

**Westbank First Nation
Forest & Range
Consultation and Revenue Sharing Agreement (FCRSA)
(the "Agreement")**

**Between:
The Westbank First Nation**

**As Represented by
Chief and Council
(the Westbank First Nation)**

And

**Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Aboriginal Relations and Reconciliation
("British Columbia")**

(Collectively the "Parties")

WHEREAS:

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Westbank First Nation have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist the Westbank First Nation in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to economic challenges among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Westbank First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Westbank First Nation community's well-being.

- E. The Westbank First Nation has Aboriginal Interests within its Traditional Territory.
- F. British Columbia Intends to consult with the Westbank First Nation and to accommodate its Aboriginal Interests as appropriate (including accommodation by way of the payments provided through this Agreement), with respect to Impacts on the Westbank First Nation's Aboriginal Interests arising from forest and/or range resource development activities proposed within the Westbank First Nation Traditional Territory.
- G. The Westbank First Nation Intends to fully participate in any consultation or information sharing with British Columbia or a Licensee in relation to forest and/or range resource development activities proposed within the Westbank First Nation's Traditional Territory that may impact the Westbank First Nation's Aboriginal Interests.
- H. This Agreement is intended to assist in achieving stability and greater certainty for forest and/or range resource development on Crown lands within the Traditional Territory of the Westbank First Nation while longer term interests of the Westbank First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 Definitions

For the purposes of this Agreement, the following definitions apply:

- 1.1 "**Aboriginal Interests**" means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2 "**Administrative and/or Operational Decision**" means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation as identified in the First Annual List and/or Annual List as defined in Appendix B.
- 1.3 "**Band Council Resolution**" means a resolution of Westbank First Nation having the form of Appendix D.
- 1.4 "**BC Fiscal Year**" means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year.
- 1.5 "**Delegated Decision Maker**" and "**DDM**" means a person with authority to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time.
- 1.6 "**Designate**" has the meaning given to that term in section 3.1.1.
- 1.7 "**Effective Date**" means the date on which this Agreement has been ratified and signed by each of the Parties.

- 1.8 "First Fiscal Year of the Term" has the meaning given to that term in section 3.3.
- 1.9 "Licensee" means a holder of a forest tenure or a range tenure.
- 1.10 "Matrix" means the framework in Appendix B which will be used to define consultation between the Parties with respect to Operational and Administrative Decisions.
- 1.11 "Minister" means the Minister of Forests, Mines and Lands or the Minister of Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters.
- 1.12 "Operational Plan" means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan (as those terms are defined in forest and range legislation) that has or will have effect in the Westbank First Nation's Traditional Territory.
- 1.13 "Payment Account" has the meaning given to that term in section 3.1.3.
- 1.14 "RA" means a reconciliation agreement between British Columbia and the First Nation that creates a foundation for the reconciliation of aboriginal rights and/or aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*.
- 1.15 "Revenue Sharing Contribution" means each payment to be made by British Columbia to the Westbank First Nation in accordance with section 3.0 of this Agreement.
- 1.16 "SEA" means a strategic engagement agreement between British Columbia and the First Nation that describes a consultation process between the First Nation and more than one natural resource ministry of the Government of British Columbia.
- 1.17 "Forest Tenure Opportunity Agreement" means an agreement signed between the Minister of and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*.
- 1.18 "Term" has the meaning given to that term in section 11.1.
- 1.19 "Timber Harvesting Land Base" means the portion of the total land area of a management unit considered by Minister of Forest Mines and Lands to contribute to, and be available for, long-term timber supply.
- 1.20 "Traditional Territory" means the Westbank First Nation's claimed or asserted Traditional Territory as shown in bold black on the map attached in Appendix A.
- 1.21 "Treasury Board" means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

2.0 Purpose and Objectives

The purposes and objectives of this Agreement are:

- 2.1 In relation to potential impacts on Westbank First Nation's Aboriginal Interests resulting from forest and range development in Its Traditional Territory, to facilitate the Parties in meeting their respective legal consultation obligations by supporting the capacity of Westbank First Nation to participate in consultation initiated by British Columbia and by establishing a consultation process which results in appropriate accommodation measures being implemented, where appropriate, in addition to the Revenue Sharing Contribution provided as an accommodation in this Agreement; and
- 2.2 To provide an opportunity for the Westbank First Nation to identify and pursue activities that will enhance and improve the social, cultural and economic well-being of its community and assist the Westbank First Nation in achieving progress towards closing socio-economic gaps between the members of Westbank First Nation and non-Aboriginal people in British Columbia.

3.0 Forest Revenue Sharing Contribution

3.1 Recipient Entity:

- 3.1.1 Unless the Westbank First Nation elects to have another entity (its "Designate") receive Revenue Sharing Contributions pursuant to section 3.1.2, the Westbank First Nation will be the recipient of the Revenue Sharing Contributions. Westbank First Nation recognizes that any such election does not relieve it of its obligations under this Agreement.
- 3.1.2 Where the Westbank First Nation chooses to have its Designate receive Revenue Sharing Contributions under this Agreement, British Columbia may withhold payment of the Revenue Sharing Contribution until it is satisfied that the Designate is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.0 and that it has been appointed by Band Council Resolution documented in Appendix D to receive the Revenue Sharing Contribution on behalf of the Westbank First Nation.
- 3.1.3 Westbank First Nation will establish and throughout the Term maintain a separate bank account in the name of Westbank First Nation (or the Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"), which bank account will be used solely for the purpose of receiving monies payable under this Agreement and implementing the objectives described in section 2.0. Westbank First Nation will provide to British Columbia sufficient address and

account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.

- 3.2 Subject to section 3.1.2 and section 10.0 of this Agreement, British Columbia will during the Term make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to the Westbank First Nation, or to its Designate, as the case may be, and, subject to sections 3.4 and 3.6, the Revenue Sharing Contribution will be disbursed in two equal payments: the first payment to be paid on or before September 30th, and the second payment to be paid on or before March 31st.
- 3.3 Notwithstanding section 3.2, for the BC Fiscal Year in which the Effective Date falls (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix C is deemed to be \$128,138.
- 3.4 For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated for each month or part thereof that this Agreement is in effect.
- 3.5 Before November 30th of each year during the Term, Westbank First Nation will receive written notification from British Columbia of the Revenue Sharing Contribution for the following BC Fiscal Year (including the summary document(s) and calculations identified in Appendix C) and the Westbank First Nation agrees that such written notification will have the effect for the purposes of this Agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for that following BC Fiscal Year.
- 3.6 For each BC Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by British Columbia to the Westbank First Nation or its Designate in the manner specified in section 3.2 only if Westbank First Nation has published all of the necessary statements and reports before the appropriate dates as set out in section 6.0 of this Agreement, is in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to section 10.0.
- 3.7 In addition to section 3.2, on the Effective Date, the Westbank First Nation will be paid a payment to bridge the period from the date of the last payment to which the Westbank First Nation is entitled under its *Westbank First Nation Interim Measures Agreement Extension* (the "IMAE") to the Effective Date of this Agreement (the "Bridging Amount"), which additional payment will be calculated on the basis of the Revenue Sharing Contribution for the First Fiscal Year of the Term but prorated for the period from the date of the last payment under the IMAE to the Effective Date.

- 3.8 Westbank First Nation agrees that for the period between the end of the term of IMAE and the Effective Date, it has been adequately consulted and accommodated by British Columbia in relation to all Administrative Decisions, Operational Decisions, and Operational Plans made during that period that could impact its Aboriginal Interests.
- 3.9 Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to the Westbank First Nation pursuant to this Agreement is subject to:
- 3.9.1 there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
- 3.9.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in section 3.9.1.

4.0 Consultation Process

- 4.1 The Parties agree that consultation with respect to impacts to Westbank First Nation's Aboriginal Interests arising from any Operational or Administrative Decisions or Operational Plans is to be carried out in accordance with the process set out in Appendix B of this Agreement.
- 4.2 British Columbia will use the map of the Westbank First Nation's Traditional Territory used in IMAE, which map will be set out in this Agreement as Appendix A.
- 4.3 Westbank First Nation agrees that British Columbia may share the map of the Traditional Territory as set out in Appendix A with another provincial government agency and/or a licensee responsible for information sharing associated with a decision that is subject to this Agreement.
- 4.4 The Parties agree that in the event Westbank First Nation enters into a SEA or RA with British Columbia after the Effective Date which includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA, if the SEA or RA so provides. Should the SEA or RA terminate prior to the end of the Term, the Parties agree that the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.
- 4.5 In the event that the Effective Date falls after the date on which Westbank First Nation enters into a SEA or RA with British Columbia that includes a consultation process which addresses forest and range management and decision making, and the SEA or RA is subsequently terminated prior to the end of the Term, the Westbank First Nation agrees that this Agreement will

be amended within 60 days of the date of termination of the SEA or RA to include a consultation process in this Agreement.

5.0 Acknowledgments and Covenants by Westbank First Nation

- 5.1 Westbank First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 5.2 Westbank First Nation agrees that the Revenue Sharing Contributions made under section 3.0 of this Agreement constitute an accommodation for impacts on Westbank First Nation Aboriginal Interests of Administrative Decisions, Operational Decisions and/or Operational Plans in the Traditional Territory.
- 5.3 Westbank First Nation agrees that during the term of this Agreement, if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted and has provided an accommodation with respect to potential infringements of Westbank First Nation's Aboriginal Interests in the context of Operational Decisions and Administrative Decisions that British Columbia will make and any forest or range practices that may be carried out under an Operational Plan in the Traditional Territory.

6.0 Community Priorities, Annual Reports and Records

- 6.1 Westbank First Nation covenants and agrees as follows:
 - 6.1.1 Within 60 days of the Effective Date of this Agreement, Westbank First Nation or its Designate will prepare a statement of community priorities covering the term of the Agreement, substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives identified in section 2.1. This statement will outline the community priorities based on the First Fiscal Year Revenue Sharing Contribution.
 - 6.1.2 Before the end of each BC Fiscal Year, Westbank First Nation or its Designate will update the statement of community priorities identified in section 6.1.1 based on the updated Revenue Sharing Contribution described in section 3.5.
 - 6.1.3 Within 90 days of the end of each BC Fiscal Year, Westbank First Nation or its Designate will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report (or, in the case of the first such report, since the Effective Date of this Agreement) and confirming that, aside from reasonable administrative expenses, all such expenditures were made for the purpose of accomplishing the purposes and objectives referred to in section 2.0.
 - 6.1.4 British Columbia retains the right at its sole discretion, such discretion

to be exercised reasonably, to require an audit of expenditures made from the Payment Account to ensure that all such expenditures were made for appropriate purposes under this Agreement, such audit to be at the expense of the Westbank First Nation or its Designate.

6.1.5 The documents referred to in sections 6.1.1, 6.1.2, and 6.1.3 will be published by Westbank First Nation or its Designate in a manner that can reasonably be expected to bring the information to the attention of its communities and the public.

6.1.6 Notwithstanding the termination or expiry of this Agreement, Westbank First Nation or its Designate will continue to comply with the provisions of section 6.1 until 90 days after it receives the last Revenue Sharing Contribution from British Columbia.

6.2 If Westbank First Nation requires funding ("capacity") to engage in consultation processes on forest and range decisions, or with other provincial Ministries where Westbank First Nation has entered into a SEA and/or RA with British Columbia, up to \$35,000 annually of the Revenue Sharing Contribution will be used by Westbank First Nation for that capacity during the term of this Agreement.

7.0 Security Deposits

7.1 In recognition of Westbank First Nation entering into this Agreement, British Columbia may choose not to request a silviculture deposit(s) pertaining to licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Westbank First Nation (or a legal entity and controlled by the Westbank First Nation) and British Columbia.

7.2 Westbank First Nation agrees that British Columbia may apply any payment that Westbank First Nation is entitled to receive under this Agreement, to a maximum of the amounts that British Columbia would have obtained in a or silviculture deposit, in order to fully or partially satisfy any unfulfilled financial obligations of Westbank First Nation to British Columbia arising from a licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Westbank First Nation (or a legal entity controlled by the Westbank First Nation) and British Columbia.

7.3 Prior to British Columbia applying any payment to satisfy unfulfilled Westbank First Nation financial obligations arising from a licence(s) in accordance with section 7.2, British Columbia will notify the Westbank First Nation of the unfulfilled financial obligation(s) and will discuss the proposed action with the Westbank First Nation.

8.0 Stability in the Westbank First Nation Traditional Territory

- 8.1 Westbank First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Westbank First Nation with provincially authorized forest and/or range activities and will work co-operatively with British Columbia to assist in resolving any such matters.

9.0 Dispute Resolution

- 9.1 If a dispute arises between British Columbia and the Westbank First Nation regarding the interpretation of a provision of this Agreement, the duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.
- 9.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Westbank First Nation.
- 9.3 If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

10.0 Suspension and Termination

- 10.1 British Columbia may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, acting reasonably, that Westbank First Nation is not fulfilling its obligations under sections 4.0 and 6.0 or sections 8.1 or 10.3 of this Agreement, or where the Westbank First Nation has outstanding unfulfilled financial obligations to British Columbia arising from a licence(s) issued further to an agreement between the Westbank First Nation and British Columbia. Upon making any such determination, British Columbia will provide notice to Westbank First Nation of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 10.2 If the alleged non-compliance by Westbank First Nation is not resolved within 60 days of the notice provided in section 10.1, British Columbia will notify Westbank First Nation that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by British Columbia, may terminate this Agreement.
- 10.3 If, during the term of this Agreement, Westbank First Nation challenges or supports a challenge to an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to section 5.2, the Revenue Sharing Contribution provided for in section 3.0 of this Agreement does not provide an accommodation for impacts on Westbank First Nation's Aboriginal Interests then, without limiting any actions that may be taken by British Columbia, the Revenue

Sharing Contribution provided for in section 3.0 may be suspended or this Agreement may be terminated by British Columbia.

- 10.4 This Agreement will terminate prior to the end of the Term in any one of the following circumstances; 90 days' written notice of termination is given by one Party to the other; termination occurs in accordance with any of the provisions of section 10.0; or upon mutual agreement of the Parties. In the event of such early termination of this Agreement, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.
- 10.5 If a Party gives written notice of its intention to terminate this Agreement effective 90 days from the date of the notice, the Parties will, prior to the end of the 90-day period, meet and will attempt to resolve any issue that may have given rise to the termination notice.

11.0 Term

- 11.1 The term of this Agreement commences on the Effective Date and, unless terminated earlier in accordance with any of the provisions hereof, will end on the day immediately before the third anniversary of the Effective Date.

12.0 Renewal of the Agreement

- 12.1 Prior to the expiry of the Term, if the terms and conditions of this Agreement are being met, British Columbia and Westbank First Nation will, if each party has received such authorizations as it may require, begin negotiations for the renewal of this Agreement or for a new agreement.

13.0 Amendment of Agreement

- 13.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 13.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

14.0 Entire Agreement

- 14.1 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

15.0 Notice

- 15.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.

- 15.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 15.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O. Box 9100 STN PROV GOVT
Victoria B.C. V8W 9B1
Telephone: 250-356-1394
Facsimile: 250-387-6073

Westbank First Nation

Chief Robert Louie
Westbank First Nation
301-515 HWY 97 South
Kelowna, BC V1Z 3J2
Telephone: 250-769-4999
Facsimile: 250-769-4377

16.0 Miscellaneous

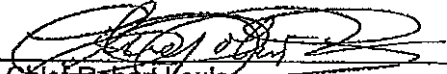
- 16.1 This Agreement shall be interpreted in a manner consistent with provincial and federal law.
- 16.2 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 16.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 16.4 Subject to section 10.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 British Columbia acknowledges and enters into this Agreement on the basis that the Westbank First Nation has Aboriginal Interests within their Traditional Territory but that the specific nature, scope and geographic extent of Aboriginal Interests of the Westbank First Nation have yet to be determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty Interests of the Westbank First Nation.

- 16.6 References in this Agreement to Crown lands are without prejudice to the Westbank First Nation's Aboriginal title and/or rights claims over those lands.
- 16.7 With the exception of matters or decisions dealt with in section 3.8, this Agreement does not address or affect any claims by the Westbank First Nation regarding impacts on its Aboriginal Interests resulting from past Operational or Administrative Decisions made by British Columbia prior to the effective date of this Agreement.
- 16.8 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 16.9 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 16.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.12 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Westbank First Nation.
- 16.13 This Agreement does not exclude the Westbank First Nation from accessing forestry economic opportunities and benefits, which may be available to the Westbank First Nation, other than those expressly set out in this Agreement.
- 16.14 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of fact or liability.
- 16.15 This Agreement does not constitute an admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the British Columbia's obligation to consult and accommodate.
- 16.16 If any part of this Agreement is void or unenforceable at law, that part shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 16.17 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.

- 16.18 All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 16.19 In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 16.20 The appendices to this Agreement form part of the Agreement.
- 16.21 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of:

Westbank First Nation


 Chief Robert Louie

March - 14 - 2011
 Date

 Councillor

 Councillor


 Witness of Westbank First Nation signatures
 Raf R. Cuervo

Signed on behalf of:

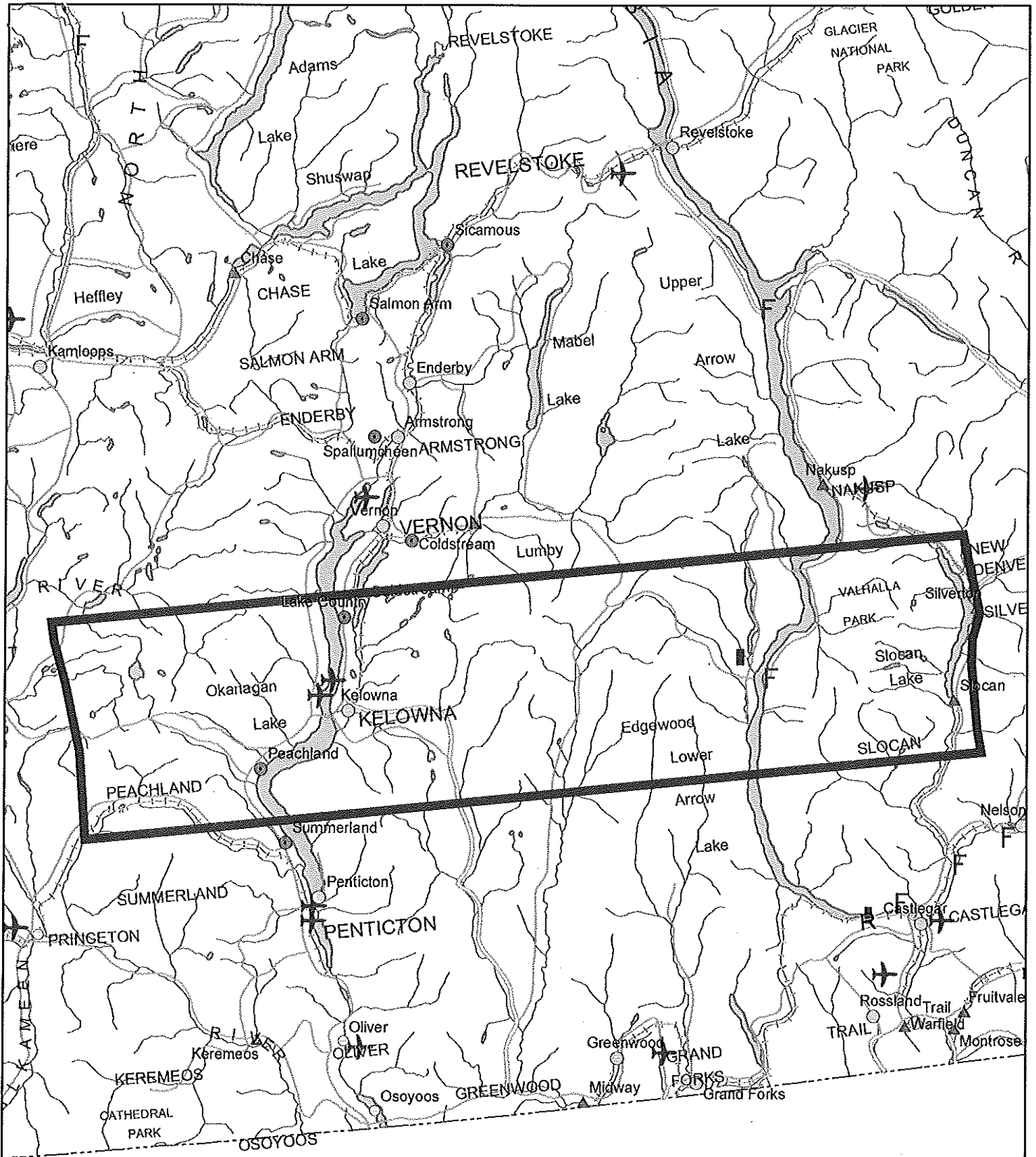
Government of British Columbia


 Barry Penner **MARY POLAK**
 Minister of Aboriginal Relations and
 Reconciliation

03. 31. 11
 Date


 Witness of Minister signature

APPENDIX A
Map of Westbank First Nation Traditional Territory



WASHINGTON (USA)

APPENDIX A - Map of Westbank Traditional Territory



APPENDIX B

Consultation

On Operational and Administrative Decisions and Operational Plans.

In order to facilitate consultation with respect to Operational and Administrative Decisions and Operational Plans, the Parties have agreed to use the Matrix framework set out in section 1.10 of this Appendix ("section 1.10"), which allows the Parties to determine which Operational and Administrative Decisions and Operational Plans will require consultation, as well as the associated appropriate level of consultation for those decisions and plans.

- 1.1 British Columbia agrees to consult with Westbank First Nation in accordance with the applicable consultation level agreed to by the Parties under section 1.10 on Operational Plans, Operational Decisions, and Administrative Decisions that may potentially adversely impact Westbank First Nation's Aboriginal Interests within the Traditional Territory.
- 1.2 Westbank First Nation agrees to fully participate with British Columbia and/or Licensees or licence proponents, as set out in this Agreement and in accordance with the applicable level of consultation to which the Parties have agreed under section 1.10, in information sharing and/or consultation regarding proposed Operational Decisions, Administrative Decisions, and Operational Plans dealing with forest and range development within the Traditional Territory.
- 1.3 In this Appendix, "First Annual List" means a list of Operational and Administrative Decisions and Operational Plans, which may require consultation during the First Fiscal Year of the Term or part thereof in which the Effective Date occurs, and would have been provided to the Westbank First Nation by British Columbia in advance of the Parties entering into this Agreement.
- 1.4 Prior to entering into this Agreement, the Parties will agree on the applicable consultation levels for the decisions on the First Annual List, using the consultation levels described in section 1.10.
- 1.5 In this Appendix, "Annual List" means an annual list of Operational and Administrative Decisions and Operational Plans that may require consultation in a fiscal year of the Agreement in which those decisions are anticipated to be made, and that will be provided to the Westbank First Nation by British Columbia before March 31st of each year after the First Fiscal Year of the Term.
- 1.6 For fiscal years subsequent to the First Fiscal Year of the Term, the Parties will meet annually on or before March 31st to discuss the Annual List and, in the case of decisions and plans for which the Parties have not already agreed to a consultation level described in section 1.10 in a preceding fiscal year, the Parties will agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans on the Annual List, in accordance with section 1.10.
- 1.7 When British Columbia becomes aware of proposed types of Operational or Administrative Decisions or Operational Plans not contained in the Annual List

that will have effect within the Traditional Territory of Westbank First Nation during the current fiscal year, British Columbia will notify the Westbank First Nation of those new types of decisions or plans and the Parties will seek to agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans, in accordance with section 1.10.

- 1.8 In reviewing and responding to an Operational Decision, Administrative Decision, or Operational Plan submitted to them, Westbank First Nation will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, a licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities pursuant to that Operational Decision, Administrative Decision or Operational Plan within the Traditional Territory.
- 1.9 If no response is received from Westbank First Nation within the timeframe set out in section 1.10, then British Columbia may conclude that Westbank First Nation does not intend to respond or participate in the consultation process in respect of the Operational or Administrative Decision or Operational Plan and that a decision may proceed.
- 1.10 The Parties agree to the following description and intent of the consultation levels:



Level	Description	Intent
1. Information Sharing: prior to formal consultation process	Referral to Westbank First Nation during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Decision Maker.	Proponent or tenure holder engages directly with Westbank First Nation, and provides summary of communications to British Columbia.
2. Available on Request	Type of notification whereby British Columbia informs Westbank First Nation they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Westbank First Nation can request more detail if they wish.
3. Notification	Notify in writing Westbank First Nation about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Westbank First Nation base level information and a short reasonable time (21-30 calendar day consultation period determined by the Parties) to comment. Limited follow-up.
4. Expedited Consultation Process	Where there is an imminent threat to a resource value (e.g. mountain pine	Intense but short timeline (about 10 calendar days). A

Level	Description	Intent
	beetle spread control) an expedited consultation process is undertaken,	justification for shortening the period would be given by describing the imminent threat. May require a meeting.
5. Normal Consultation	Follow on "normal" track for consultation guided by up-to-date consultation policy. Meetings to resolve issues where possible and make decision in a timely manner.	Intent to follow this course in most circumstances. Usually a 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Westbank First Nation of the final decision where requested by the Westbank First Nation.
6. Deep Consultation	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary. Preliminary assessments may indicate a significant aboriginal interest and a significant impact to that interest.	Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Westbank First Nation with the final decision and rationale in writing.

- 1.11 The Parties may agree to adjust the consultation levels for specific circumstances where detailed aboriginal interest information is shared that would suggest a different consultation level.
- 1.12 Westbank First Nation agrees that the province is not obligated, unless requested by the Westbank First Nation, to inform the Westbank First Nation of the Delegated Decision Maker's decision for decisions on which the consultation level has been level three (3) or lower.
- 1.13 If the Parties cannot agree upon which consultation level in section 1.10 should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Westbank First Nation on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.

APPENDIX C

Revenue Sharing Contribution Methodology

Traditional Territory Forest Revenue Sharing Component

- 1.0 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of British Columbia, a summary document will be prepared of District X and District Y's forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for District X and District Y.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Westbank First Nation's Forest License (A80260) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Westbank First Nation's Traditional Territory will be calculated by determining the percent of Westbank First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in the Arrow Boundary Forest District, the Cascades Forest District and the Okanagan Shuswap Forest District, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.
- 1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Westbank First Nation as described in section 1.2 of this Appendix.
- 1.4 Where the calculation in section 1.3 of this Appendix is less than \$35,000, Westbank First Nation will receive a maximum of \$35,000 to provide capacity to participate in the consultation process in accordance with section 4.0 of this Agreement.
- 1.5 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

Direct Award Tenure Forest Revenue Sharing Component

- 2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of British Columbia, a summary document will be prepared of Westbank First Nation's Forest License (A80260) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 35 percent of the forest revenue as described in section 2.0 of this Appendix.


- 2.2 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

Forest Revenue Sharing Transition

- 3.0 The Parties agree that new methods to calculate the Revenue Sharing Contribution will be phased in over the next 4 years.
- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by determining the total of the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year ("the sum") and applying the following percentages to that sum:
- 3.1.1 2010/11 BC Fiscal Year: 10 percent;
 - 3.1.2 2011/12 BC Fiscal Year: 50 percent; and
 - 3.1.3 2012/13 BC Fiscal Year: 80 percent.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Westbank First Nation in any given full year under the *WESTBANK FIRST NATION INTERIM MEASURES AGREEMENT (Extension)* which expired on 9/14/2010 ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.2.1 2010/11 BC Fiscal Year: 69 percent;
 - 3.2.2 2011/12 BC Fiscal Year: 59 percent; and
 - 3.2.3 2012/13 BC Fiscal Year: 55 percent.
- 3.3 The Parties agree that if this Agreement is renewed in accordance with section 12.0 of this Agreement, or this Agreement expires in the 2013/2014 BC Fiscal Year, the Revenue Sharing Contribution will be the sum of:
- 3.3.1 the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component calculated in this Appendix; and
 - 3.3.2 50 percent of the value of the Annual Amount identified in section 3.2 of this Appendix.

APPENDIX D

**Band Council Resolution Appointing
the
Recipient Entity for this Agreement ("Designate")**

	<p style="text-align: center;">stqa?k^w+nfw`t WESTBANK FIRST NATION #301 - 515 Highway 97 South Kelowna, B.C. V1Z 3J2 Phone: (250) 769-4999 Fax: (250) 769-4377 www.wfn.ca</p> <p style="text-align: center;"><i>Community. Leadership. Pride.</i></p>	<p style="text-align: center;">MINUTES GENERAL COUNCIL MEETING</p> <p style="text-align: center;"> skix^wfws, sknr'mn / Monday, February 14, 2011 Approved sknr'mn / February 28, 2011</p>
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This is a certified excerpt from the General Council Meeting minutes of February 14, 2011.

<p>RESOLUTION 110214-18</p>	<p>MOVED BY COUNCILLOR WERSTUIK Seconded by Councillor Swite-Ghostkeeper THAT Chief and Council hereby delegate signing authority for forest stewardship plans and cutting permits to the Manager of Heartland Economics. Signing authority for the licence and licence amendments will be retained by Chief Louie. CARRIED</p>
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CERTIFIED TRUE COPY

THIS 9TH DAY OF MARCH, 2011



DELLA ELLIOTT
Commissioner of Oaths
for Westbank First Nation
#301 - 515 Hwy 97 S
Kelowna, BC V1Z 3J2

File: 10450-20/Westbank First Nation

December 7, 2010

Chief Robert Louie
Westbank First Nation
301-515 Highway 97 South
Kelowna, British Columbia
V1Z 3J2



Dear Chief Louie:

Re: Further to Signing a Forest and Range Consultation and Revenue Sharing Agreement

In the new, proposed Forest and Range Consultation and Revenue Sharing Agreement (FCRSA) with the Province there is a requirement at the start of each fiscal year for the parties to agree on an Annual List of anticipated administrative, operational and operational planning decisions. We would sit down to review and reach agreement on the various levels of consultation for those decisions that can be identified at the beginning of the year.

The levels for consultation are described in the FCRSA under section 1.10 of Appendix B. A copy of Appendix B, Consultation on Operational and Administrative Decisions and Operational Plans from the current proposed FCRSA is attached for information purposes.

Should Westbank First Nation sign the FCRSA before March 31, 2011, the applicable First Annual List is a document that was forwarded to Westbank First Nation on May 6, 2010. That list is the document and information that we need to confirm is acceptable to Westbank First Nation. A copy of the May 6, 2010 letter and the Annual List is included.

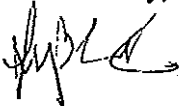
Page 1 of 2

Westbank First Nation

In the future, as envisioned in the FCRSA, ongoing Annual Lists will be the subject of discussion between the parties, focussing on Westbank First Nation's requirements for notice and consultation on the proposed forest and range decisions. We have started to gather a list of upcoming administrative, operational and operational planning decisions for 2011-2012. This information can be shared early in 2011.

Should you have any questions, please call. I am copying Raf DeGuevara and will await further input and guidance on this matter.

Yours truly,



Lynn Black
Consultation Coordinator

c: Raf DeGuevara, Manager of Intergovernmental Affairs, Westbank First Nation (by e-mail)

Encl. Appendix B, Forest and Range FCRSA
May 6, 2010 letter, with attachments Ministry of forest and Range First Nations Admin
List for 2010



File: 10450-20/Westbank First Nation

May 6, 2010

Chief Robert Louie
Westbank First Nation
301 - 515 Highway 97 South
Kelowna, British Columbia
V1Z 3J2

Dear Chief Robert Louie and Council:

The purpose of this letter is to provide Westbank First Nation with the 2010 Administrative Decisions List for the Southern Interior Forest Region (RSI). This decision list will be used to assist ministry staff and First Nation communities in planning and coordinating consultation for the 2010 calendar year. This letter is meant to provide you advance notice regarding what you may expect in upcoming consultations with the Ministry of Forests and Range. This letter is not meant to initiate consultation on the decisions listed in the attached spread sheet. This list provides you our best information at this time, and may require amendment given operational adjustments throughout the year. In addition to the enclosed decision list, some forest districts in the Southern Interior Forest Region compile a district specific decision list of upcoming consultation required with First Nation communities.



If you wish to discuss any aspect(s) of the attached decision list, please contact Rob Purdy, First Nations Consultation Coordinator, at (250) 371-3940, or email at rob.purdy@gov.bc.ca. Westbank First Nation will be contacted at the appropriate time to initiate required consultation on operational and administrative decisions, and we look forward to engaging you in the consultation projects for 2010.

Yours truly,

Michael Blackstock, R.P.T., C.M.B.D.
First Nations Relations Manager
Southern Interior Forest Region

Attachment: Definitions for the Administrative Decision List
Enclosure: 2010 Administrative Decision List

Ministry of Forests
and Range

Southern Interior Forest Region

Location:
441 Columbia Street
Kamloops, British Columbia
V2C 2T3
CANADA

Mailing Address:
441 Columbia Street
Kamloops, British Columbia
V2C 2T3
Tel: (250) 828-4151
Fax: (250) 828-4154

Attachment: Definitions for the Administrative Decisions List

An explanation of the columns on the enclosed 2010 Administrative Decision List is provided below.

Decision

A decision made by a decision maker related to forestry, range or recreation resources under the *Forest Act* or the *Range Act* or the *Forest and Range Practices Act* or the *Forest Practices Code of British Columbia Act*.

In general, administrative decisions do not result in immediate on-the-ground activities; rather they relate to the administrative regime supporting the forest and range tenure system in BC. Some administrative decisions may have an on-the-ground effect.

Operational decisions are decisions made by a decision maker with respect to the statutory approval of a Forest Development Plan, Forest Stewardship Plan, Range Use Plan, Range Stewardship Plan, including forest and range activities that are carried out pursuant to this plan. The decision-maker under PRPA is the Minister or his Delegated-Decision-Maker (DDM).

Please note:

- the list in the 2010 Administrative Decision List (enclosed) contains only administrative decisions; and
- the 2010 Administrative Decision List identifies decisions that are the responsibility of the Ministry of Forests and Range. Other agency decisions are not included in this decision list.

Designated Decision Maker (DDM Office)

Statutory decision makers (SDMs) within the Ministry of Forests include: Region (Regional Executive Director), District (District Manager), BC Timber Sales (Timber Sales Manager) or Branch (i.e. Minister, Chief Forester, and Director Range Section). Each decision is assigned to a different SDM. The decision maker is clearly identified during consultation.

- R – Region
- D – District
- B – Branch
- T – Timber Sales Offices
- En – Engineering
- Te – Tenures
- Ra – Range
- St – Stewardship/ Planning/ Recreation
- FR – Region FN
- FD – District FN
- L – Licensee
- Ts – BC Timber Sales
- TSM – Timber Sales Manager
- () – indicates assists in referral process

Proposed Spectrum

The proposed spectrum follows the format of the *Matrix: Interim Guidance for First Nation's Consultation, Ministry of Forests and Range, November 2006*. The 2010 Administrative Decision List includes suggested levels of consultation for First Nation involvement with respect to different forest and range administrative decisions. The level of consultation may be adjusted as we receive more specific information on your aboriginal interests as part of the consultation process, or due to interim measures agreements with specific First Nation communities. The table below describes the suggested level of consultation from 1 through to 6.

Ministry of Forests
and Range

Southern Interior Forest Region
Regional Office

Location:
441 Columbia Street
Kamloops, British Columbia

Mailing Address:
441 Columbia Street
Kamloops BC V2C 2T3

Phone: 250 828-4131
Fax: 250 828-4154

1. Information sharing	2. Available on Request	3. Notification	4. Expedited process	5. Normal Course Consultation: Inform & follow-up	6. Deep consultation
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Level	Description	Comment/Intent
1. Information Sharing	Information sharing by 3 rd party (e.g. First Nations Information Sharing by licensees undertaken in order to fulfil their FSP obligations - Cultural Heritage Resources results and/or strategies).	Information sharing by 3 rd party (e.g. licensee)
2. Available on request (low level notification)	Type of notification whereby government notifies First Nation they will not be sending out information about very low impact decisions.	Intent is to notify (or negotiate through a consultation protocol) on an annual basis which decisions fall in this category. FN can request more detail if they wish.
3. Notification	Notify in writing the First Nation about an upcoming decision and provide overview information. Would be an opportunity for comment.	Intent is to provide base level information and time to comment. Limited follow-up.
4. Expedited Consultation Process	Where there is an imminent threat to a resource value (e.g. mountain pine beetle spread control) an expedited consultation process is undertaken.	A justification for shortening the period would be given by describing the imminent threat.
5. Normal Course Consultation	Follow policy on "normal" track for consultation. Resolve issues where possible and make decision in a timely manner.	Intent to follow this course in most circumstances where there is not a high probability of impact.
6. Deep Consultation	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary.	Follow provincial guidelines on consultation and accommodation. Would involve meaningful discussion in respect of appropriate accommodation. Probably undertake a strength of claim.

