docks that are showing evidence of breakdown must be replaced using an alternative material.

9.15 Commercial Docks must be constructed in accordance with requirements under *Canadian Navigable Waters Act* and the *Fisheries Act* as may be amended or replaced from time to time.

9.16 The use of outdoor lighting on all Commercial Dock structures must be minimized and should be on a timer or motion activated.

9.17 Where a Commercial Dock includes Boathouses, an applicant must demonstrate how they have applied the Best Management Practices outlined in Section 9.0 to the Boathouse structure. For further clarity, in relation to the light penetration requirement in 9.7, an applicant must demonstrate how impacts from the Boathouse are minimized and how the objectives in Section 2.0 are met.

10.0 APPENDICES

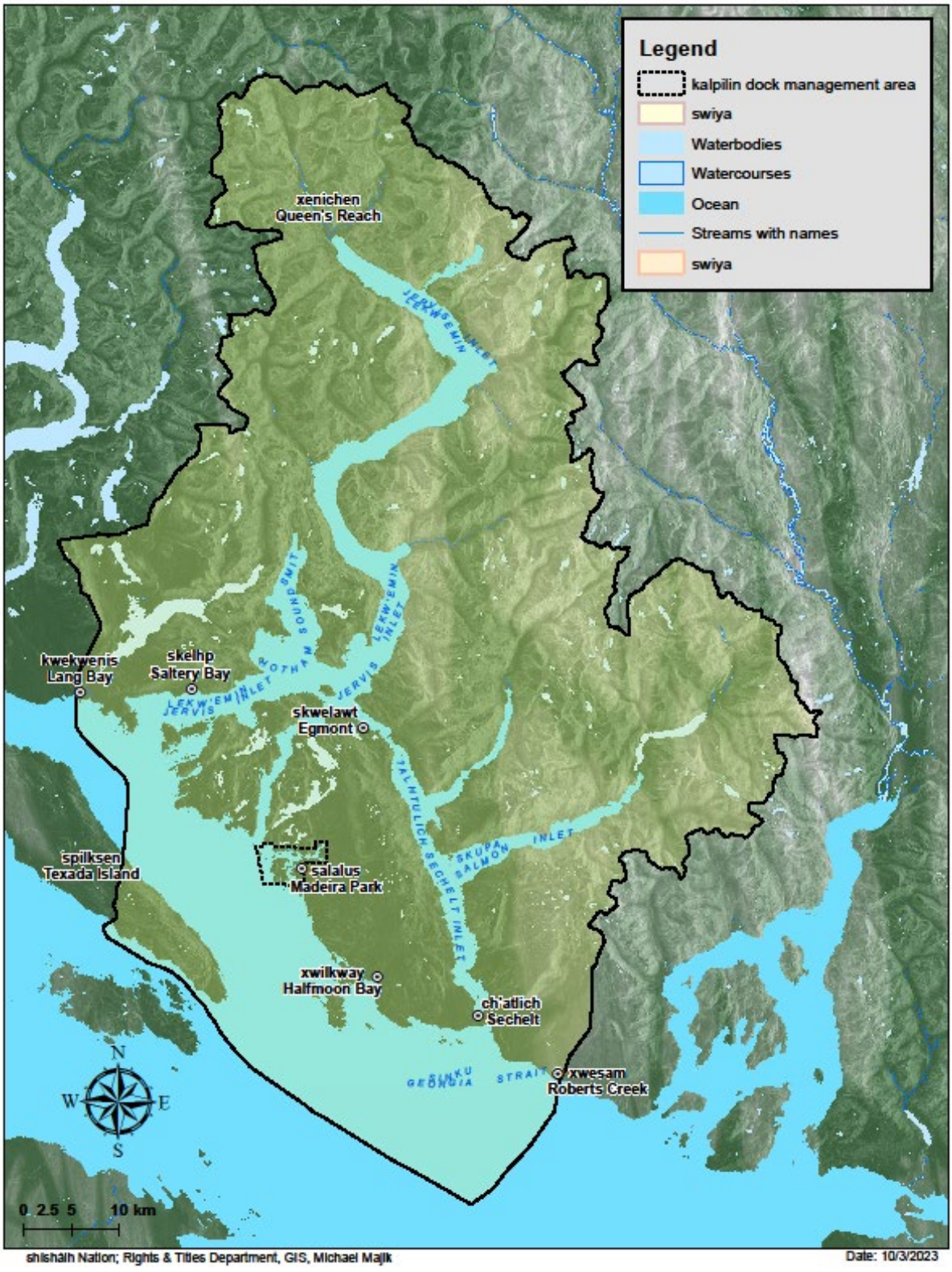
Appendix A swiya Map

Appendix B kalpilin (Pender Harbour) Dock Management Area Map

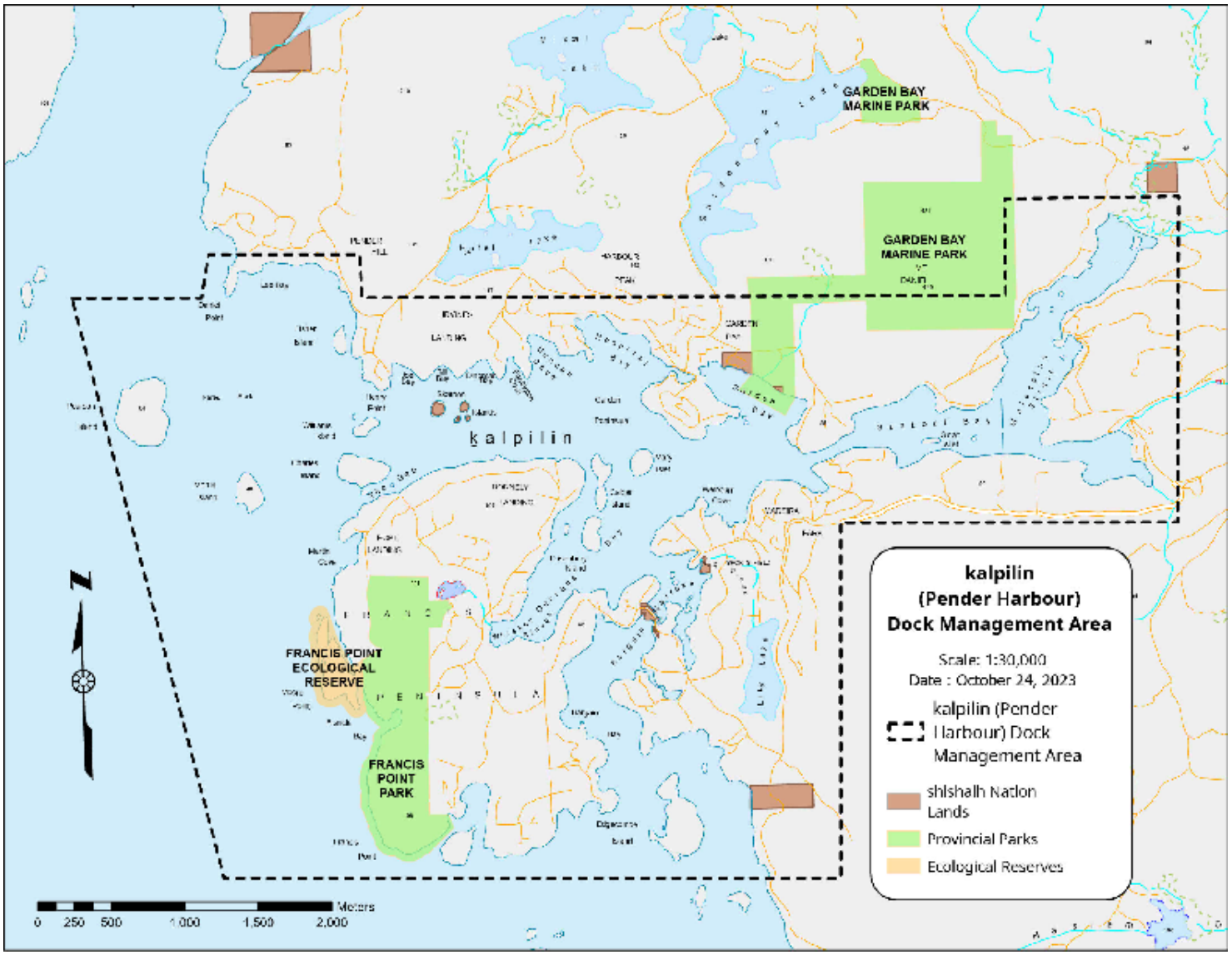
Appendix C kalpilin (Pender Harbour) Dock Management Zone Map

Appendix D – Supporting Documents

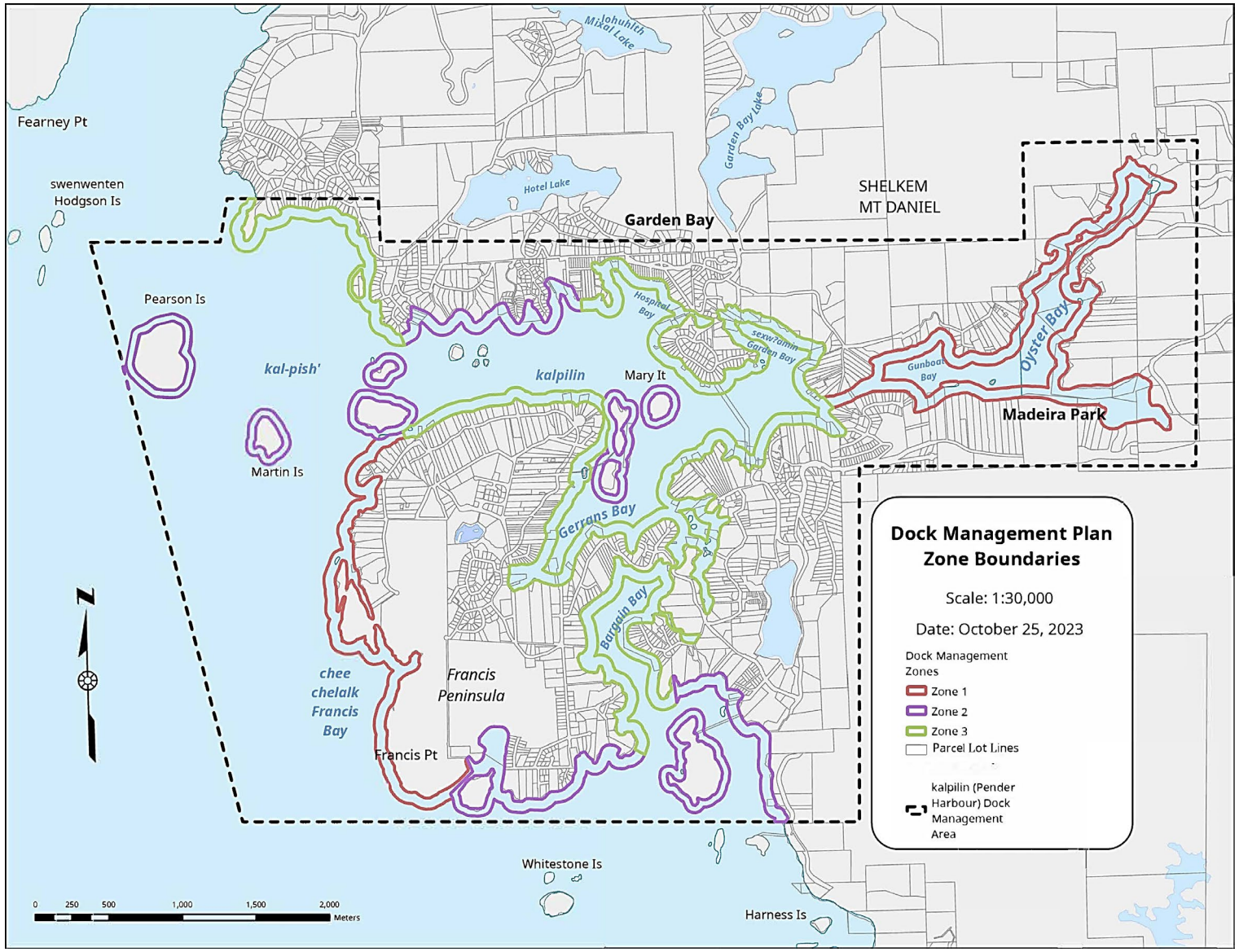
Appendix A – swiya Map



Appendix B – kalpilin (Pender Harbour) Dock Management Area Map



Appendix C – kalpilin (Pender Harbour) Dock Management Zone Map



Appendix D – Supporting Documents

The following supporting documents are available from FrontCounter BC and online:

- Private Moorage Inspection Template
- Commercial Moorage Inspection Template
- Management Plan Template
- Guidance Document for Qualified Professionals