

**Okanagan Indian Band
Interim Agreement on Forest and Range Opportunities**

BETWEEN:

**Okanagan Indian Band
As represented by Chief Fablan Alexis and Council
("OKIB")**

AND:

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

(collectively the "Parties")

WHEREAS:

- A. OKIB asserts that the Okanagan Nation has aboriginal title and aboriginal rights throughout Syilx Territory as shown on the map attached to this Agreement as Appendix A and outlined in bold black;
- B. OKIB, as a member community of the Okanagan Nation, asserts that it is a beneficiary and steward of Okanagan Nation title and rights, particularly within the OKIB Area of Responsibility as shown in bold red on the map attached to this Agreement as Appendix A;
- C. The Okanagan Indian Band and the Okanagan Nation have a relationship to the land that is important to Okanagan culture and the maintenance of Okanagan community, governance and economy;
- D. The Okanagan Nation has Aboriginal Interests within Syilx Territory, and specifically within the OKIB Area of Responsibility;
- E. British Columbia understands that Okanagan Nation claims an interest in the OKIB Area of Responsibility that is proprietary in nature and has an economic component and that this interest has yet to be determined;
- F. British Columbia has a duty to consult the OKIB and where appropriate, accommodate Okanagan Nation Aboriginal Interests with respect to forest or range resource development plans and activities proposed within the OKIB Area of Responsibility where those plans and activities may lead to an infringement of Aboriginal Interests of the Okanagan Nation;

- G. The Parties intend to participate in a consultation process with respect to forest or range resource development plans and activities that may lead to an infringement of Okanagan Nation Aboriginal Interests; and
- H. The Parties seek to establish a long-term relationship with the objective of developing, among other things, shared decision-making processes and benefit-sharing with respect to land and resource development and protection in accordance with the spirit and vision of the New Relationship within the OKIB Area of Responsibility.

THE PARTIES AGREE AS FOLLOWS:

Definitions

"Aboriginal Interests" means aboriginal rights and/or aboriginal title.

"Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:

- The making, varying, or postponing of Allowable Annual Cut (AAC) determinations for a Timber Supply Area or a Forest Tenure;
- The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or Range Tenure;
- The adjustment of Animal Unit Months in a Range Tenure;
- The extension of the term of, or replacement of a Forest and/or Range Tenure;
- The disposition of volumes of timber arising from undercut decisions on Forest Tenure;
- The conversion of a Forest Tenure to a different form of Forest Tenure;
- The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
- The issuance of a Special Use Permit;
- The decision regarding approval or extension of a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
- The deletion or addition of provincial forest;
- The transfer of AAC between Timber Supply Areas;
- The removal of private land from a Woodlot Licence or a Tree Farm Licence; and
- The establishment of an interpretative forest site, recreation site, and recreation trail.

"Interim Accommodation" means an accommodation provided in this Agreement, of the potential infringements of the economic component of the Okanagan Nation's Aboriginal Interests as those pertain to the OKIB Area of Responsibility arising from or as a result of forest and range development, prior to the full reconciliation of these Interests. The revenue component

reflects the present budget limitations of the Minister of Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.

“New Relationship” means the relationship between 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, in which they are committed to reconciliation of Aboriginal and Crown titles and jurisdiction, and have agreed to implement a government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights.

“OKIB Area of Responsibility” means for the purposes of this Agreement, that portion of the asserted Syilx Territory as shown on the map attached to this Agreement as Appendix A and outlined in bold red.

“Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has a potential effect in the OKIB Area of Responsibility.

“Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, Woodlot Licence Plan, a Range use Plan or Range Stewardship Plan that has a potential effect in the OKIB Area of Responsibility.

“Syilx Territory” means the asserted Traditional Territory of the Okanagan Nation as shown on the map attached to this Agreement as Appendix A and outlined in bold black.

Economic Benefits and Consultation

1. This is an interim agreement with a term of 5 years beginning on the date it has been signed by both Parties.
2. British Columbia will pay OKIB the sum of \$827,536 per year, in quarterly installments, at the end of each quarter, for each of the 5 years. Upon signing of this Agreement, OKIB will be paid for the full revenues for the quarter in which the Agreement is signed.
3. The funding commitment set out in section 2 is subject to the availability of annual appropriations for that purpose by British Columbia.
4. British Columbia will not seek to direct or influence the expenditure of the funds provided to OKIB pursuant to this Agreement.

5. **OKIB is entitled to full consultation with respect to all potential infringements of their Aboriginal Interests arising from any Operational or Administrative Decisions or Plans affecting the Aboriginal Interests of the Okanagan Nation within the OKIB Area of Responsibility.**
6. **The Parties will make every reasonable effort to develop consultation processes, including the establishment of a Joint Forestry Council, to address both Operational and Administrative Decisions and Operational Plans that may lead to an infringement of the Aboriginal Interests of the Okanagan Nation within the OKIB Area of Responsibility.**
7. **The consultation processes referred to in section 6 will address, among other things, OKIB participation in strategic planning processes, input into Operational and Administrative Decisions and Operational Plans and the management of forest and range resources within the OKIB Area of Responsibility.**
8. **The Parties will endeavour to develop draft consultation processes referred to in section 6 within 45 days of signing this agreement and finalize those processes within three months of signing this agreement.**
9. **Until the consultation processes described in sections 6 through 8 are finalized, the Parties will adopt the interim consultation process attached to this Agreement as Appendix B.**
10. **During the term of this Agreement, and subject to the terms and the intent of this Agreement being met and adherence by British Columbia, OKIB agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Okanagan Nation's Aboriginal Interests as an interim measure as a result of forest and range activities occurring within the OKIB Area of Responsibility.**
11. **Nothing in this Agreement restricts the ability of OKIB to seek additional accommodation for impacts on the Aboriginal Interests of the Okanagan Nation from forest or range resource development activities proposed within the OKIB Area of Responsibility that may lead to an infringement of the Aboriginal Interests of the Okanagan Nation.**
12. **Nothing in this Agreement limits any obligation of third parties to OKIB.**

13. Nothing in this Agreement excludes OKIB from pursuing other economic and other benefits from forest and range activities that may be available from time to time.
14. This Agreement does not limit any obligation of British Columbia to consult with or accommodate the Okanagan Nation except within the OKIB Area of Responsibility.
15. This Agreement is without prejudice to the positions that a Party may take in future negotiations or in current or future legal proceedings, except as provided by this Agreement.
16. This Agreement shall not be interpreted as addressing any potential infringement of Okanagan Nation Aboriginal Interests other than potential infringements arising from any Operational or Administrative Decisions or Plans contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize, address or affect any infringement that occurred before the execution of this Agreement or may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
17. No license issued to other Bands or First Nations within the OKIB Area of Responsibility shall constitute an assertion or denial of aboriginal title, rights or interests of the other Band or First Nation by MFR.
18. This Agreement and any decisions and forest and range tenures issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
19. The Province acknowledges and enters into this Agreement on the basis that the Okanagan Nation has Aboriginal Interests within the OKIB Area of Responsibility and further, that the specific nature, scope or geographic extent of those Aboriginal Interests have not yet been 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 Okanagan Nation.

Dispute Resolution

20. If a dispute arises between British Columbia and the OKIB regarding the interpretation of a provision of this Agreement, the Parties or their

duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.

21. 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 OKIB.
22. If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to assist them to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

Termination and Renewal

23. This Agreement may be terminated by Agreement of the Parties, or upon 90 days written notice to the other Party.
24. A challenge in court or other tribunal by OKIB of a decision by British Columbia shall not be grounds to terminate this Agreement.
25. If the terms and conditions of this Agreement are being met and, prior to the expiry of the term of this Agreement, OKIB notifies British Columbia that OKIB wishes to renew this Agreement or conclude a new forestry agreement, the Parties will seek the necessary authorities to renew this Agreement, or to conclude a new forestry agreement, which may provide for the matters provided for in this Agreement, as well as forest tenures, range tenures, other economic benefits and other terms and conditions agreed to by the Parties.

Amendments and Additional Agreements

26. The Parties may review this Agreement from time-to-time and consider amendments to it.
27. Any amendment to this Agreement shall be in writing and signed by the Parties.
28. The Parties acknowledge that this Agreement may need to be amended in future to reflect the outcome of discussions currently underway pursuant to the New Relationship.
29. Immediately upon signing this Agreement, the Parties will commence discussions with respect to direct award forest license and range tenure opportunities that are available to OKIB.

30. Notwithstanding this Agreement, the Parties will, at the request of the OKIB, enter into discussions, and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship, which may include, but are not limited to the following components:
- a) a process for shared decision-making about the land and resources;
 - b) new mechanisms for land and resource protection;
 - c) a process for OKIB's land use planning at all spatial scales and for reconciliation of Crown and OKIB's plans
 - d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;
 - e) financial capacity for OKIB and resourcing for British Columbia to develop and implement new frameworks for shared land and resource decision-making and other components listed above;
 - f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by OKIB to be reserved from resource development pending the outcome of negotiation of agreements referred to in (a) to (e) above;
 - g) Mountain Pine Beetle infestation in OKIB's Area of Responsibility; and
 - h) Forest and Range tenures and other economic accommodations.
31. The Parties acknowledge that the funding provided through this Agreement is an interim accommodation only and that broader processes are underway with respect to the New Relationship that will benefit and, at times, assist the Parties in:
- a) reaching a common understanding of the nature, scope and geographic extent of the Aboriginal Interests of the Okanagan Nation;
 - b) determining the appropriate accommodation in respect of potential infringement on the Aboriginal Interests of the Okanagan Nation as a result of forest and range activities occurring within Syilx Territory;
 - c) negotiating with respect to the issues set out in paragraph 30; and
 - d) developing new approaches for consultation and accommodation, including benefit-sharing.
32. OKIB may choose to opt into opportunities developed through the New Relationship as they become available, through amendment to this Agreement or other mutually agreeable methods.

Entire Agreement

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

Notice

34. 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.
35. Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 pm. If received after 4:00 pm, it will be deemed to have been received on the next business day.
36. 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 Forestry and Range
PO Box 9525 STN PROV GOVT
Victoria, BC V8W 9C3
Telephone: (250) 356-5012
Facsimile: (250) 953-3687

OKIB

Ed Gus, Director of Operations
Okanagan Indian Band
12420 Westside Road
Vernon, BC V1H 2A4
Telephone: (250) 542-4328
Facsimile: (250) 542-4990

Miscellaneous

37. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.

38. This Agreement is not a treaty or land 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.

39. This Agreement may be entered into by each Party signing a separate 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 the Okanagan Indian Band on the 22nd day of September, 2008.

Fabian Alexis
Chief Fabian Alexis

[Signature]
Councillor

Judy Marchand
Councillor

Diane Lewis
Councillor

[Signature]
Councillor

[Signature]
Councillor

[Signature]
Witness of OKIB Signatures

[Signature]
Councillor

Councillor

Councillor

Councillor

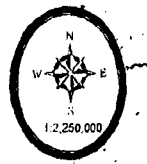
Councillor

Signed on behalf of the Government of British Columbia on the 20th day of OCTOBER, 2008.

[Signature]
Pat Bell
Minister of Forests and Range

[Signature]
Witness of Minister's signature

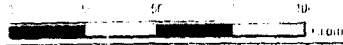
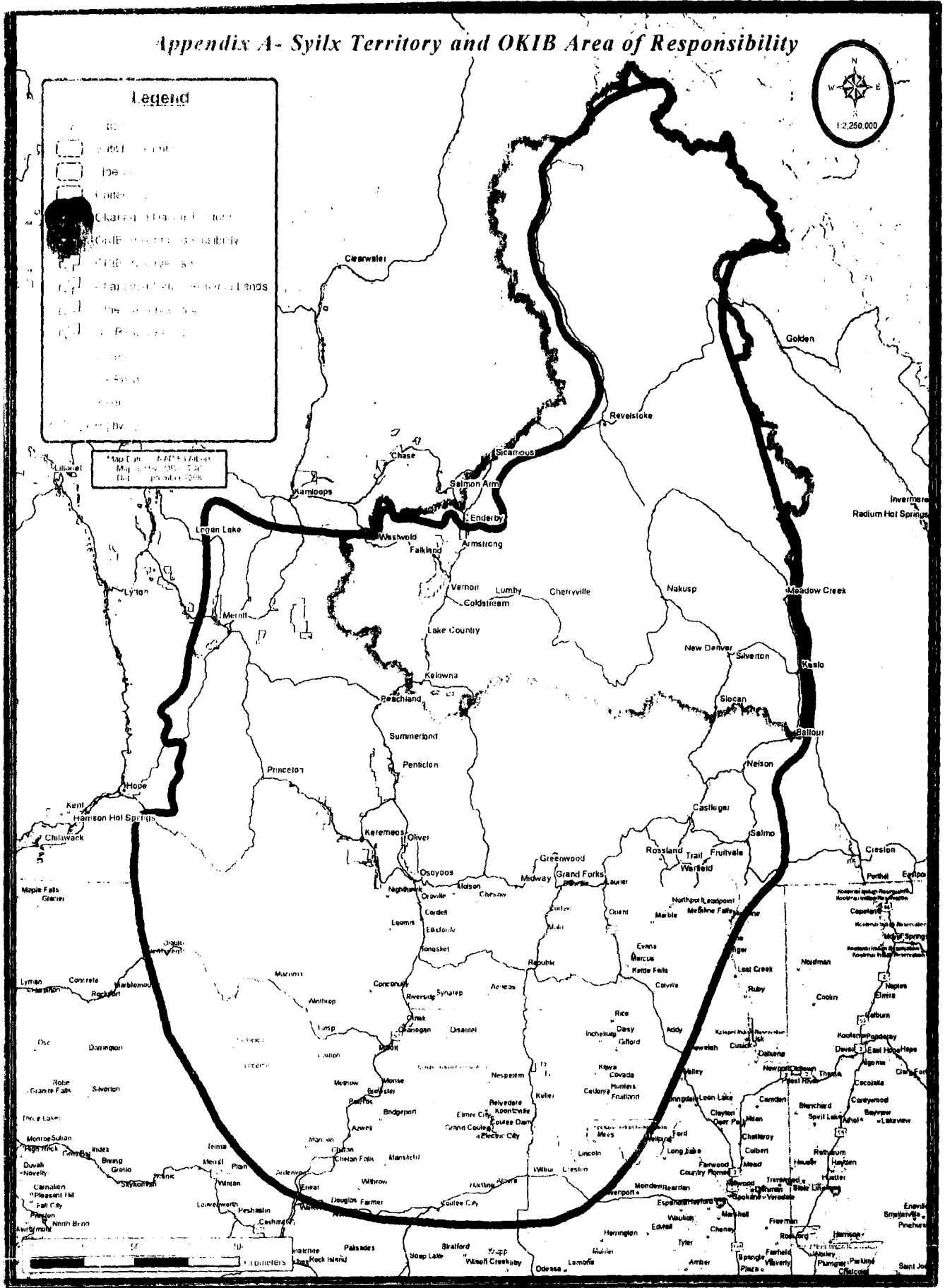
Appendix A- Syilx Territory and OKIB Area of Responsibility



Legend

- Syilx Territory
- OKIB Area of Responsibility
- International Boundary
- Provincial Boundary
- Municipal Boundary
- Indian Reserve
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Map E prepared by the
Map Service, 2002
Date: 2002



Appendix B Consultation Framework

The following consultation framework will be applied to the extent possible to decisions and processes that were initiated prior to, and are underway at the time of, signing this agreement.

The Parties will establish a Joint Consultation Committee (the "Committee") which will be comprised of representatives of Okanagan Indian Band and a matching number of representatives from the Ministry of Forests and Range, including representatives from both the Okanagan Shuswap, Arrow Boundary and Columbia Forest Districts as well as the Southern Interior Forest Region, depending on the nature of the issues to be addressed at any given meeting. The purpose of the Committee is to improve understanding on the part of both Okanagan Indian Band and British Columbia as to the nature of Okanagan Indian Band's concerns with respect to impacts to Okanagan Nation Aboriginal Interests of forestry and range decisions and operations in the OKIB Area of Responsibility and the opportunities for British Columbia to address these concerns.

The duties of the Committee shall be:

- 1) To develop, update and amend as needed, mutually agreed, detailed consultation processes for specific categories of decisions.**
 - a) As part of developing and maintaining detailed consultation processes, British Columbia will provide to Okanagan Indian Band a draft consultation matrix on an annual basis listing all proposed Administrative and Operations Decisions and who the decision makers are for each forestry and/or range decision that will have an effect in the OKIB Area of Responsibility.
 - b) With the understanding that it is important for Okanagan Indian Band to be aware of and have an opportunity to participate in all relevant decisions, but that different decisions may require different consultation approaches, on an annual basis the Committee will jointly review the list of decisions and agree on consultation approaches, including the level of consultation, for each decision. The table below is a starting point for defining the necessary details for each type of decision and identifying special cases which need specific consultation approaches.
 - c) The Committee will explore opportunities to include guidelines or portions of guidelines provided by Okanagan Indian Band in specific consultation approaches to the extent that doing so is consistent with the Ministry of Forests and Range's statutory jurisdiction, authorities, responsibilities and legal advice.

- d) The Committee will extend an invitation to the other provincial land use agencies to sit on the Committee where and when appropriate.
- e) To address unforeseen and emergent issues, either upon the request of Okanagan Indian Band or when British Columbia becomes aware of other proposed Decisions, British Columbia will provide to Okanagan Indian Band an updated list of decisions and the parties will discuss how to adapt an existing consultation approach to the new situation and/or develop a new consultation approach appropriate to the new situation.

1. Planning- FN involvement	2. Available on Request	3. Notification	4. Expedited process	5. Normal Consultation:	6. Deep consultation
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Description and intent of consultation spectrum levels:

Level	Description	Comment on Intent
1) Planning referral: prior to formal consultation process	Referral to Okanagan Indian Band during planning to provide opportunity to incorporate aboriginal interests <i>prior</i> to submitting plan/request to Statutory Decision Maker.	3 rd party volunteer effort
2) Available on request (low level notification)	Type of notification whereby British Columbia notifies Okanagan Indian Band they will not be sending out information about very low impact decisions.	Intent is to notify (or negotiate) on an annual basis which decisions fall in this category. Okanagan Indian Band can request more detail if they wish.
3) Notification	Notify Okanagan Indian Band in writing 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 the public (i.e. wild fire) or a resource value (mountain pine beetle) an expedited consultation process is undertaken. Full process on a short timeline (e.g. 10 days for suppression harvesting of beetle attacked trees).	A justification for shortening the period would be given by describing the imminent threat.
5) Normal course Consultation (standard response period)	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 of low to medium 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 appropriate.	Follow provincial guidelines on consultation and accommodation. Would involve meaningful discussion in respect of appropriate accommodation. Probably undertake a strength of claim analysis.