

**Lake Cowichan First Nation
Interim Agreement on Forest & Range Opportunities
(the "Agreement")**

**Between:
The Lake Cowichan First Nation**

As represented by
Chief and Council
(the "Lake Cowichan First Nation")

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") has 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 Lake Cowichan 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 Lake Cowichan First Nation has Aboriginal Interests within its Traditional Territory.**

- F. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development within the Traditional Territory.**
- G. References in this Agreement to Crown Lands are without prejudice to the Lake Cowichan 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 Lake Cowichan First Nation on forest and/or range resource development activities proposed within the Lake Cowichan First Nation Traditional Territory that may lead to the infringement of the Lake Cowichan First Nation's Aboriginal Interests.**
- I. The Lake Cowichan First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Lake Cowichan First Nation's Traditional Territory, that may lead to an infringement of the Lake Cowichan First Nation's Aboriginal Interests.**
- J. British Columbia and the Lake Cowichan First Nation wish to resolve issues relating to forest and/or range 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 "Aboriginal Interests" means aboriginal rights and/or aboriginal title.**
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation.**
- The making, varying or postponing of Allowable Annual Cut (AAC) determinations for a Timber Supply Area or a Forest Tenure;**
 - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or a Range Tenure;**
 - The adjustment of Animal Unit Months in a Range Tenure;**
 - The extension to the term of, or replacement of a Forest and/or Range 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 or Tree Farm Licence; and,
 - The establishment of an interpretive forest site, recreation site and/or recreation trail.
- 1.3 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.4 “Interim Accommodation” means the accommodation provided in this Agreement, of the potential infringements of the economic component of the Lake Cowichan First Nation’s Aboriginal Interests arising from or as a result of forest and range development, prior to the full reconciliation of these Interests. The revenue component reflects the present budget limitations of the Minister of Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.
- 1.5 “Licensee” means a holder of a Forest Tenure or a Range Tenure.
- 1.6 “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 Lake Cowichan First Nation’s Traditional Territory.
- 1.7 “Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan that has a potential effect in the Lake Cowichan First Nation’s Traditional Territory.
- 1.8 “Range Tenure” means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.9 “Traditional Territory” means the Lake Cowichan First Nation’s asserted Traditional Territory as shown on bold black on the map attached in Appendix A.

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 Lake Cowichan First Nation through economic diversification.**
- 2.2 Provide interim payment and other economic benefits to the Lake Cowichan 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 and/or range resource development on Crown lands within the Traditional Territory of the Lake Cowichan 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 Lake Cowichan First Nation

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

3.1 Forest Tenure

After the execution of this Agreement and, if applicable, once volume becomes available through the timber reallocation process, the Minister will invite the Lake Cowichan First Nation, or such legal entity as the Lake Cowichan First Nation has appointed as its representative to hold the licence to apply under the *Forest Act* for a Licence (the "Licence") on a non-competitive basis for up to 4,050 cubic meters in the Arrowsmith Timber Supply Area(s).

- 3.1.1 For greater certainty, the maximum volume that may be available under the Licence referred to in Section 3.1 will be up to 4,050 cubic meters over 5 years.**
- 3.1.2 The operating area for the Licence will be a portion of District Lot 27, Cowichan Lake Land District, as per the attached map.**

Prior to the Lake Cowichan First Nation making an application for the Licence, the MOFR will complete a preliminary timber assessment and lot plan. The Lake Cowichan First Nation will be required to submit a Forest Stewardship Plan for the area, this could be undertaken with involvement from the larger group of licensees developing a Forest Stewardship Plan for the Arrowsmith Timber Supply Area. The Lake Cowichan First Nation will be required to submit additional information including but not limited to a Cutting Permit application.

3.1.3 A Licence entered into as a result of an invitation under section 3.1 will be for a term of 5 years.

3.1.4 If the Licence remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be Interim Accommodation until the Licence expires or is terminated.

3.1.5 The Minister may invite the Lake Cowichan 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 Lake Cowichan First Nation of \$15,000 annually. Payments will be made quarterly.

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.

3.2.4 Upon signing of this Agreement, the Lake Cowichan 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 Lake Cowichan 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 Lake Cowichan 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 Lake Cowichan First Nation agrees that British Columbia will have provided Interim Accommodation with respect to the economic component of potential infringements of the Lake Cowichan First Nation's Aboriginal Interests as an interim measure.**
- 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 Lake Cowichan First Nation has agreed to accept.**
- 4.4 The Parties agree to develop consultation processes to address both Operational and Administrative Decisions or Plans which may affect the Lake Cowichan First Nation's Aboriginal Interests within their Traditional Territory.**
- 4.5 Where Lake Cowichan 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 Lake Cowichan 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 Lake Cowichan 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 5 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:**
 - 6.3.1 The expiry of its term;**
 - 6.3.2 90 days notice by one Party to the other Party; or,**
 - 6.3.3 The 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 Notwithstanding section 6.4, British Columbia may terminate the Agreement when there is a challenge on the basis that the Economic Benefits set out in section 3 are not adequate or sufficient Interim Accommodation.**
- 6.6 Prior to termination under section 6.5, the Parties agree to meet and endeavour to resolve the dispute.**

7.0 Renewal of the Agreement

- 7.1 Prior to this Agreement terminating in accordance with Section 6.3.1, if the terms and conditions of this Agreement are being met, British Columbia and the Lake Cowichan First Nation will seek the necessary authorities and approvals to renew this Agreement.**
- 7.2 Any subsequent forestry agreement between British Columbia and the Lake Cowichan 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 Lake Cowichan 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

Lake Cowichan First Nation

Chief Councillor
Lake Cowichan First Nation
PO Box 1376
Lake Cowichan, BC. V0R 2G0
Telephone (250) 749-3301
Facsimile: (250) 749-4286

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 Nothing in this Agreement, including the recitals, defines or confirms the specific nature, scope, location or geographic extent of Aboriginal Interests of the Lake Cowichan 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 Lake Cowichan 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 Lake Cowichan First Nation.
- 11.13** This Agreement is not intended to limit any obligation of Licensees or other third parties to the Lake Cowichan 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 Lake Cowichan 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 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 Lake Cowichan First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Lake Cowichan 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 Lake Cowichan 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; and

- (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Lake Cowichan First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above.

Signed on behalf of:

Lake Cowichan First Nation

Date: April 17, 2006


Chief Cyril Livingstone

Councillor _____

Councillor 

Councillor _____

Councillor _____

Councillor _____

Councillor _____

Councillor _____


Witness of Lake Cowichan First Nation's signatures

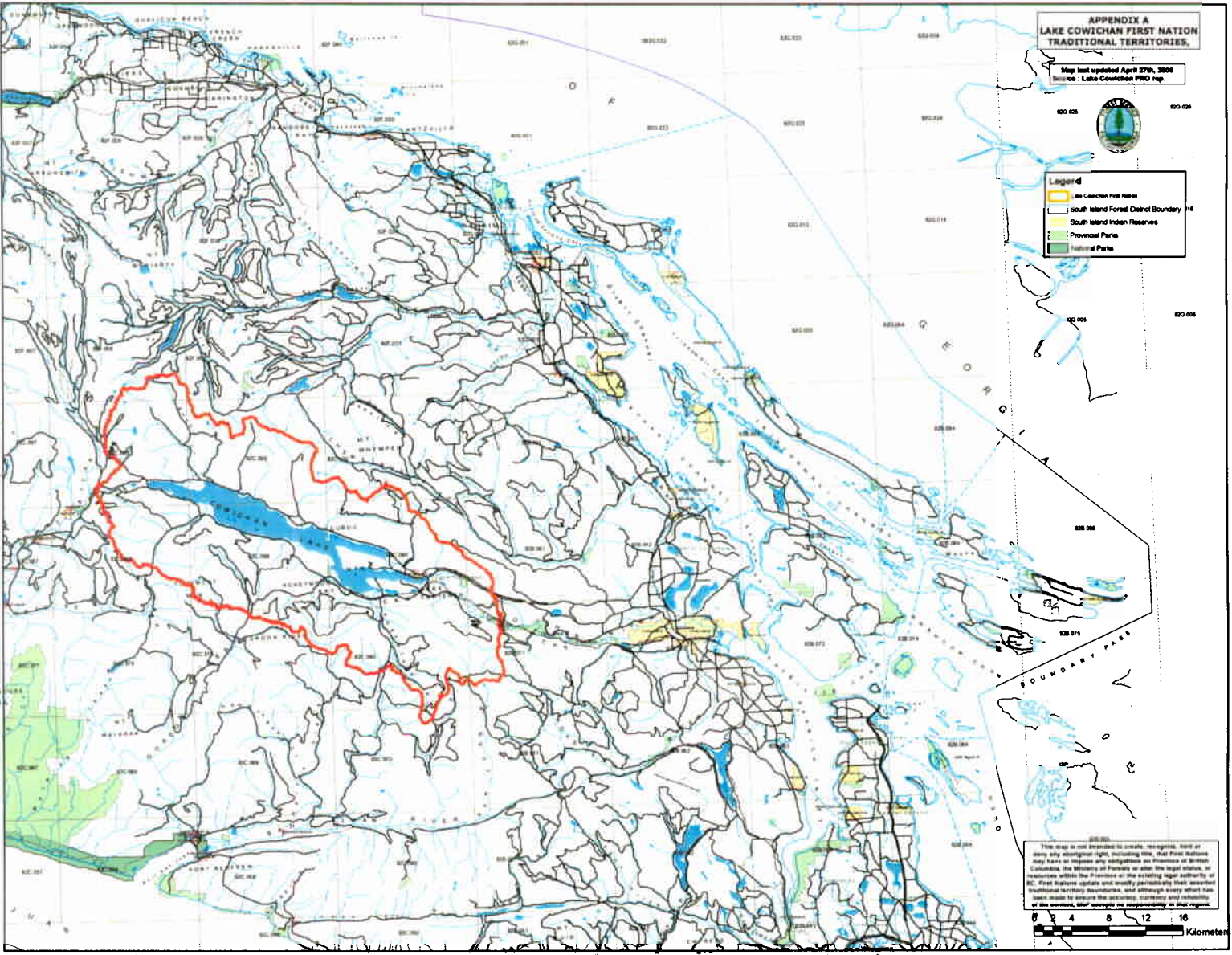
Signed on behalf of:

Government of British Columbia

Date: June 6/06


Rich Coleman
Minister of Forests and Range

Witness of Minister's signature



APPENDIX B CONSULTATION PROCESS

Consultation Regarding Operational and Administrative Decisions and Plans

This appendix contains an interim consultation process as referred to in Section 4.4 of the FRO Agreement.

1.0 Consultation Regarding Operational Plans

- 1.1 The Government of British Columbia agrees to consult with Lake Cowichan First Nation on Operational Plans that may potentially infringe Lake Cowichan First Nation's Aboriginal Interests within the Traditional Territory, except for any economic component of those interests that the parties agree are addressed by the economic benefits provided for under Section 3.0 of the Agreement.
- 1.2 Lake Cowichan 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, Lake Cowichan First Nation will, within a 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 other than the economic component of those interests that the parties agree are addressed by the economic benefits provided for under Section 3.0 of the Agreement.
- 1.4 Upon receiving the response from Lake Cowichan First Nation as specified in Section 1.3 of this appendix, the Government of British Columbia and/or the licensee will discuss and attempt to resolve with Lake Cowichan First Nation any site specific operational impacts on Lake Cowichan First Nation's Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Traditional Territory, other than the economic component of those Aboriginal Interests that the parties agree are addressed by the economic benefits provided for under Section 3.0 of the Agreement.
- 1.5 If no response is received from Lake Cowichan First Nation within the Response Period, then the Government of British Columbia may conclude that Lake Cowichan 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 Lake Cowichan First Nation, whether received directly or through a licensee, and will consider whether concerns identified by Lake Cowichan First Nation have been addressed.

2.0 Consultation Regarding Administrative Decisions

- 2.1 The Government of British Columbia will provide to Lake Cowichan 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 Lake Cowichan First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Lake Cowichan First Nation an updated list.
- 2.2 The Government of British Columbia will meet with Lake Cowichan First Nation at mutually agreed times throughout the year to provide an opportunity for Lake Cowichan 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.
- 2.3 The Government of British Columbia will include Lake Cowichan 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 Arrowsmith Timber Supply Area.
- 2.4 Lake Cowichan First Nation agrees to fully participate, within a 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*.
- 2.5 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.
- 2.6 If, after considering the concerns and comments of Lake Cowichan First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Lake Cowichan 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.

2.7 The Government of British Columbia will provide a response to Lake Cowichan First Nation as to how their concerns raised in Section 2.2 of this Appendix have been addressed.

2.8 Lake Cowichan First Nation agrees that, in consideration of Section 4 of the Agreement and sections 1 and 2 of this appendix, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation process for both Operational Plans and Administrative Decisions and an 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.