

First Nations Wildfires Agreement
(the "Agreement")

Between:

Ktunaxa Kinbasket Tribal Council
(The "K/KTC")

Representing
The following bands:
Columbia Lake
Shuswap
St. Mary's
Tobacco Plains
Lower Kootenay

And

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

(collectively the "parties")

Whereas:

- A. The K/KTC have aboriginal interests within the interest area map attached in Appendix A.
- B. This Agreement applies to K/KTC's asserted traditional territory of interest within the wildfire areas outlined in Appendix B
- C. The Cranbrook and Invermere Timber Supply Areas (TSA) Fire Timber Recovery Process (TRP) will manage the salvage of fire-killed timber in the following fire areas: Plumbob Fire; Lamb Fire; Ram/Storm Fire; Cummings Fire; and Magnesite Fire as depicted on the map attached in Appendix B and in section 4.0 (b).

Should a Beetle Salvage AAC uplift occur, the MOF will discuss this with the K/KTC.

- D. This Agreement covers only the lands identified as part of the Cranbrook and Invermere TSAs Fire Timber Recovery Process (TRP).
- E. The Government of British Columbia is responding to an economic interest expressed by K/KTC by providing access to wildfire damaged timber and silviculture for economic purposes as part of the fire TRP in the Cranbrook and Invermere TSAs.
- F. The K/KTC is prepared to review the Forest/Range Agreement information (i.e. Forest Revitalization Plan).

Therefore the Parties agree as follows:

1.0 Definitions:

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

- 1.1 "Aboriginal interests" means the cultural, economic and social interests of the Ktunaxa people, as well as their asserted but not yet proven aboriginal rights and/or aboriginal title.
- 1.2 "Forest Tenure" means an Agreement issued under the *Forest Act*.
- 1.3 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, Tree Farm Licence Management Plan and Range Use Plan as defined in provincial legislation respecting forest or range practices and includes forest or range development activities that are carried out pursuant to those Plans.

2.0 Purpose:

2.1 The purposes of this Agreement are to:

- (a) Respond to K/KTC economic interest for access to tenures created as part of the fire TRP in the Cranbrook and Invermere TSA's.
- (b) Agree to jointly create an expedited consultation process by which the Ministry of Forests will consult with the K/KTC and member bands regarding their aboriginal interests on the harvesting and rehabilitation activities within the wildfire areas in a manner that will allow for the timely removal of timber and rehabilitation of wildfire areas.
- (c) To confirm that the K/KTC will participate in the development and implementation of the fire TRP for the Cranbrook and Invermere TSA's. The K/KTC capacity to harvest and /or mill and market will be considered as a factor in this planning.

3.0 Invitation to apply for a licence(s)

- 3.1 After the execution of this Agreement by the parties, the Minister will invite an application(s) for a non-replaceable forest licence(s) (the "license") pursuant to Section 47.3 of the Forest Act for volumes specified, and not to exceed, the total volume of 255,000 cubic metres in section 4(b), within the Cranbrook or Invermere TSA's - in an area agreed to by the Regional Manager. The application(s) will invite the intended holder of the licence or appointed legal entities to act as their representative. Supporting documentation is specified within Schedule C of this Agreement. .

3.2

An invitation to apply for a licence and any licence entered into as a result of the invitation to apply under this Agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time. This Agreement will be in accordance with Section 71 of the *Forest Practices Code of BC Act*, which provides an option to the authority to transfer silviculture liability away from the license. There is also an option for the district manager to direct award of up to \$50,000 of silviculture work on the fires to a First Nation per year.

3.3

An invitation to apply under this Agreement will contain terms and conditions required by the Minister and the Regional Manager.

3.4

A licence entered into as a result of an invitation to apply under this Agreement:

- (a) will be for a term of no longer than 3 years, as determined by the Minister;
- (b) will only apply to fire-damaged timber
- (c) will not be transferable or divisible without the consent of the Minister;
- (d) will not be replaceable;
- (e) will not guarantee timber rights to a particular species or grade of timber;
- (f) will contain other terms and conditions required by law, including the condition that the K/KTC must comply with this Agreement;
- (g) will include other terms and conditions as may be required by the regional manager

4.0 Requests for Wood for Economic Purposes

- (a) Upon signing this Agreement the K/KTC and/or bands which are signatories of this Agreement will make a request for tenure to the Minister who will make a determination and may then make an invitation for tenure in accordance with the *Forest Act*;
- (b) The total volume of fire salvage timber which will be eligible for invitation is outlined below by fire name:

Fire	Non Replaceabl e Forest Licence #	Intended Holder or Legal Entity Authorized to represent the Intended Holder	Up to Volumes (m3)	TSA
Magnesite	A73240		50,000	Invermere
Plumbob	A73554		80,000	Cranbrook
Ram/Storm	A73554		20,000	Cranbrook
Cummings	A73554		5,000	Cranbrook
Lamb	A73554		100,000	Cranbrook

- (c) The K/KTC and signatories acknowledges that the Ministry of Forests will also be awarding additional wildfire salvage tenures to other licensees (other than First Nations) as part of the fire TRP.

5.0 Dispute Resolution

5.1

In the event of a dispute arising under this Agreement, the Parties will endeavour to define the dispute and resolve it within fifteen working (15) days.

5.2

If the dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve the dispute within 60 days, or such period as may be otherwise agreed upon.

5.3

Nothing in Section 5 will prevent either party from resorting to legal remedies at any time to resolve disputes. However the

parties agree the preference is to complete section 5.1 and section 5.2 before resorting to other remedies.

5.4

The cost of mediation will be equally shared by both parties.

6.0 Amendment

6.1 Any alteration or amendment to the terms and conditions of this Agreement must be in writing and duly executed by both parties.

7.0 Entire Agreement

7.1 This Agreement and any amendments to it constitute the entire Agreement between the parties with respect to the subject matter of this Agreement.

8.0 Term

8.1 This Agreement will take effect on the date that it has been executed by the Parties.

8.2 This Agreement will terminate on the occurrence of the earliest of the following events:

- (a) 3 years from date of signing; or
- (b) the date on which this Agreement is super-ceded by a broader Agreement addressing the reconciliation of K/KTC and signatories interests with forest development and/or other Crown authorized land or resource activity.

9.0 Suspension or Cancellation of Licence

9.1 Without limiting the actions that may be taken by the Minister or by the Government of British Columbia, and in accordance with Sections 76 and 77 of the Forest Act, the Regional Manager or District Manager may suspend or cancel the licence entered into as a result of the invitation to apply under this Agreement if it is determined that the K/KTC is not in compliance with this Agreement or if this Agreement is terminated under section 8.0.

The Minister will provide K/KTC 30 days prior written notice of the intent to cancel. The notice will include a description of the perceived breach and a proposed remedy.

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 set out in this paragraph of the Agreement.

British Columbia

Deputy Minister
Minister of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Facsimile (250) 387-7065

Ktunaxa Kinbasket Tribal Council

Administrator
Ktunaxa Kinbasket Tribal Council
7468 Mission Road
Cranbrook, B.C. V1C 7E5
Facsimile (250) 489-5760

- 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.

11.0 Counterpart

- 11.1 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.

12.0 Miscellaneous

- 12.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.
- 12.2 This Agreement is not a treaty or a land claim Agreement within the meaning of section 25 and 35 of the *Constitution Act*, 1982 and does not recognise, affirm, or deny the existence of aboriginal rights including aboriginal title, or treaty rights.
- 12.3 This Agreement will not limit the positions that the parties may take in future negotiations or court actions, other than with respect to the matters addressed in this Agreement.
- 12.4 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute.
- 12.5 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any party.
- 12.6 This Agreement shall be governed by the applicable laws of British Columbia and Canada.

13.0 Without Prejudice

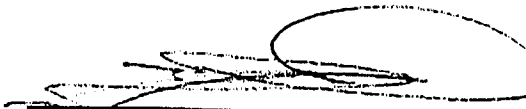
- 13.1 Nothing in the Agreement is intended to define, create, or cause the extinguishment of any title or rights of the K/KTC or member bands.
- 13.2 This agreement is without prejudice to the positions the Parties may take in other negotiations or court actions, other than with respect to the matters addressed in this Agreement.
- 13.3 This Agreement and any licenses issued as contemplated by this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction, authorities, legislation or policies except as set out in this Agreement.

This Agreement is dated for reference November 30, 2003

Signed on behalf of K/KTC


Date: 2003 12 11



Kathryn Teneese
K/KTC Administrator


Witness

Signed on behalf of:
Government of British Columbia

Date: Dec. 18, 2003.

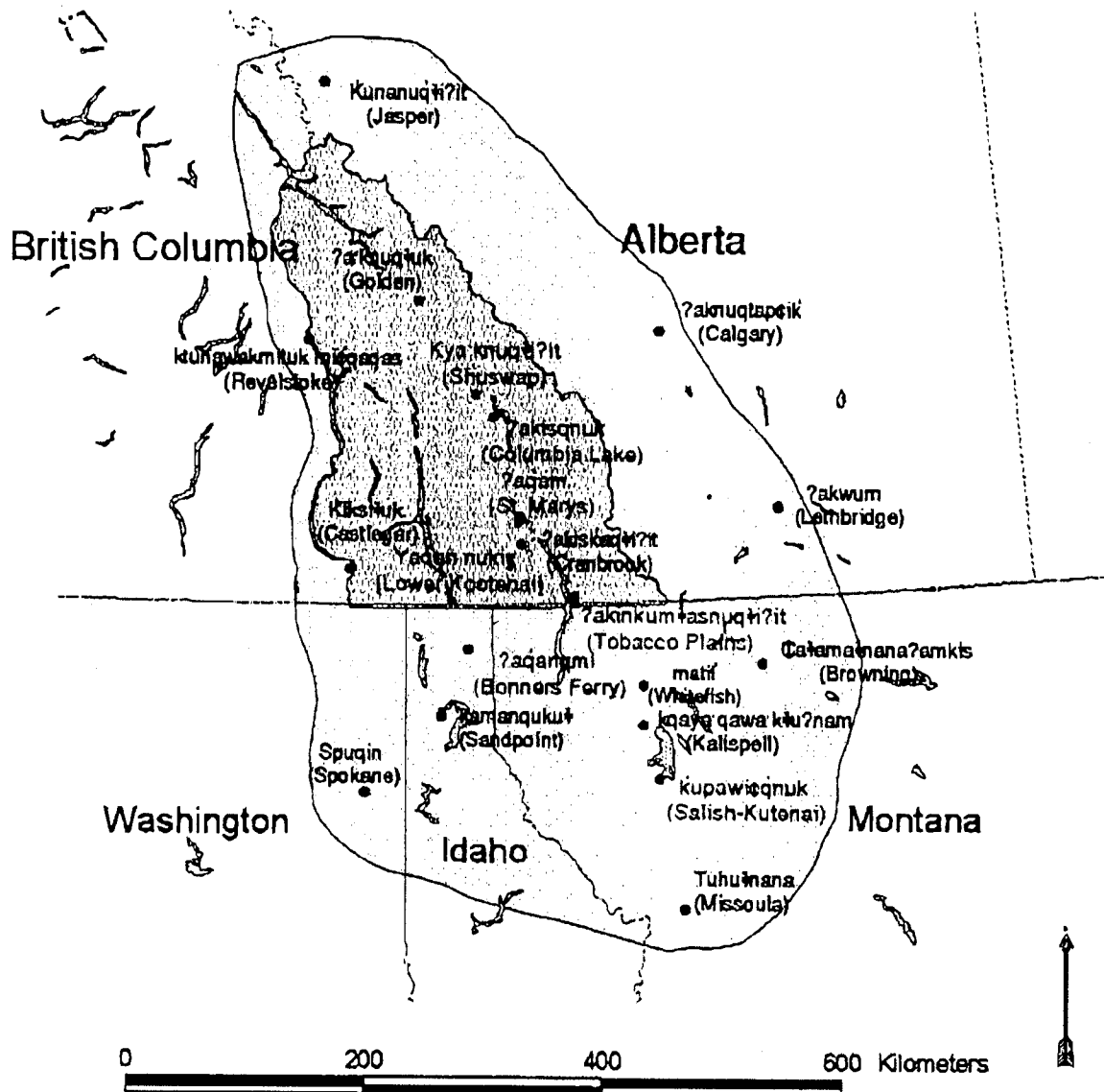

Michael de Jong
Minister of Forests


Witness

APPENDIX "A"

THE ASSERTED Traditional Territory OF THE K/KTC

TRADITIONAL TERRITORY OF THE KTUNAXA NATION



-  Area involved in current Treaty negotiations
 Approximate extent of Traditional Territory
 Reserve Lands

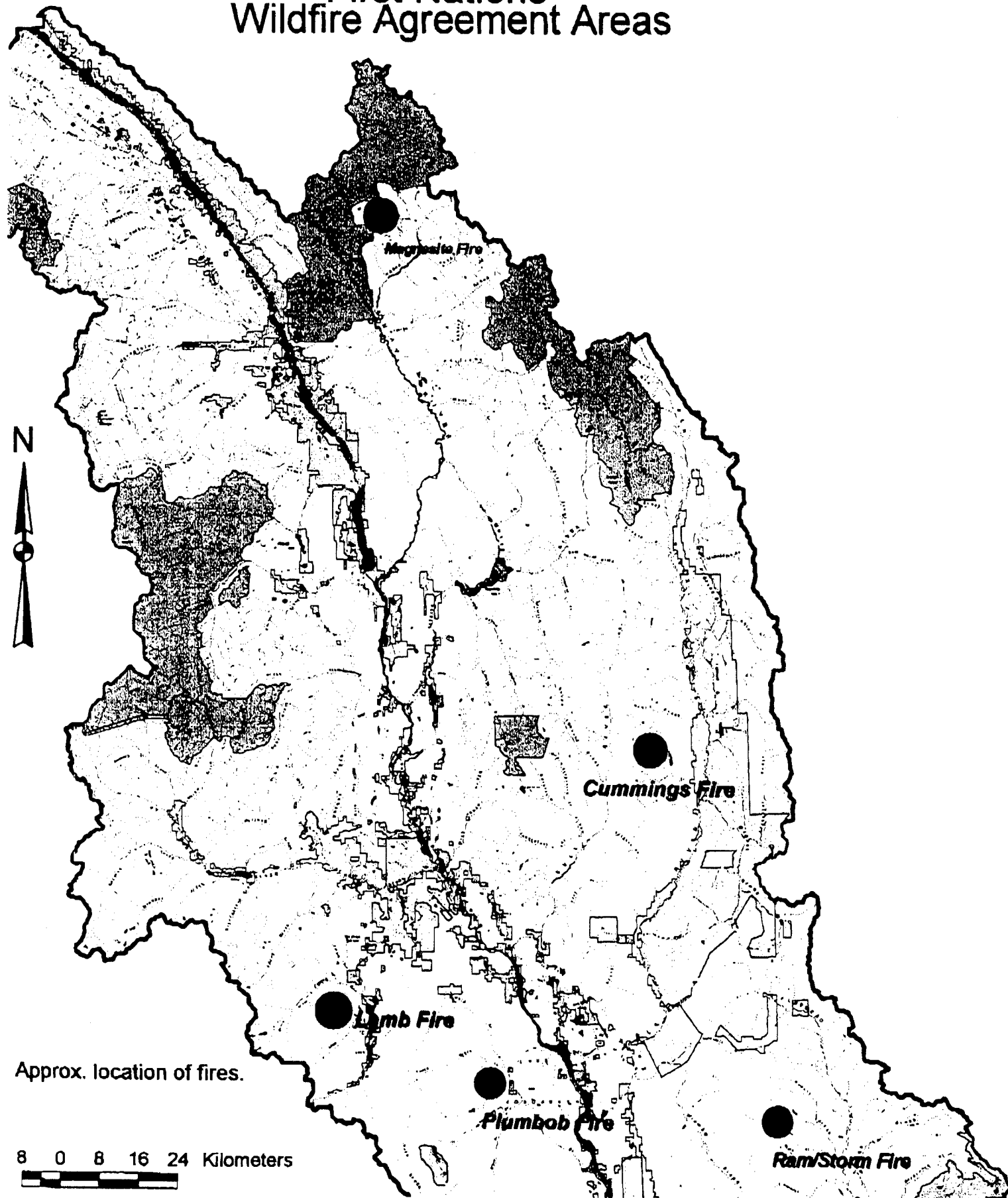
Map produced by European Treaty Council



APPENDIX "B"
Cranbrook and Invermere Timber Supply Area's (TSA)
Wildfire Areas

Rocky Mountain Forest District

First Nations Wildfire Agreement Areas



APPENDIX "C"
**Description and Documentation pertaining to the Intended
Holder of the Non Replaceable Forest Licences (NRFLs)**

A) Intended Holder of **NRFL A73240**: Ktunaxa/Kinbasket Tribal Council

B) Full legal name, or corporate description of the legal entity, other than the

Intend Holder of NRFL A73240 authorized to represent the Intended Holder

of NRFL A73420: Ktunaxa Kinbasket Development Corporation

- (i) Copy attached of legal instrument entered into between the applicant and the intended holder of the licence authorizing that the legal entity to be their representative;
- (ii) Copy attached of the ownership structure of the legal entity of the intended holder of the licence; and,
- (iii) Copy of verification that the applicant has the controlling interest in that legal entity.

A) Intended Holder of **NRFL A73554**: Ktunaxa/Kinbasket Tribal Council

B) Full legal name, or corporate description of the legal entity, other than the

Intend Holder of NRFL A73554 authorized to represent the Intended Holder

of NRFL A73554: Ktunaxa Kinbasket Development Corporation

- (i) Copy attached of legal instrument entered into between the applicant and the intended holder of the licence authorizing that the legal entity to be their representative;
- (iv) Copy attached of the ownership structure of the legal entity of the intended holder of the licence; and,
- (v) Copy of verification that the applicant has the controlling interest in that legal entity.