

Mountain Pine Beetle Agreement
(the "Agreement")

Between:

Lower Nicola Indian Band

As represented by
Chief and Council

and

Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Forests and Range
(the "Government of British Columbia")

(collectively the "Parties")

Whereas:

- The Lower Nicola Indian Band signed a Forest and Range Opportunity Agreement (FRO) with the Government of British Columbia on March 26, 2008. This Agreement is a short-term additional forestry economic opportunity and does not supersede or alter the FRO.
- Mountain pine beetle allowable annual cut increases in the Merritt Timber Supply Area have lead to increased harvesting activity and potential impacts on Lower Nicola Indian Band aboriginal rights and/or title.
- The Government of British Columbia wishes to support economic opportunities for the Lower Nicola Indian Band.

Purpose

1. The purposes of this Agreement are to:
 - a. increase the participation of the Lower Nicola Indian Band in the forest sector;
and,
 - b. provide an economic opportunity by inviting the Lower Nicola Indian Band to apply for a non-replaceable forest licence to assist the province in the management of mountain pine beetle in the Merritt Timber Supply Area, in a manner linked to the FRO and as set out in this Agreement.

Therefore the Parties agree as follows.

2. After execution of this Agreement by the Parties, the Minister of Forests and Range (the "Minister") will invite the Lower Nicola Indian Band to apply for a non-replaceable forest licence (the Licence) under section 47.3 of the *Forest Act* to harvest a total of up to 35,000 cubic meters annually of beetle infested timber over a 5 year

term. This annual volume will be comprised of 20,000 cubic meters conventional MPB uplift and 15,000 cubic meters of smallwood within the traditional territory of the Lower Nicola Indian Band as identified in black bold in Appendix A in the Merritt Timber Supply Area.

3. If the intended holder of the licence(s) is a legal entity other than the Lower Nicola Indian Band, this Agreement must include supporting documentation as specified in Appendix B stating that the intended holder has been validly appointed by the Lower Nicola Indian Band as its representative.
4. The invitation will be subject to a condition that prior to making an application for the Licence, the Lower Nicola Indian Band will contact the Ministry of Forests and Range and the Parties will work co-operatively to identify an operating area within the traditional territory of the Lower Nicola Indian Band.
5. The Licence(s) entered into as a result of the invitation to apply under this Agreement will:
 - a. be for a term of no longer than 5 years as determined by the Minister;
 - b. contain other terms and conditions required by law, including the condition that the Lower Nicola Indian Band must comply with this Agreement and with the FRA/FRO;
 - c. include a term that Lower Nicola Indian Band may not dispose of the Licence except in accordance with the *Forest Act*; and
 - d. include other terms and conditions as may be required by the Regional Manager.
6. An invitation to apply for a non-replaceable forest licence entered into as a result of the invitation to apply under this Agreement may be consolidated with other non-replaceable forest licenses in accordance with section 19(3)(a) of the *Forest Act*.

Consultation

7. The Parties agree to participate in consultation regarding forestry operational plans and administrative decisions pertaining to increases and/or potential increases in harvest levels to address the mountain pine beetle epidemic in the Merritt TSA, as set out in section 4 of the FRO.
8. During the term of this Agreement, and subject to the terms and intent of this Agreement being met and adhered to by the Government of British Columbia, the Lower Nicola Indian Band agrees that the Government of British Columbia will have provided an accommodation, with respect to the economic component of potential infringements of the Lower Nicola Indian Band aboriginal title and/or rights resulting from operational plans and administrative decisions pertaining to increases in harvest levels to address the mountain pine beetle epidemic in the Merritt TSA, as an interim measure.

Dispute Resolution

9. If a dispute arises between the Government of British Columbia and the Lower Nicola Indian Band regarding the interpretation of a provision of this Agreement, the Parties will follow the dispute resolution process set out in the FRO.

Amendments

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

Term

12. This Agreement will take effect on the date on which the last Party has executed it.
13. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - a. 5 years from the date this Agreement is executed; or
 - b. the mutual agreement of the Parties, or
 - c. upon 90 days written notice by either of the Parties.
14. If the FRO is terminated, the consultation processes that were set out in section 4 of that agreement are incorporated by reference into this Agreement and will continue to be followed by the Parties for the term and for the purposes of this Agreement.
15. The Government of British Columbia will not terminate this Agreement on the grounds that the Lower Nicola Indian Band has challenged an Administrative or Operational Decision by way of legal proceedings.

Notice

16. All of the provisions set out in the Notice section of the FRO apply to this Agreement.


Miscellaneous

17. All of the provisions set out in the Miscellaneous section of the FRO apply to this Agreement.

Signed on behalf of:

Lower Nicola Indian Band:

Date: 12 Nov 2008




Chief



Witness

Signed on behalf of:
Government of British Columbia

Date: Jan 17, 2009



Honourable Pat Bell
Minister of Forests and Range



Witness

**APPENDIX A MAP OF LOWER NICOLA INDIAN BAND TRADITIONAL
AREA**

APPENDIX B: (optional)

Description and Documentation pertaining to the Intended Holder of the licence

Please complete part A or B, whichever is appropriate, and attach appropriate documentation:

A) Applicant for the license: _____

OR

B) Full legal name, or corporate description of the legal entity, authorized to represent the applicant of the licence

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- (i) Copy attached of legal instrument (band council resolution) authorizing that legal entity to be their representative;
 - (ii) Copy attached of the ownership structure of the legal entity (the intended holder of the licence).