

WORKING AGREEMENT

Concerning

**PROCEDURES FOR DEVELOPMENT AND OPERATION OF THE
PORT METRO VANCOUVER
HABITAT BANK**

Between

VANCOUVER FRASER PORT AUTHORITY

And

FISHERIES AND OCEANS CANADA

July 31, 2012

WORKING AGREEMENT
Concerning
PROCEDURES FOR DEVELOPMENT AND OPERATION OF THE
PORT METRO VANCOUVER
HABITAT BANK

BETWEEN:

VANCOUVER FRASER PORT AUTHORITY, a corporation established pursuant to the *Canada Marine Act* having its place of business at 100 The Pointe, 999 Canada Place, Vancouver, British Columbia, V6C 3T4 (herein referred to as the "Authority")

of the FIRST PART

AND:

FISHERIES AND OCEANS CANADA, Represented by the Regional Director, Ecosystem Management Branch, Fisheries and Oceans Canada, Pacific Region (herein referred to as "DFO")

of the SECOND PART

WHEREAS:

- A. The VFPA is responsible for the use, management and development of its land, buildings and property within its jurisdiction, including Vancouver Harbour, Roberts Bank, Sturgeon Bank and the Fraser River, in a manner that ensures the integrity and environmental protection thereof;
- B. The VFPA conducts environmental assessments and project review and permitting pursuant to the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 and regulations, the *VFPA Project Review Process Directive*, and the *VFPA Environment Policy*;
- C. The DFO is responsible, pursuant to the *Fisheries Act*, R.S.C. 1985, c. F-14 (the "Fisheries Act"), for the protection of fish and fish habitat, which are essential for the maintenance of sustainable British Columbia and Canadian commercial, recreational and aboriginal fisheries;
- D. VFPA and DFO agree that there is mutual benefit to be realized in the development of a habitat bank that permits the creation and restoration of fish habitat on VFPA land with demonstrable productive value (the "DFO Benefit") in a planned and deliberate manner whilst

allowing for increased certainty in habitat offsetting in the development of VFPA land (the "VFPA Benefit");

- E. This Working Agreement sets forth the Parties' commitments to develop the Habitat Bank, whereby habitat may be withdrawn from the Habitat Bank agreed to by the Parties and describes the process whereby the Parties will identify potential fish habitat development projects.

NOW THEREFORE the Authority and the DFO covenant and agree as follows:

1. INTRODUCTION

- 1.1 The Parties have a shared interest in the protection of fish habitat and the sustainability of fisheries in the Fraser River and surrounding areas. To that end the Parties have agreed, through the Fraser River Framework, to work towards maintaining and, where practical, improving the productivity of fish and wildlife habitats through the development of the Habitat Bank. The Habitat Bank is intended to create and improve fish habitat in Burrard Inlet, Roberts Bank, Sturgeon Bank and the Fraser River and its estuary. It is intended to credit the fish habitat creation against future VFPA or waterfront development projects requiring habitat compensation. The establishment of the Habitat Bank is considered beneficial because viable and productive habitat is created in advance of projects that will result in habitat losses.
- 1.2 The Habitat Bank also offers the advantage of being able to create larger habitat areas rather than several smaller, non-contiguous sites that may yield fewer ecological benefits and be more expensive to construct.
- 1.3 The VFPA, working in consultation with the DFO, and taking into consideration consultation input from other agencies, First Nations and local communities has initiated an on-going process of identifying and selecting potential habitat banking sites for the Habitat Bank. Actual sites targeted for creation or enhancement by VFPA or third parties will be developed by agreement of the Parties.
- 1.4 Sites for the Habitat Bank will be selected based on the following considerations and criteria:
 - a) **Need:** Locations characterized by low productive capacity for species and stocks of interest or species at risk will be considered as a priority for the Habitat Bank. The intent is to develop or improve habitat capacity in geographic service areas where habitat is needed and in support of applicable DFO policies.
 - b) **Habitat Productivity:** Emphasis will be placed on creation of high value habitat types that support a large number of ecological services and species functions (e.g. eelgrass beds and low marshes). The value of productivity will be assessed in the context of need

(consideration "a" above).

- c) **Site location:** Sites for the Habitat Bank will be selected based on their proximity to potential development areas with significant or rare ecological habitats or where onsite habitat compensation opportunities may be limited.
- d) **Feasibility and cost:** Coastal zone processes, river hydraulics, biological productivity and ecological functioning are amongst the factors that will be used to determine the feasibility of habitat creation. In some areas it may not be possible to achieve stable self functioning habitat due to ongoing influences of physical processes. Further some habitat creation options may be possible but only at extreme high cost. Consideration may be given if these habitat types are critical for endangered or threatened species and the habitat credit applied to the Habitat Bank recognizes the increased cost of development.
- e) **Ownership and Tenure:** VFPA shall, either through ownership, lease, licence or agreement, ensure that that the tenure for the Sites for the Habitat Bank will be for the long-term beyond the life of the project that resulted in the habitat loss.

2. DESCRIPTION OF HABITAT BANKING SITES

- 2.1 VFPA continues to identify potential habitat development sites in consultation with DFO, the Canadian Wildlife Service and other appropriate parties. Potential sites for inclusion in the Habitat Bank are situated geographically over the Lower Fraser River Estuary, Burrard Inlet and southern Georgia Strait. The identification of potential sites has no other weight or meaning in the context of this Working Agreement, and in particular is intended to suggest but not mandate priority with respect to habitat creation or enhancement.
- 2.2 VFPA will select priority habitat banking sites in consultation and negotiation with DFO. The considerations set out in this Working Agreement will be the basis for proceeding to conceptual design, for determining feasibility, habitat ratios and relative habitat values to be used, for applying compensation credits to geographic service areas and for identifying any site specific characteristics to be addressed in detailed design.
- 2.3 Nothing in this Working Agreement will preclude the Parties to the Memorandum from placing Sites developed by third parties into the Habitat Bank. Once accepted into the Habitat Bank, such habitat will be treated in the same manner as other habitat that has been placed into the Habitat Bank.

3. GENERAL GUIDELINES FOR OPERATION OF THE HABITAT BANK

- 3.1 Habitat creation or enhancement projects will undergo all appropriate reviews and assessments that may apply, including those mandated by applicable

environmental assessment legislation and VFPA-mandated reviews and assessments. These reviews and assessments will include referral to the Burrard Inlet Environmental Action Program and Fraser River Estuary Management Program Coordinated Environmental Review processes, with all appropriate supporting information and documentation.

- 3.2 Each habitat development Site will be subject to pre-construction, construction and post-construction monitoring as stipulated in the conditions for mitigating adverse environmental affects arising out of the reviews referenced in Section 3.1 above. The Parties may agree that additional monitoring may be warranted for some projects. A reason for such additional monitoring might be to establish and track the overall habitat value of the Habitat Bank, in the form of a balance sheet or other form agreed to by the Parties. Responsibility for, and implementation of, such additional monitoring will be determined as part of such agreement.
- 3.3 A principle underlying Section 3.2 is that the actual productive value of a particular habitat parcel will need to be determined immediately prior to its application as credit for a development project to address the nature of the habitat loss associated with that project, but not necessarily sooner.
- 3.4 The process for determining the productive value of the habitat will be circumstantial, site specific and mutually agreed to by the Parties but will likely follow these general principles:
 - a) Habitat parcels will be targeted for withdrawal from the Habitat Bank in consultation with and agreement by DFO;
 - b) Habitat parcels targeted for withdrawal will be at least nominally fully functioning habitat, but their functionality will need to be confirmed through quantitative monitoring that identifies their existing biophysical characteristics to the satisfaction of DFO;
 - c) The selected parcels will subsequently monitored for at least a year and possibly multiple years to confirm their viability, at the discretion of DFO;
 - d) This subsequent confirmatory monitoring may be done concurrently with the activity expected to result in the habitat loss;
 - e) Monitoring reports will be submitted as stipulated by DFO;
 - f) Habitat in the Habitat Bank will be confirmed as a successful or viable habitat credit if the physical works are stable and target vegetation or biological features have been established; and
 - g) Site specific conditions may justify that DFO, in consultation with VFPA, evaluate different performance criteria on a case by case basis.

- 3.5 VFPA will apply for approval to DFO to use the Habitat Bank credits to offset VFPA development projects. VFPA is aware that the use of the Habitat Bank is subject to the following conditions:
- a) The existence of the Habitat Bank does not guarantee that DFO will issue an Authorization pursuant to the Fisheries Act for any proposed VFPA development.
 - b) The Habitat Bank cannot be used to compensate or offset for a habitat impact as a result of a VFPA project unless DFO expressly authorizes VFPA to do so pursuant to the Fisheries Act.
 - c) The Habitat Bank does not constitute in any time an authorization to modify a fish habitat pursuant to the Fisheries Act.
 - d) DFO's decision to issue an Authorization pursuant to the Fisheries Act may be made without taking into account the existence of a Habitat Bank and opportunities to avoid or to mitigate loss of fish habitat for future VFPA projects will be considered before approving the use of the Habitat Bank.
 - e) The determination of the actual value of the Habitat Bank and its use as compensation for an eventual loss of fish habitat remains the prerogative of DFO.
 - f) For any proposed VFPA development project, all on-site compensation options shall be fully assessed and implemented before VFPA can apply to DFO to use habitat credits from the Habitat Bank
 - g) DFO reserves the right to at anytime, before any aspect of the Habitat Bank be used as potential compensation for a future VFPA project, require an assessment of the Habitat Bank to be carried out before or after the period initially envisaged within the monitoring program.
- 3.6 The VFPA will conduct annual inspections of the Habitat Bank for the duration of this Working Agreement after the prescribed monitoring periods for each habitat creation project for general assurance that the habitat remains viable and secure. Where indications exist that this is not the case, the parties will mutually agree to a course of action that restores levels of habitat compensation appropriate to the habitat loss the creation project was applied to.
- 3.7 Any required remedial action will be undertaken by VFPA to maintain the value of the habitat credits. This could include physical (e.g., shoreline protection or site stabilization) or biological (e.g., additional planting) works.
- 3.8 VFPA will have the right to sell sites within the Habitat Bank to third parties to allow the third party to credit the habitat creation against its waterfront development projects requiring habitat compensation.

- 3.9 This Working Agreement will remain in effect for a five (5) year trial period after which it may be extended indefinitely if it is mutually agreeable to both Parties. This Working Agreement may be amended by mutual consent and written agreement between the Parties.
- 3.10 Nothing in this Working Agreement is intended to replace, abrogate or derogate from any of the rights, powers, authorities or jurisdiction of either Party.

4.0 ADMINISTRATION OF THE PORT METRO VANCOUVER HABITAT BANK

- 4.1 The VFPA will be responsible for the administration of the Habitat Bank. Administration will include maintaining a general ledger of all habitat transactions and producing an annual habitat balance sheet for review by DFO in December of any given year of this Working Agreement.
- 4.2 The VFPA will provide monitoring reports to DFO as stipulated in this Working Agreement. Once the stipulated monitoring provisions have been fulfilled, VFPA will maintain habitat surveillance for general assurance that the sites in the Habitat Bank sites remain functional, as stipulated in section 3.6 above.
- 4.3 DFO will provide technical direction and assistance and policy advice to the VFPA when required.
- 4.4 VFPA will review the administration of the Habitat Bank on an annual basis with the goal of improving the habitat banking process and reviewing it for new and emerging opportunities.

5.0 GENERAL

- 5.1 Each party shall bear all of the costs and expenses entailed in, arising out of or in any way connected with the performance of its activities contemplated in this Working Agreement.
- 5.2 Neither party may transfer or assign any of its rights or obligations under this Working Agreement, or any interest therein, without the prior written consent of the other party.
- 5.3 Nothing contained in this Working Agreement shall be construed to create any joint venture or partnership, whether statutory or otherwise, and the rights and obligations of the parties shall be limited to those expressly recited herein.

5.4 This Working Agreement constitutes the entire agreement of the parties hereto with reference to the subject matter hereof. It supersedes all related prior agreements and understandings, written or oral, express or implied relating to such subject matter.

IN WITNESS WHEREOF the Parties hereto execute the Working Agreement

the 10 DAY OF SEPTEMBER, 2012

Signed on behalf of the
**VANCOUVER FRASER PORT
AUTHORITY** And in the
presence of:

[Signature]
Witness (signature)

Nancy Readman
Name (print)

[Signature]
Witness (signature)

Lee Ann Ryan
Name (print)

[Signature]
Robin Silvester
President & CEO

[Signature]
J. Dean Readman
Director, Legal Services &
Corporate Secretary

Approved as to Law
[Signature]
Legal Counsel

APPROVED
[Signature]
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APPROVED
[Signature]

Signed on behalf of the
**DEPARTMENT OF FISHERIES
AND OCEANS** and in the
presence of:

[Signature]
Witness (signature)

VANESSA HODGKINS
Name (print)

[Signature]
Bonnie Antcliffe
Regional Director
Ecosystem Management Branch
Pacific Region

