

**Mowachaht/Muchalaht First Nations
Interim Agreement on Forest Opportunities
(the "Agreement")**

Between:

The Mowachaht/Muchalaht First Nations

As represented by
Council of Chiefs
(the "Mowachaht/Muchalaht First Nations")

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. British Columbia and First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs ("Leadership Council") have entered into a New Relationship 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.
- B. This Agreement is in the spirit and vision of the "New Relationship".
- C. Work is underway regarding the implementation of the New Relationship and that this Agreement may need to be amended in the future to reflect the outcomes of that work.
- D. The Mowachaht/Muchalaht First Nation has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.

- E. The Mowachaht/Muchalaht First Nation has Aboriginal Interests within its Traditional Territory.
- F. The Parties wish to enter into an interim measures agreement in relation to forest resource development within the Traditional Territory.
- G. References in this Agreement to Crown Lands are without prejudice to the Mowachaht/Muchalaht First Nation's Aboriginal title and/or rights claims over those lands.
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Mowachaht/Muchalaht First Nation on forest resource development activities proposed within the Mowachaht/Muchalaht First Nation's Traditional Territory that may lead to the infringement of the Mowachaht/Muchalaht First Nation's Aboriginal Interests.
- I. The Mowachaht/Muchalaht First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest resource development activities proposed within the Mowachaht/Muchalaht First Nation's Traditional Territory that may lead to an infringement of the Mowachaht/Muchalaht First Nation's Aboriginal Interests.
- J. British Columbia and the Mowachaht/Muchalaht First Nation wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 Definitions

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

- 1.1 "Operational Decision" means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has potential effect in the Mowachaht/Muchalaht First Nation's Traditional Territory.
- 1.2 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, or a Woodlot Licence Plan that has a potential effect in the Mowachaht/Muchalaht First Nation's Traditional Territory.
- 1.3 "Aboriginal Interests" means aboriginal rights and/or aboriginal title.

- 1.4 “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 determinations (AAC) for a Timber Supply Area or a Forest Tenure
 - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure;
 - The extension of the term of, or replacement of a Forest Tenure;
 - The disposition of volumes of timber arising from undercut decisions on a 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 interpretive forest site, recreation site, and recreation trail.
- 1.5 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6 “Traditional Territory” means the Mowachaht/Muchalaht First Nation’s asserted traditional territory as shown on bold black on the map attached in Appendix A.
- 1.7 “Licensee” means a holder of a Forest Tenure.
- 1.9 “Interim Accommodation” means an accommodation provided in this Agreement, of the potential infringements of the economic component of the Mowachaht/Muchalaht First Nation’s Aboriginal Interests arising from or as a result of forest 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.

2.0 Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1 Create viable economic opportunities and to assist in the improvement of social conditions of the Mowachaht/Muchalaht First Nation through economic diversification.
- 2.2 Provide interim payment and other economic benefits to the Mowachaht/Muchalaht First Nation through a forest tenure opportunity and/or economic benefits related to forestry received by British Columbia from forest resource development.
- 2.3 Address consultation and provide Interim Accommodation, as set out in this Agreement.
- 2.4 Provide a period of stability to forest resource development on Crown lands within the Traditional Territory of the Mowachaht/Muchalaht First Nation during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.

3.0 Economic Benefits to the Mowachaht/Muchalaht First Nation

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Mowachaht/Muchalaht First Nation:

3.1 Forest Tenure

- 3.1.1 For the purposes of the provisions of section 3.1, Licence includes two non replaceable Forest Licences, or Forestry Licences to Cut, or other forms of agreement as agreed to by the Parties.
- 3.1.2 After the execution of this Agreement, the Minister will invite the Mowachaht/Muchalaht First Nation, or such legal entity as the Mowachaht/Muchalaht First Nation has appointed as its representative to hold the licences, to apply under the *Forest Act* for two non-replaceable forest licences (the "Licences") or Forestry Licences to Cut, on a non-competitive basis from the Strathcona Timber Supply Area and Tree Farm Licence 19. The volume from TFL 19 will be 9893 cubic metres annually and the volume from the

Strathcona Timber Supply Area will be 5565 cubic metres annually.

- 3.1.3 For greater certainty, the maximum volume that may be available under the Licences referred to in Section 3.1.2 will be up to 49,465 cubic meters over five years from TFL 19 and up to 27,825 cubic metres over five years from the Strathcona Timber Supply Area for a total of 77,290 cubic metres (re-allocation volumes).
- 3.1.4 The Parties will strive to ensure that the assigned operating area for the Licences in the Strathcona Timber Supply Area and Tree Farm Licence 19 have a representative timber profile and logging chance relative to other licensees and BC Timber Sales, taking into account the quality of timber, access and commercial viability. Prior to the Mowachaht/Muchalaht First Nation making an application for the Licences, the Parties will work together to identify the location of an operating area for the Licences, which to the extent that it is operationally feasible will be within the Traditional Territory.
- 3.1.5 Licences entered into as a result of an invitation under section 3.1.2 will be for a term of five years.
- 3.1.6 If the Licences remains in effect beyond the term of this Agreement, the Licences will continue to be considered by the Parties to be Interim Accommodation until the Licence expires or is terminated.
- 3.1.7 The Minister may invite the Mowachaht/Muchalaht First Nation to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.2 Interim Payment

- 3.2.1 During the term of this Agreement, British Columbia will make an interim payment to the Mowachaht/Muchalaht First Nation of \$257,634 annually.
- 3.2.2 The funding commitment set out in section 3.2.1 is subject to the availability of annual appropriations for that purpose by British Columbia.

- 3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e. $\frac{1}{4}$) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.4 Upon signing of this Agreement, the Mowachaht/Muchalaht First Nation will be paid the full revenues for the quarter in which the Agreement is signed (e.g. if this Agreement is signed at the end of the quarter, the FN would receive payment for that entire quarter), with subsequent payments being made at the end of each quarter.
- 3.2.5 British Columbia will not seek to direct or influence the expenditure of the funds provided to the First Nation.

4.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 4.1 The Mowachaht/Muchalaht First Nation 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 Mowachaht/Muchalaht First Nation's Aboriginal Interests, regardless of benefits provided under this Agreement.
- 4.2 During the term of this Agreement, and subject to the terms and the intent of this Agreement being met and adherence by British Columbia, the Mowachaht/Muchalaht First Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Mowachaht/Muchalaht First Nation's Aboriginal Interests as an interim measure as a result of forest activities occurring within the Traditional Territory.
- 4.3 The interim payment set out in this Agreement reflects an amount that British Columbia, through the Minister of Forests and Range is able to pay as an interim measure, which the Mowachaht/Muchalaht First Nation has agreed to accept.
- 4.4 The Province acknowledges that the timber opportunities and funding provided through this Agreement are an interim accommodation only and that broader processes are underway that will assist in determining the appropriate accommodation in respect of impacts on the Mowachaht/Muchalaht First Nation's Aboriginal

Interests as a result of forest activities occurring within the Traditional Territory.

- 4.5 Nothing in this Agreement restricts the ability of Mowachaht/Muchalaht First Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resource development within the Traditional Territory.
- 4.6 The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational Plans which may affect the Mowachaht/Muchalaht First Nation's Aboriginal Interests within the Traditional Territory.
- 4.7 In developing such consultation processes, the Parties further agree to address consultation on Administrative Decisions, Operational Decisions and Operational Plans through participation of the Mowachaht/Muchalaht First Nation in strategic level planning and policy development processes.
- 4.8 Unless agreed to otherwise, the Parties will use every reasonable effort to agree upon a consultation process within 3 months of signing this Agreement and, in helping to achieve this, will endeavour to develop draft processes to govern consultation under this Agreement within 45 days after signing this Agreement. In the meantime and until the process is developed the Consultation process outlined in Appendix B will apply.
- 4.9 Where Mowachaht/Muchalaht First Nation is a member of a larger Tribal Nation, this Agreement does not limit the obligation of British Columbia to fulfil its consultation obligations with the Tribal Nation.

5.0 Dispute Resolution

- 5.1 If a dispute arises between British Columbia and the Mowachaht/Muchalaht First Nation 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.
- 5.2 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 Mowachaht/Muchalaht First Nation.
- 5.3 If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable

mediator 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.

6.0 Term and Termination

- 6.1 The term of this Agreement is five years.
- 6.2 This Agreement will take effect on the date on which the last Party has executed it.
- 6.3 This Agreement will terminate on the occurrence of the earliest of any of the following events: expiry of its term; 90 days notice; or mutual agreement of the parties.
- 6.4 Neither Party shall terminate this Agreement on the grounds that the other Party has challenged an Administrative or Operational Decision by way of legal proceedings.
- 6.5 Prior to the expiry of the 90 days when 90 day notice of termination has been given under Section 6.3, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

7.0 Renewal of the Agreement

- 7.1 Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and the Mowachaht/Muchalaht First Nation will seek the necessary authorities and approvals to enter into negotiations to renew this Agreement, or to conclude a new forestry agreement, consistent with the New Relationship.
- 7.2 Any subsequent forestry agreement between British Columbia and the Mowachaht/Muchalaht First Nation may provide for an opportunity to acquire a licence, other forest tenures, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

8.0 Amendment of Agreement

- 8.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 8.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.
- 8.3 The Parties agree that new approaches for consultation and accommodation, including benefit and revenue sharing, will be developed as a priority under the New Relationship by British Columbia and the Leadership Council. The Mowachaht/Muchalaht First Nation may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

9.0 Entire Agreement

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

10.0 Notice

- 10.1 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.
- 10.2 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.
- 10.3 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 Forests and Range

P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 356-5012
Facsimile (250) 953-3687

Mowachaht/Muchalaht First Nation

Chief M. Maquinna
Mowachaht/Muchalaht First Nation
Address: Box 459, Gold River, B.C. V0P 1G0

Telephone: 250 283 2015
Facsimile: 250 283 2335

11.0 Miscellaneous

- 11.1 This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 11.2 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.
- 11.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 11.4 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 11.5 The Province acknowledges and enters into this Agreement on the basis that the Mowachaht/Muchalaht First Nation has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Mowachaht/Muchalaht First Nation 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 Mowachaht/Muchalaht First Nation.
- 11.6 Nothing in this Agreement shall be interpreted to authorize any infringement that 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.

- 11.7 This Agreement does not address or affect any claims by the Mowachaht/Muchalaht First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement,
- 11.8 This Agreement and any decisions and or Licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 11.9 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.
- 11.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 11.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 11.12 British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Mowachaht/Muchalaht First Nation.
- 11.13 This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Mowachaht/Muchalaht First Nation.
- 11.14 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.
- 11.15 This Agreement does not exclude the Mowachaht/Muchalaht First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.

12.0 Giving Effect to the New Relationship

- 12.1 Notwithstanding this agreement, the Parties will, at the request of the Mowachaht/Muchalaht First Nation, 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 the Mowachaht/Muchalaht First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Mowachaht/Muchalaht First Nation's plans;
- (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;
- (e) financial capacity for the Mowachaht/Muchalaht First Nation 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 the Mowachaht/Muchalaht First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above; and


12.2 The Parties acknowledge that there are broader processes underway with respect to the New Relationship which will benefit and, at times assist, the Parties in negotiating with respect to the issues set out in section 12.1.


Signed on behalf of:


Mowachaht/Muchalaht First Nations

Date: Sept 29/08


Chief Michael Maquinna

for 
Chief Norman George


Chief Dan Savey

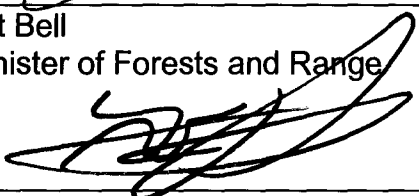

Witness of Mowachaht/Muchalaht First Nations signatures

Signed on behalf of:

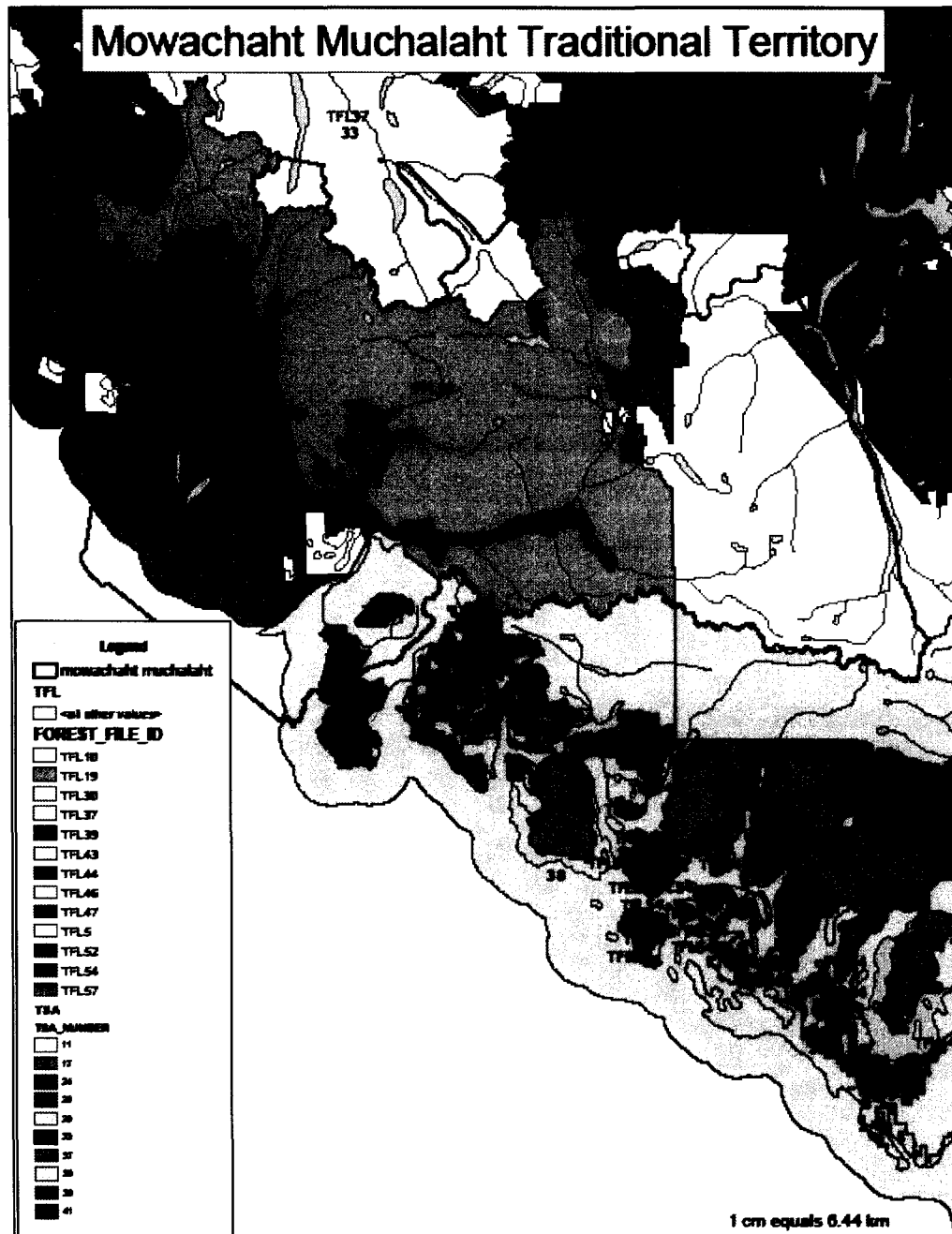
Government of British Columbia

Date: Nov 20/08


Pat Bell
Minister of Forests and Range


Witness of Minister signature

APPENDIX A **Map of Mowachaht/Muchalaht First Nation Asserted Traditional Territory**



Appendix B

Consultation Regarding Operational and Administrative Decisions and Plans

This appendix B contains an interim consultation process as referred to in Section 4.8 of the Agreement. It is expected that this interim consultation process may be amended and refined in due course.

1.0 Consultation Regarding Operational Plans

- 1.1 The Government of British Columbia agrees to consult with Mowachaht/Muchalaht First Nation on Operational Plans that may potentially infringe Mowachaht/Muchalaht First Nation's Aboriginal Interests within the Traditional Territory
- 1.2 Mowachaht/Muchalaht First Nation agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest resource development activities within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 1.3 In reviewing and responding to an Operational Plan submitted to them, Mowachaht/Muchalaht First Nation will, within the Response Period of 60 days, provide the party that supplied the 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 resource development activities within the Traditional Territory.
- 1.4 Upon receiving the response from Mowachaht/Muchalaht First Nation as specified in Section 1.3 of this appendix B, the Government of British Columbia and/or the licensee will discuss and attempt to resolve with Mowachaht/Muchalaht First Nation any site specific operational impacts on Mowachaht/Muchalaht First Nation's Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Traditional Territory. .
- 1.5 If no response is received from Mowachaht/Muchalaht First Nation within the Response Period of 60 days, then the Government of British Columbia may conclude that Mowachaht/Muchalaht First Nation does not intend to respond or participate in the consultation process in respect of the

Operational Plan and that a decision on the Operational Plan may proceed.

- 1.6 In making the final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from Mowachaht/Muchalaht First Nation, whether received directly or through a licensee, and will consider whether concerns identified by Mowachaht/Muchalaht First Nation have been addressed.

Consultation Regarding Administrative Decisions

- 1.7 The Government of British Columbia will provide to Mowachaht/Muchalaht First Nation on an annual basis a list of all proposed Administrative Decisions anticipated within the year that may have an effect within the Traditional Territory, and either upon the request of Mowachaht/Muchalaht First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Mowachaht/Muchalaht First Nation an updated list.
- 1.8 The Government of British Columbia will meet with Mowachaht/Muchalaht First Nation at mutually agreed times throughout the year to provide an opportunity for Mowachaht/Muchalaht First Nation to make known to representatives of the Government of British Columbia their concerns and comments relative to the effects of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.
- 1.9 The Government of British Columbia will include Mowachaht/Muchalaht First Nation in that stage of the timber supply review process referred to as “the public timber supply review process” that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Strathcona and Arrowsmith timber supply areas and tree farm licences 19, 37, and 54.
- 1.10 Mowachaht/Muchalaht First Nation agrees to fully participate, within the Response Period of 60 days, in that stage of the timber supply review process referred to as “the public timber supply review process” by providing all reasonably available information about their Aboriginal Interests within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*. Sensitive cultural information will be protected in a manner consistent with provincial privacy and freedom of information legislation.

- 1.11 The parties acknowledge that the public timber supply review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 1.12 If, after considering the concerns and comments of Mowachaht/Muchalaht First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Mowachaht/Muchalaht First Nation's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0 of the Agreement, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 1.0 of this appendix B.
- 1.13 The Government of British Columbia will provide a response to Mowachaht/Muchalaht First Nation as to how their concerns have been addressed.
- 1.14 Mowachaht/Muchalaht First Nation further agrees that, in consideration of Section 4 of the Agreement and appendix B, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim accommodation process with respect to the economic component of potential infringements of their Aboriginal Interests resulting from Operational and Administrative Decisions made by delegated decision-makers from time to time during the term of this Agreement.