

**Malahat First Nation
Forest & Range
Consultation and Revenue Sharing Agreement (FCRSA)
(the “Agreement”)**

**Between:
The Malahat First Nation**

As Represented by
Chief and Council
(the Malahat 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 British Columbia 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 Malahat 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 Malahat 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 Malahat 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 Malahat First Nation community's well-being.

- E. The Malahat First Nation has Douglas Treaty rights to hunt over the unoccupied lands and to carry on its fisheries as formerly.
- F. British Columbia intends to consult with the Malahat First Nation and to seek to avoid unjustifiable infringement of its Douglas Treaty rights with respect to impacts on the Malahat First Nation's Douglas Treaty rights arising from forest and/or range resource development activities proposed within the Malahat First Nation Traditional Territory.
- G. The Malahat 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 Malahat First Nation's Traditional Territory that may impact the Malahat First Nation's Douglas Treaty rights.
- 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 Malahat First Nation which will enhance the ability of the forestry and ranching industries to exercise timber harvesting and grazing rights in a timely, economic, and environmentally sustainable manner while longer term interests of the Malahat 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 **"Douglas Treaty rights"** means treaty rights of the Malahat First Nation to hunt over the unoccupied lands and carry on fisheries as formerly, which rights 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 Malahat 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, Lands and 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 Malahat First Nation’s Traditional Territory.
- 1.13 “**Payment Account**” has the meaning given to that term in section 3.1.3.
- 1.14 “**Revenue Sharing Contribution**” means each payment to be made by British Columbia to the Malahat First Nation in accordance with Section 3.0 of this Agreement.
- 1.15 “**SEA**” means a strategic engagement agreement between British Columbia and the Malahat First Nation that describes a consultation process between the Malahat First Nation and more than one natural resource ministry of the Government of British Columbia.
- 1.16 “**Forest Tenure Opportunity Agreement**” means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*.
- 1.17 “**Term**” has the meaning given to that term in section 11.1.
- 1.18 “**Timber Harvesting Land Base**” means the portion of the total land area of a management unit considered by Ministry of Forests, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply.
- 1.19 “**Traditional Territory**” means the Malahat First Nation’s claimed or asserted Traditional Territory as shown in bold black on the map attached in Appendix A.
- 1.20 “**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 Malahat First Nation's Douglas Treaty rights 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 Malahat First Nation to participate in consultation initiated by British Columbia and by establishing a consultation process which results in appropriate accommodation or infringement mitigation measures being implemented, where appropriate, in addition to the Revenue Sharing Contribution provided in this Agreement; and
- 2.2 To provide an opportunity for the Malahat 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 Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.

3.0 Forest Revenue Sharing Contribution

- 3.1 Recipient Entity:
 - 3.1.1 Unless the Malahat First Nation elects to have another entity (its "Designate") receive Revenue Sharing Contributions pursuant to section 3.1.2, recognizing that any such election does not relieve the Malahat First Nation of its obligation under this agreement, the Malahat First Nation will be the recipient of the Revenue Sharing Contributions.
 - 3.1.2 Where the Malahat 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 Malahat First Nation.
 - 3.1.3 Malahat First Nation will establish and throughout the Term maintain a bank account in the name of Malahat 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"). Malahat 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 Malahat First Nation, or to its Designate, as the case may be, and, subject to section 3.3 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 \$35,000. For further certainty the first payment under this agreement will be on September 30, 2012 (if the agreement is signed prior to September 30) or March 31, 2013 (if signed after September 30).
- 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, Malahat 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 Malahat 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 Malahat First Nation or its Designate in the manner specified in section 3.2 only if Malahat 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 Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to the Malahat First Nation pursuant to this Agreement is subject to:
- 3.7.1 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
 - 3.7.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in section 3.7.1.

4.0 Consultation Process

- 4.1 The Parties agree that consultation with respect to impacts to Malahat First Nation's Douglas Treaty rights 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 If this is the first such agreement between British Columbia and Malahat First Nation, the Malahat First Nation will provide a hard copy map of its Traditional Territory and a digital copy of the Traditional Territory boundary conforming to current government mapping standards, which hard copy will be set out in this Agreement as Appendix A.
- 4.3 Malahat 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 Malahat First Nation enters into a SEA 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 will supersede and replace the consultation process set out in this Agreement for the term of the SEA if the SEA so provides; and in any such case, if the SEA terminates 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 Malahat First Nation enters into a SEA with British Columbia that includes a consultation process which addresses forest and range management and decision making, and the SEA is subsequently terminated prior to the end of the Term, the Malahat First Nation agrees that this Agreement will be amended within 60 days of the date of termination of the SEA to include a consultation process in this Agreement.

5.0 Acknowledgments and Covenants by Malahat First Nation

- 5.1 Malahat 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 Malahat 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 avoided the unjustifiable infringement of Malahat First Nation's Douglas Treaty rights 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 Malahat First Nation covenants and agrees as follows:

- 6.1.1 Within 60 days of the Effective Date of this Agreement, Malahat 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 2.2. 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, Malahat 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, Malahat 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 Malahat 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 Malahat 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, Malahat 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 Malahat First Nation requires funding ("capacity") to engage in consultation processes on forest and range decisions, or with other provincial Ministries where Malahat First Nation has entered into an SEA with British Columbia, up to \$35,000 annually of the Revenue Sharing Contribution will be used by Malahat First Nation for that capacity during the Term of this Agreement.

7.0 Security Deposits

- 7.1 In recognition of Malahat 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 Malahat First Nation (or a legal entity controlled by the Malahat First Nation) and British Columbia.
- 7.2 Malahat First Nation agrees that British Columbia may apply any payment that Malahat First Nation is entitled to receive under this Agreement, to a maximum of the amounts that British Columbia would have obtained in a silviculture deposit, in order to fully or partially satisfy any unfulfilled financial obligations of Malahat 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 Malahat First Nation (or a legal entity controlled by the Malahat First Nation) and British Columbia.
- 7.3 Prior to British Columbia applying any payment to satisfy unfulfilled Malahat First Nation financial obligations arising from a licence(s) in accordance with section 7.2, British Columbia will notify the Malahat First Nation of the unfulfilled financial obligation(s).

8.0 Stability for Land and Resource Use

- 8.1 Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 Malahat 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 Malahat 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 Malahat First Nation is not fulfilling its obligations under sections 4.0 and

6.0 or sections 8.1 of this Agreement, or where the Malahat First Nation has outstanding unfulfilled financial obligations to British Columbia arising from a licence(s) issued further to an agreement between the Malahat First Nation and British Columbia. Upon making any such determination, British Columbia will provide notice to Malahat 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 Malahat First Nation is not resolved within 60 days of the notice provided in section 10.1, British Columbia will notify Malahat 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 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.
- 10.4 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 Malahat 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
Fax: (250) 387-6594

Malahat First Nation

Chief David Harry
Malahat First Nation
110 Thunder Road, RR4
Mill Bay, BC V0R 2P4
Phone: (250) 743-3231
Fax: (250) 743-3251

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 treaty rights, or limit any priorities afforded to treaty rights.
- 16.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 16.4 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 16.6 This Agreement does not address or affect any claims by the Malahat First Nation regarding impacts on its Douglas Treaty rights resulting from past Operational or Administrative Decisions made by British Columbia prior to the effective date of this Agreement.
- 16.7 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.
- 16.8 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.
- 16.9 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.10 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.11 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Malahat First Nation.
- 16.12 This Agreement does not exclude the Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to the Malahat First Nation, other than those expressly set out in this Agreement.
- 16.13 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.
- 16.14 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.

- 16.15 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.
- 16.16 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.
- 16.17 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.
- 16.18 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.
- 16.19 The appendices to this Agreement form part of the Agreement.

16.20 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.

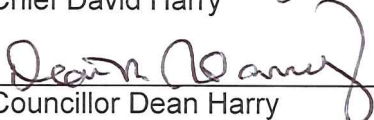
Signed on behalf of:

Malahat First Nation




Chief David Harry


Oct 2, 2012
Date



Councillor Dean Harry



Councillor Russell Harry



Witness of Malahat First Nation signatures

Signed on behalf of:

Government of British Columbia



Ida Chong
Minister of Aboriginal Relations and
Reconciliation

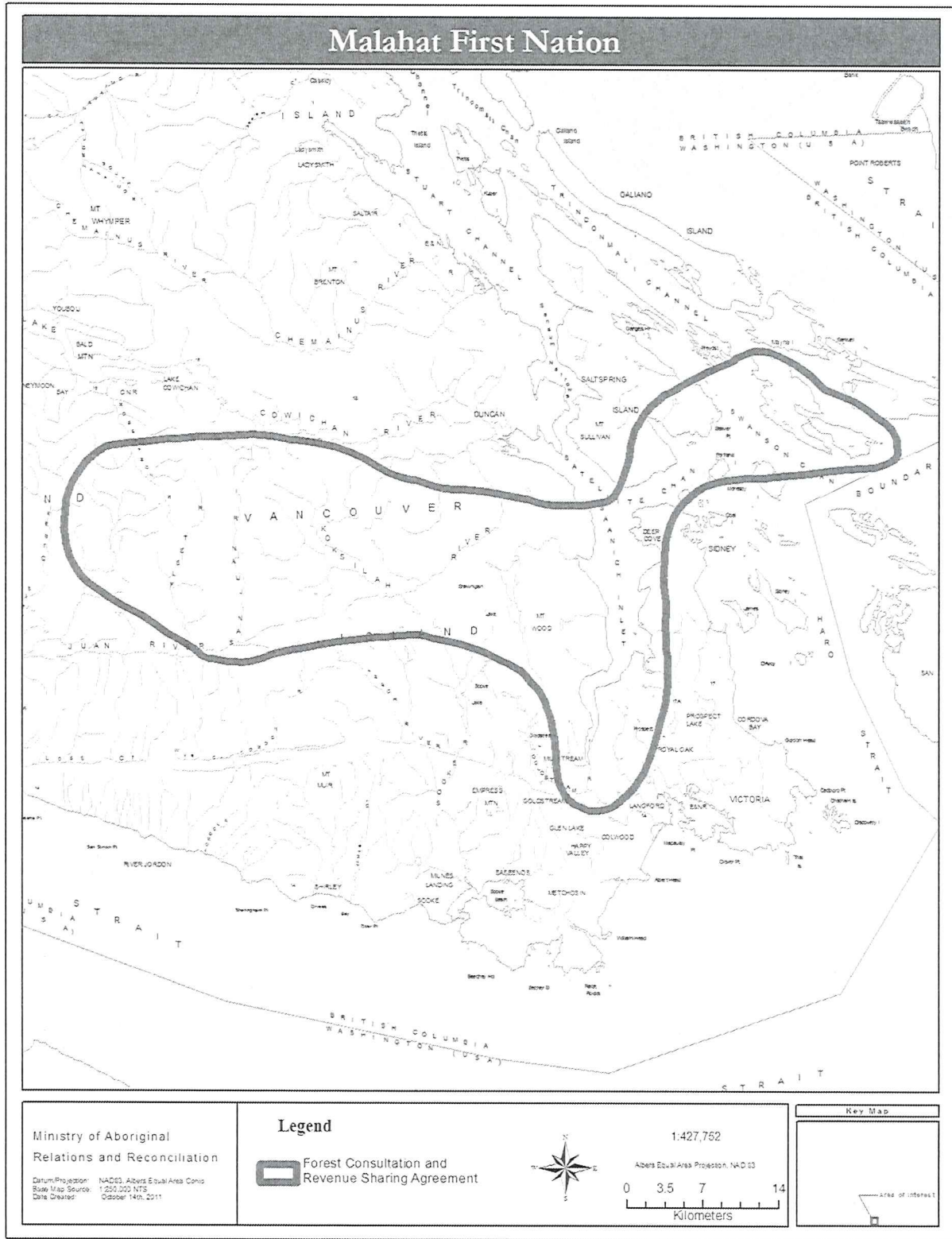
Oct-30/12
Date



Witness of Minister signature

APPENDIX A

Map of Malahat First Nation Traditional Territory



APPENDIX B

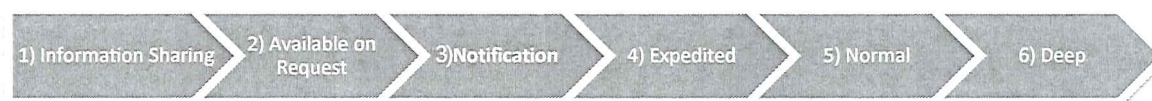
Consultation

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 1.1 of this Appendix ("section 1.1"), 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 Malahat First Nation in accordance with the applicable consultation level agreed to by the Parties under section 1.1 on Operational Plans, Operational Decisions, and Administrative Decisions that may potentially adversely impact Malahat First Nation's Douglas Treaty rights within the Traditional Territory.
- 1.2 Malahat 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 1.1, 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, that is provided to the Malahat 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 1.1.
- 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 Malahat 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 1.1 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 1.1.

- 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 Malahat First Nation during the current fiscal year, British Columbia will notify the Malahat 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 1.1.
- 1.8 In reviewing and responding to an Operational Decision, Administrative Decision, or Operational Plan submitted to them, Malahat 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 Douglas Treaty rights 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 Malahat First Nation within the timeframe set out in section 1.1, then British Columbia may conclude that Malahat 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 Malahat 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 Malahat First Nation, and provides summary of communications to British Columbia.
2. Available on Request	Type of notification whereby British Columbia informs Malahat First Nation they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Malahat First Nation can request more detail if they wish.
3. Notification	Notify in writing Malahat First Nation about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Malahat 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.

Level	Description	Intent
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.	Intense but short timeline (about 10 calendar days). A 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 Malahat First Nation of the final decision where requested by the Malahat 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 mitigate impacts and avoid unjustifiable infringement of treaty rights where necessary.	Would involve meaningful discussion of suitable accommodation or impact mitigation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Malahat 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 treaty rights information is shared that would suggest a different consultation level.
- 1.12 Malahat First Nation agrees that the province is not obligated, unless requested by the Malahat First Nation, to inform the Malahat 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 1.1 should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Malahat 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.

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
Allowable Annual Cut at the Timber Supply Area					
Timber supply reviews for AAC Cut (AAC) determination	Admin	Chief Forester	5	24 months total several 60-day consultations	Multiple 60 day processes at discreet intervals over 24 month period
AAC disposition /apportionment	Admin	Minister FLNRO	5	60 days	
Innovative Forestry Practices AAC	Admin	Regional Executive Director	5	60 days	
Community Forest Agreements (CFA)					
Timber supply reviews for AAC determination	Admin	Regional Executive Director	5	60 days	
Establishment of CFA area	Admin	District Manager	5	60 days	
CFA management plan approvals	Admin	Regional Executive Director	1-3	60 days	
CFA management plan amendments	Admin	Regional Executive Director	1-2	30 days	
Probationary CFA transition into a CFA	Admin	Regional Executive Director	1-2	30 days	
Boundary/Area amendment	Admin	Regional Executive Director (legislation indicates DM or RED but currently it is the RED)	5	30 days	
Cutting permit (CP) issuance	Operational	District Manager	1-2	360 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee-led information sharing.
Road permit (RP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee lead information sharing.
CP/RP minor amendments	Operational	District Manager	1-2	30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
Delisting Community Watersheds					
Delisting Community Watersheds	Admin	Regional Executive Director	5 ?	60 days	
Forest Licence (FL)					
AAC Disposition	Admin	Regional Executive Director	5-6	60 days	
Licence transfer	Admin	Minister FLNRO	3	30 days	Unknown until application arrives
Section 18 transfers of AAC between TSA's	Admin	Regional Executive Director	5	60 days	
Innovative Forest Practises Agreements	Admin	Regional Executive Director	3-5	6 months	
Issuance of Forest licence/Non-replaceable forest licence (NRFL)	Admin	Regional Executive Director	5	60 days	

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
Extension of Forest licence/Non-replaceable forest licence (NRFL)	Admin	Regional Executive Director	3	30 days	
FL consolidation, and subdivision	Admin	Regional Executive Director	3	30 days	
FL replacement	Admin	Regional Executive Director	5	60 days	
Exemptions from cut control limits for forest health	Admin	Regional Executive Director	3	30 days	
Cutting permit (CP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee-led information sharing.
Road permit (RP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee lead information sharing.
CP/RP minor amendments	Operational	District Manager	1-2	30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
Forestry Licence to Cut (FLTC)					
Licence transfer	Admin	Regional Executive Director	3	30 days	Unknown until application arrives
Licence to cut issuance (minor cutting, small scale salvage, recreation sites and trails), commercial CTP mature timber harvest, and OLTC Extensions	Operational	District Manager and Regional Executive Director	1-2	n/a	
Salvage permit (i.e. commercial operators seeking cedar), and FLTC Extensions	Operational	District Manager	1-2	30 days	
Community wildfire protection. (FLTC) Non-emergency licence to cut for wildfire prevention	Operational	Regional Executive Director	3	30 days	
OLTC issuance. Tree removal required for new infrastructure/ facilities installations. Most are consulted on in association with Land Act tenures	Operational	District Manager	2	n/a	
Forestry licence to cut issuance by BC Timber Sales	Operational	Timber Sales Manager	2	n/a	
First Nation Woodland Licence (FNWL)					
FNWL through treaty or interim measures agreement	Admin	Regional Executive Director	3	30 days	
Exemptions from cut control limits for forest health	Admin	Regional Executive Director	3	30 days	
Cutting permit (CP)	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
issuance					1) may occur based on the outcome of licensee-led information sharing.
Road permit (RP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee lead information sharing.
CP/RP minor amendments	Operational	District Manager	1-2	30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
Forest Investment Account (FIA) Stewardship					
Sustainable forest management planning; management unit and watershed level strategies/plans; resource inventories; monitoring; decision support;; recreation, etc. Intended to improve the economic and ecological stability of the forest land base	Operational	District Manager	1-2	60 days	Consultation levels guided by the <i>Land Based Investment Interim First Nations Information Sharing Guidelines 2010</i>
Stand Treatments to meet timber objectives	Operational	District Manager	1-2	?	Consultation proponent driven as per FIA program guidelines
Free Use Permits					
Free Use Permits for First Nations' traditional and cultural activities	Operational	District Manager	2	n/a	
Government Actions Regulation Orders (GAR)					
Generally GARS serve to protect lands from development (i.e. Visual quality objectives, old growth management areas, wildlife habitat areas/ measures, etc)	Admin	District Manager	2-3	30 days	Consultation level set at notification.
Higher Level Plan Orders					
Higher level plan orders	Admin	Regional Executive Director	5-6	60 days	
Land Act					
Issue new <i>Land Act</i> Tenure over previously un-impacted site/submerged land generally related to forestry activities. Examples may include dryland sort and foreshore lease tenures	Admin	Minister Forests, Lands and Natural Resource Operations or designate	5	60 days	
<i>Land Act</i> tenure amendments, extensions & replacements related to forestry activities. Examples may include dryland sort and	Admin	Minister Forests, Lands and Natural Resource Operations or designate	3	30 days	

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
foreshore lease tenures					
Misc. Forest Tenure					
Authority to harvest timber by Crown agents. (<i>Forest Act</i> Sec 52) May be used FSR realignments, heli pad clearing for BCTS, research branch destructive sampling, and parks staff	Operational	District Manager and Timber Sales Manager	1	n/a	
Christmas Tree Management Plan approval	Operational	District Manager	1	0 days	
Christmas Tree Permit (CTP) to grow and/or harvest Christmas trees on Crown land, and CTP Re-Issuance Often in association with compatible land use such as BC Hydro power line right of ways	Operational	District Manager	1	n/a	
Occupant Licence to Cut (OLTC)					
Licence to cut issuance (minor cutting, small scale salvage, recreation sites and trails), commercial CTP mature timber harvest, and OLTC Extensions	Operational	District Manager and Regional Executive Director	1-2	n/a	
Salvage permit (i.e. commercial operators seeking cedar), and FLTC Extensions	Operational	District Manager	1-2	30 days	
Community wildfire protection. (FLTC) Non-emergency licence to cut for wildfire prevention	Operational	Regional Executive Director	1-2	30 days	
OLTC issuance. Tree removal required for new infrastructure/ facilities installations. Most are consulted on in association with Land Act tenures	Operational	District Manager	1-2	30 days	
Forestry licence to cut issuance by BC Timber Sales	Operational	Timber Sales Manager	1-2	n/a	
Old Growth Management Areas (OGMA)					
Establishment of OGMA. OGMA serve to protect existing old growth stands from harvest or alternatively serve to recruit old growth from younger stands	Admin	District Manager	2	n/a	
Range					

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
New range tenure (re-issuance of relinquished tenure or no previous tenure)	Admin	District Manager	5		
Range tenure replacement	Admin	Minister FLNRO	3	30 days	
Range tenure major amendments, boundary change	Admin	District Manager	5	60 days	
Range tenure transfer	Admin	N/A	N/A		Advisory upon occurrence; tenure holder process
Grazing lease replacement	Admin	Minister	1-2	30 days	
1 Year grazing permit issuance	Admin	District Manager	5	60 days	
Animal Unit Month (AUM) adjustment	Admin	District Manager	3	?	Major adjustment to AUM only
Range use plan (RUP) or stewardship plan issuance	Operational	District Manager	5	60 days	
Range use plan or range stewardship plan extensions	Operational	District Manager	3	30 days	
RUP amendments (major)	Operational	District Manager	1-2	30 days	
Range developments not in RUP (large scale)	Operational	District Manager	5	60 days	
Range developments not in RUP (small scale)	Operational	District Manager	3	30 days	
Pest Management Plan	Operational	Regional Executive Director	1,5		Plan prepared at Branch/regional level
Road Use Permit (RUP) Issuance					
RUP over existing Forest Service Roads for industrial use	Operational	District Manager	1-2	30 days	
Recreation Sites and Trails (RST)					
The establishment of new interpretive forest sites, recreation sites and recreation trails and their objectives. (Section 56 FRPA)	Admin	Sites and Trails BC Assistant Deputy Minister	3	30 days	
Dis-establish recreation sites and trails	Admin	Sites and Trails BC Assistant Deputy Minister	2	30 days	
Authorize trail construction (Section 57 FRPA)	Admin	Sites and Trails BC Regional Manager/ District Recreation Officer	3	30 days	
Protection of recreation resources on Crown land (Section 58 FRPA) - Protect a recreation resource or to manage public recreation use.	Admin	Sites and Trails BC Regional Manager	1-2	30 days	
Special Use Permits (SUP)					
Issue new permit over previously un-impacted site. Examples may	Admin	District Manager	5	60 days	

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
include logging camps, log sorts, and log dumps					
SUP amendment/ replacement/ issuance over previously developed site. Examples may include logging camps, log sorts, and log dumps	Admin	District Manager	1-2	30 days	
Tree Farm Licence (TFL)					
Management plan approval AAC determination	Admin	Deputy Chief Forester	3	30 days	
Timber supply reviews for AAC Cut (AAC) determination	Admin	Chief Forester	5	24 months total several 60 day consultation	Multiple 60 day processes at discreet intervals over 24 month period
AAC Disposition	Admin	Regional Executive Director	5-6	60 days	
Deletion of Crown land	Admin	Minister FLNRO	5	60 days	Unknown until application arrives
TFL consolidation, and subdivision	Admin	Minister FLNRO	3	30 days	Unknown until application arrives
Deletion of Private land	Admin	Minister FLNRO	5	60 days	Unknown until application arrives
TFL replacement	Admin	Minister FLNRO	3-5	60 days	
Licence transfer	Admin	Minister FLNRO	3	30 days	
Cutting permit (CP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee-led information sharing.
Road permit (RP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee lead information sharing.
CP/RP minor amendments	Operational	District Manager	1-2	30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
Timber Licence (TL)					
Lincence transfer	Admin	Minister or delegate	3	30 days	
Licence transfer	Admin	Regional Executive Director	3	30 days	
Extension	Admin	Regional Executive Director	5	60 days	
Exemptions from cut control limits for forest health	Admin	Regional Executive Director	3	30 days	
Woodlot Licence (WL)					
Establishment and advertising of WL area.	Admin	District Manager	5	60 days	
Exemptions from cut control limits for forest health	Admin	Regional Executive Director	3	30 days	
Management Plan approvals	Admin	District Manager	1-3	30 days	
Timber supply reviews for AAC determination	Admin	District Manager	5	60 days	
WL Plan approvals	Admin	District Manager	3	60 days	

First Annual List for 2012/2013 As per Section 1.2 - South Island Natural Resource District or Malahat First Nation					
Decision	Decision Type	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments
WL Plan amendments	Admin	District Manager	3	30 days	
Boundary/Area amendment	Admin	District Manager	3	30 days	
Deletion of Private land	Admin	Minister Forests, Lands and Natural Resource Operations	5	60 days	
First Nations direct award of WL	Admin	District Manager	5	60 days	
Removal of private land	Admin	Regional Executive Director	2	30 days	
Consolidation of 2 woodlot licenses	Admin	Regional Executive Director	2	30 days	
Replacement of a woodlot license	Admin	Regional Executive Director	2	30 days	
Licence transfer	Admin	Regional Executive Director	3	30 days	
Cutting permit (CP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee-led information sharing.
Road permit (RP) issuance	Operational	District Manager	1-2	30 days	Supplemental consultation by MNRO (above level 1) may occur based on the outcome of licensee led information sharing.
CP/RP minor amendments	Operational	District Manager	1-2	30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
BC Timber Sales TSL/RP					
BC Timber Sales (BCTS) Timber Sale Licence or Road Permit	Operational	Timber Sales Manager	5	60 days	Consultation is done at the Operational Plan Review stage prior to Timber Sale Licence and Road Permit Issuance. Supplementary consultation is done when required as per the Aconsultation procedures.
TFL/FL/CFA/WL/ FNWL					
Forest Stewardship Plan (FSP) /Woodlot Licence Plan (WLP) review and approval, including major amendments to FSP	Operational	District Manager	5	60 days	
FSP and WLP extensions	Operational	District Manager	3	30 days	

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 South Island District'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 South Island District.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Malahat First Nation's Forest License (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Malahat First Nation's Traditional Territory will be calculated by determining the percent of Malahat First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in District X and District Y, 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 Malahat 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, Malahat 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 Malahat First Nation's Forest License (if applicable) 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.

APPENDIX D

Band Council Resolution Appointing the Recipient Entity for this Agreement (“Designate”)

APPENDIX E

Malahat First Nation Statement of Community Priorities

(Example only)

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2012/2013	2013/2014	2014/2015		

APPENDIX F

Malahat First Nation Statement of Community Priorities

Annual Report

(Example only)

Socio-economic Priority	2012/2013 Planned Expenditures	2012/2013 Actual Expenditures	Outcomes Achieved	Variance Explanation