

**Upper Nicola Band  
Forest and Range Agreement  
(the “Agreement”)**

**Between:  
Upper Nicola Band  
(also known as the Upper Nicola Indian Band)**

**As represented by Chief Fred Holmes and Council  
(the “Upper Nicola”)**

**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:**

- **The Upper Nicola Band of the Okanagan Nation has asserted and continues to assert Aboriginal Rights and Title within its Traditional Territory.**
- **The Upper Nicola Band asserts that it has a relationship to the land that is important to their culture and the maintenance of their community, governance and economy.**
- **The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development activities and related economic benefits arising from this development within the Traditional Territory.**
- **The Upper Nicola Band asserts that references in this Agreement to Crown Lands are without prejudice to the Upper Nicola Aboriginal title claim over those lands.**
- **The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the Upper Nicola Band on forest and/or range resource development activities proposed within the Traditional Territory that**

may lead to the infringement of the Upper Nicola Band's Aboriginal Interests.

- Upper Nicola Band intends to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Traditional Territory, that may lead to an infringement of Upper Nicola Band's Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of Upper Nicola Band's Aboriginal Interests where forest and/or range resource development activities are proposed within the Traditional Territory that may lead to the infringement of Upper Nicola Band's Aboriginal Interests.
- The Government of British Columbia and the Upper Nicola Band wish to resolve issues relating to forest and/or range resource development activities where possible through negotiation as opposed to litigation.
- This Agreement does not exclude the Upper Nicola Band from accessing forestry economic opportunities and benefits, which may be available from time to time, other than those expressly set out in Section 3 of this Agreement.

Therefore the Parties agree as follows:

## **1.0 Definitions**

For the purposes of this Agreement, the following definitions apply wherever they appear in the Agreement in capitalized form:

- 1.1 "Aboriginal Interests" means asserted and/or proven aboriginal rights and aboriginal title.
- 1.2 "Allowable Annual Cut" (AAC) means the allowable rate of timber harvest from a specified area of land. The Chief Forester sets the AAC for timber supply areas and tree farm licences in accordance with section 8 of the *Forest Act*.
- 1.3 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:
  - the decision setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;

- the issuance, consolidation, subdivision or amendment of a Forest Tenure or a Range Tenure;
  - the approval of a Tree Farm Licence Management Plan, Community Forest Agreement Management Plan or Woodlot Licence Management Plan;
  - the adjustment of Animal Unit Months to a Range Tenure;
  - the replacement or extension of a Forest Tenure or a Range Tenure;
  - the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - the conversion of a Timber Sale Licence to another form of Forest Tenure;
  - the issuance of a Special Use Permit; and,
  - the establishment of a interpretative forest site, recreation site and/or recreation trail.
- 1.4 “Cultural Component of Aboriginal Interests” as used in this Agreement means the cultural values and traditional practices of the Upper Nicola Band that are integral to that community.
- 1.5 “Economic Component of Aboriginal Interests” as used in this agreement means the financial or commercial aspects of Aboriginal Interests.
- 1.6 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.7 “Licensee” means a holder of a Forest Tenure or a Range Tenure.
- 1.8 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan, a Forest Stewardship Plan, a Woodlot Licence Plan, a Range Use Plan or a Range Stewardship Plan that has an effect in the Traditional Territory.
- 1.9 “Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, a Woodlot Licence Plan, a Range Use Plan, or a Range Stewardship Plan that has an effect in the Traditional Territory.
- 1.10 “Range Tenure” means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.11 “Response Period” means a period of up to 60 days from initiation of the processes set out in Sections 5 and 6 of this

Agreement, where the initiation date is the date on which Upper Nicola Band is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which Upper Nicola Band receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.

- 1.12 “Sux<sup>w</sup>txtEm” is an Upper Nicola term that means sustaining the diversity of species and their habitats in perpetuity for the well-being of future generations.
- 1.13 “Traditional Territory” means the land area, and resources attached to that land over which Upper Nicola Band holds that it has Aboriginal Interests as shown on bold black on the map attached in Appendix A. For the purposes of this agreement only the Upper Nicola Band Traditional Territory shown in Appendix A is the geographic area within the Okanagan Territory that reflects the area primarily used and occupied by the Upper Nicola Band and over which they assert specific responsibilities and benefits.

## **2.0 Purpose**

The purposes of this Agreement are to:

- 2.1 Increase the Upper Nicola Band’s opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Upper Nicola Band through forest tenure opportunities, a potential range tenure opportunity and the sharing of revenues received by the Government of British Columbia from forest resource development activities.
- 2.3 Address consultation and to provide an interim workable accommodation as set out in this Agreement, with regard to any infringements of Upper Nicola Band’s Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development activities within the Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest and/or range resource development activities on Crown lands within the Traditional

**Territory during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.**

### **3.0 Economic Benefits to Upper Nicola Band**

**During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Sections 5.0 and 6.0 of this Agreement and will provide the following economic benefits/opportunities to Upper Nicola Band to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any infringements of Upper Nicola Band's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development activities within the Traditional Territory.**

#### **3.1 Forest Tenure**

- 3.1.1 After the execution of this Agreement by the Parties, the Minister of Forests will invite the Upper Nicola Band to apply for a non-replaceable forest licence ("the Kamloops uplift licence opportunity") in accordance with Section 47.3 of the *Forest Act* to harvest a total of up to 24,751 cubic meters over a 2-year term in the Kamloops Timber Supply Area.**
- 3.1.2 After the execution of this Agreement by the Parties, and after the Minister has determined that sufficient volume of timber is available for disposition to Upper Nicola Band as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite Upper Nicola Band to apply under section 47.3 of the *Forest Act* for a non-replaceable forest licence (the "Merritt licence opportunity") for a total of up to 47,004 cubic meters over a 5-year term in the Merritt Timber Supply Area and for a non-replaceable forest licence (the "Okanagan licence opportunity") for a total of up to 48,000 cubic meters over a 5-year term in the Okanagan Timber Supply Area.**
- 3.1.3 If during the term of this Agreement a volume uplift becomes available in the Merritt Timber Supply Area, the Minister may invite the Upper Nicola Band to apply for a non-replaceable forest licence (the "Merritt uplift licence opportunity") in accordance with Section 47.3 of the *Forest Act* to harvest up to a total of 98,005 cubic meters over a 5-year term in the Merritt Timber Supply Area.**

- 3.1.4** If the Merritt licence opportunity and the Merritt uplift licence opportunity are both entered into, the Parties may consolidate these two licences into one licence, in accordance with the *Forest Act*.
- 3.1.5** For greater certainty, the maximum volume that may be available under the licences referred to in Section 3.1.1, 3.1.2, and 3.1.3 will be up to 217,760 cubic meters over 5 years.
- 3.1.6** If during the term of this Agreement a regulation is passed enacting changes to section 44 of the *Forest Act*, which would permit the Upper Nicola Band to hold two woodlot licences, the Minister will invite the Upper Nicola Band to apply, under section 47.3 of the *Forest Act*, for a Woodlot Licence of approximately 600 hectares as outlined in black bold on the map in Appendix B.
- 3.1.7** If the intended holder of any of the licences is a legal entity other than the Upper Nicola Band, this Agreement must include supporting documentation as specified in Appendix C stating that the intended holder has been validly appointed by the Upper Nicola Band as its representative and that the Upper Nicola Band holds the controlling interest in that legal entity.
- 3.1.8** An invitation to apply for any of the licences (an “invitation”) and any licence entered into as a result of an invitation to apply under this Agreement, will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.
- 3.1.9** An invitation to apply under Section 3.1.1, 3.1.2 or 3.1.3 of this Agreement will be subject to a condition that prior to Upper Nicola Band making an application for a licence, the Ministry of Forests will identify potential operating areas for that licence, and the Parties will work together to assist the Ministry of Forests to identify the operating area for that licence from the potential areas identified. To the extent that it is operationally feasible, the operating areas will be within the Traditional Territory.

- 3.1.10** For the Okanagan licence opportunity and the Merritt licence opportunity, the Ministry will strive to select operating areas that have a timber profile comparable to other Licensees operating in the Traditional Territory.
- 3.1.11** A licence entered into as a result of an invitation to apply under Section 3.1.1, 3.1.2 or 3.1.3 of this Agreement will:
- 3.1.11.1** be for a term of no longer than 5 years, as determined by the Minister;
  - 3.1.11.2** include a term that the Upper Nicola Band may not dispose of the licence except in accordance with the *Forest Act*;
  - 3.1.11.3** contain other terms and conditions required by law, including the condition that Upper Nicola Band must comply with this Agreement; and
  - 3.1.11.4** include other terms and conditions as may be required by the regional manager.
- 3.1.12** A Woodlot Licence entered as a result of an invitation to apply under Section 3.1.6 of this Agreement will:
- 3.1.12.1** contain a term that the woodlot will not expire or terminate solely because this Agreement terminates pursuant to Section 9.2.1.
  - 3.1.12.2** not be transferable or divisible except as consistent with the *Forest Act* and then only to a legal entity in which the Upper Nicola Band has a controlling interest;
  - 3.1.12.3** contain other terms and conditions required by law, including the condition that Upper Nicola Band must comply with this Agreement; and
  - 3.1.12.4** include other terms and conditions as may be required by the regional or district manager.
- 3.1.13** Subject to requirements of the *Forest Act*, a Woodlot Licence entered as a result of an invitation to apply under Section 3.1.6 of this Agreement may be managed under one management plan together with Woodlot

**Licence #1637 held by the Upper Nicola Band. For greater clarity, to meet the requirements of the *Forest Act*, a joint management plan for the two woodlots must have the inventory (*Forest Act*, section 45(1)(f)(ii) and (vii)) and AAC (*Forest Act*, section 45 (1)(f)(vi)) requirements clearly separated for each woodlot licence area.**

**3.1.14 If the term of any licence entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then that licence may be referenced in and considered to be an economic benefit that addresses consultation and provides an interim workable accommodation in respect of any infringement of Upper Nicola Band's Aboriginal Interests, in any subsequent Forest and Range Agreement between Upper Nicola Band and the Government of British Columbia, for the purposes described in Section 3.0.**

**3.1.15 The Parties will meet from time to time to review forest business opportunities that may be available to the Upper Nicola Band.**

**3.1.16 Subject to:**

**3.1.16.1 the Government of British Columbia and Upper Nicola Band entering into another interim measures agreement providing for an invitation to apply for a licence; and,**

**3.1.16.2 the Minister determining that there is sufficient volume of timber available for disposition to Upper Nicola Band,**

**the Minister will invite Upper Nicola Band to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.**

**3.1.17 The financial success of the business venture derived from these tenure opportunities is the sole responsibility of the Upper Nicola Band and/or their representative validly appointed under Section 3.1.7.**



### **3.2 Range Tenure**

**3.2.1 The Parties will meet from time to time to review new range vacancies that become available in the Upper Nicola Band Traditional Territory and that may be available for disposition to the Upper Nicola Band through the direct award of a range licence(s) or permit(s) under the *Range Act*.**

### **3.3 Revenue Sharing**

**3.3.1 During the term of this Agreement, the Government of British Columbia will pay to Upper Nicola Band approximately \$412,515 annually for purposes described in Section 3.0.**

**3.2.1 The funding commitment set out in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.**

**3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e.  $\frac{1}{4}$ ) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.**

**3.2.3 Upon signing of this Agreement, the Upper Nicola Band will be paid the full revenues for the quarter in which the Agreement is signed with subsequent payments being made at the end of each quarter. For greater certainty, if Upper Nicola Band have initialled this Agreement on or before December 31, 2004, and it is subsequently executed by both Parties before March 31, 2005, it shall be deemed to have been in effect on December 31, 2004 and the Upper Nicola Band will be paid the full revenue for the quarter ending December 31, 2004.**

**3.2.4 Upper Nicola Band will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.**

**3.2.5 Upon request, Upper Nicola Band will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.**

#### **4.0 Forest and Range Stewardship**

- 4.1 Both Parties recognize that Sux<sup>w</sup>txtEm shares common interests with the Government of British Columbia's stewardship principles.**
- 4.2 Both Parties will undertake to advance mutual understanding of Upper Nicola Band's Sux<sup>w</sup>txtEm principles between the Parties.**
- 4.3 Further to Section 4.2 where consistent with both Parties interests, the Parties agree to explore opportunities to include Sux<sup>w</sup>txtEm principles related to the diversity and sustainable use of indigenous flora, fauna and habitat in Upper Nicola Band's Traditional Territory, in Operational Decisions to the extent that doing so is consistent with the Ministry of Forests' statutory jurisdiction, authority and responsibilities**

#### **5.0 Consultation and Accommodation Regarding Operational Plans**

- 5.1 The Government of British Columbia agrees to consult with Upper Nicola Band on Operational Plans that may potentially infringe Upper Nicola Band'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 this Agreement.**
- 5.2 During the term of this Agreement, Upper Nicola Band agrees that the Government of British Columbia has met its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of Upper Nicola Band's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices or range practices that may be carried out under an Operational Plan in the Traditional Territory.**
- 5.3 Upper Nicola Band intends to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest and range resource development activities within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.**
- 5.4 The Parties will seek to develop a consultation protocol to further describe consultation for Operational Plans as outlined in section 5.0.**

- 5.5** In reviewing and responding to an Operational Plan submitted to them, Upper Nicola Band will, within the Response Period, 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 and/or range 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.
- 5.6** Upon receiving the response from Upper Nicola Band as specified in Section 5.5, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Upper Nicola Band any site specific operational impacts on Upper Nicola Band's Aboriginal Interests that may occur as a result of proposed forest and/or range 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.
- 5.7** If no written response is received from Upper Nicola Band within the Response Period, then the Government of British Columbia may conclude that Upper Nicola Band 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.
- 5.8** In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from Upper Nicola Band, whether received directly or through a Licensee, and will consider whether concerns identified by Upper Nicola Band have been addressed.

**6.0 Consultation and Accommodation Respecting Administrative Decisions**

- 6.1** The Government of British Columbia will provide to Upper Nicola Band on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of Upper Nicola Band or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Upper Nicola Band an updated list.

- 6.2 The Parties will seek to develop a consultation protocol to further describe consultation on Administrative decisions as outlined in section 6.0.**
- 6.3 The Government of British Columbia will meet with Upper Nicola Band at mutually agreed times throughout the year to provide an opportunity for Upper Nicola Band to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.**
- 6.4 The Government of British Columbia will meet with the UNB at mutually agreed times to discuss their Aboriginal Interests with respect to timber supply review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Merritt, Okanagan, and Kamloops Timber Supply Areas and Tree Farm Licence 49, and pursuant to Section 59 (7) of the *Forest Act* for the Merritt and Okanagan Innovative Forest Practices Agreements.**
- 6.5 The Government of British Columbia will include Upper Nicola Band in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Merritt, Okanagan, and Kamloops Timber Supply Areas and Tree Farm Licence 49, and pursuant to Section 59 (7) of the *Forest Act* for the Merritt and Okanagan Innovative Forest Practices Agreements.**
- 6.6 Upper Nicola Band agrees to fully participate, within the Response Period, in public Timber Supply Review processes 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 and section 59 (7) of the *Forest Act*.**
- 6.7 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.**
- 6.8 If after considering the concerns and comments of Upper Nicola Band, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Upper Nicola Band's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the**

**Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 5.0 of this Agreement.**

- 6.9 The Government of British Columbia will provide a timely response to Upper Nicola Band as to how their concerns raised in Section 6.3 have been addressed.**
- 6.10 Upper Nicola Band agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 5.0 and 6.0 of this Agreement, the Government of British Columbia has met its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of Upper Nicola Band's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.**
- 6.11 Upper Nicola Band further agrees that, in consideration of Sections 6.1 to 6.8 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of Upper Nicola Band's Aboriginal Interests .**

## **7.0 Stability for Land and Resource Use**

- 7.1 Upper Nicola Band will respond immediately to any discussions initiated by the Government of British Columbia, and will work co-operatively to assist the Government of British Columbia, in resolving any issues that may arise where acts of intentional interference by Upper Nicola Band members with provincially authorized activities related to forest and/or range resource development activities including timber harvesting or other forestry economic activities occur.**

## **8.0 Dispute Resolution**

- 8.1 If a dispute arises between the Government of British Columbia and Upper Nicola Band 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.

**8.2** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and Upper Nicola Band.

**8.3** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **9.0     Term**

**9.1** Subject to 3.2.3, this Agreement will take effect on the date on which the last Party has executed it.

**9.2** This Agreement will terminate on the occurrence of the earliest of any of the following events:

**9.2.1** five years from the date this Agreement is executed; or,

**9.2.2** the coming into effect of a comprehensive and final land claim resolution between the Parties; or

**9.2.3** the mutual agreement of the Parties; or,

**9.2.4** the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 10.0; or,

**9.2.5** upon written notice of withdrawal from this Agreement by either Party which will take effect 90 days following receipt of the notice by the other Party.

**9.3** If this Agreement is terminated in accordance with Section 9.2.2 or 9.2.3 or 9.2.5, then the Minister may terminate the economic opportunities under this Agreement.

## **10.0     Suspension or Cancellation of Economic Benefits by the Minister**

**10.1** Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that Upper Nicola Band is not in compliance with this Agreement.

**10.2** Prior to taking any action referred to in Section 10.1, the Government of British Columbia will provide notice to Upper Nicola Band of any alleged contravention of this Agreement that

may lead Upper Nicola Band being determined to not be in compliance with this Agreement.

**10.3 If, during the term of this Agreement, Upper Nicola Band challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 5.0 and 6.0 of this Agreement are not adequate or sufficient to:**

**10.3.1 provide adequate consultation, to substantially address Upper Nicola Band's concerns and to provide an interim workable accommodation in respect of any potential infringements of Upper Nicola Band's Cultural and Economic Component of Aboriginal Interests with regard to Administrative Decisions relating to forest and/or range resource development activities within the Traditional Territory, or**

**10.3.2 substantially address the Economic Component of Upper Nicola Band's Aboriginal Interests with regard to Operational Decisions relating to forest and/or range resource development activities within the Traditional Territory,**

**then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.**

**10.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.**

## **11.0 Renewal of the Agreement**

**11.1 Prior to this Agreement terminating in accordance with Section 9.2, and subject to Section 11.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and Upper Nicola Band will seek the necessary authorities and approvals to renew this Agreement.**

**11.2 Any subsequent forestry agreement between the Government of British Columbia and Upper Nicola Band may provide for an**

opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

- 11.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and Upper Nicola Band has agreed to accept as an interim measure for the term of this Agreement.

**12.0 Amendment of Agreement**

- 12.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 12.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

**13.0 Entire Agreement**

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

**14.0 Notice**

- 14.1 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.
- 14.2 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.



**14.3 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  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 387-3656  
Facsimile (250) 953-3687

**Upper Nicola Band**

Chief Fred Holmes  
Upper Nicola Band  
Box 3700,  
Merritt, B.C. V1K 1B8  
Telephone: (250) 350-3342  
Facsimile: (250) 350-3311

**15.0 Miscellaneous**

**15.1 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 in any way affects or influences the exercise of any discretion by a statutory decision maker of the Province other than in accordance with the common law regarding consultation and accommodation as appropriate.**

**15.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.**

**15.3 Subject to Section 10.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.**

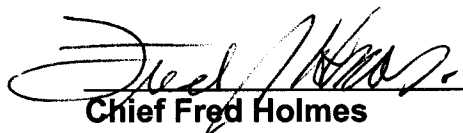
**15.4 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that**

may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.

- 15.5 This Agreement does not address or affect any claims by the Upper Nicola Band arising from past interference with its Aboriginal Interests or any future settlement or final resolution of their aboriginal rights and aboriginal title claims.
- 15.6 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 and authorities.
- 15.7 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.
- 15.8 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 15.9 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 15.10 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.

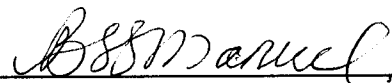
Signed on behalf of:


Upper Nicola Band

  
Chief Fred Holmes

  
Councillor

Date: Feb 10, 2005

  
Witness

  
Councillor

David Cougle  
Councillor

Lynne Charters  
Councillor

C. Alexander  
Councillor

Nelson J. Stewart  
Councillor

Timothy Munnell  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

Signed on behalf of:

**Government of British Columbia**

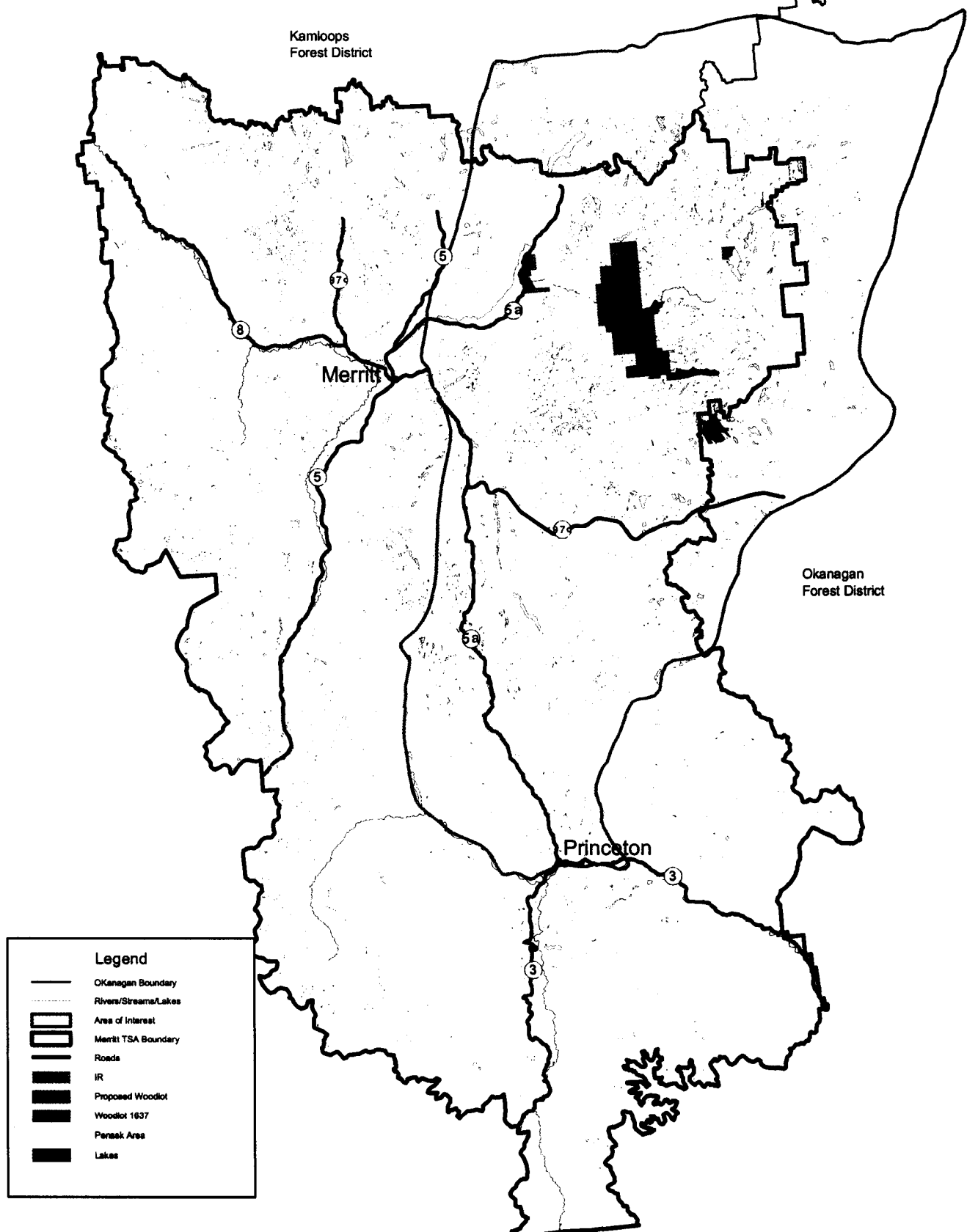
Date: Feb 10, 2005

Michael de Jong  
**Michael de Jong**  
**Minister of Forests**

David Charters  
Witness

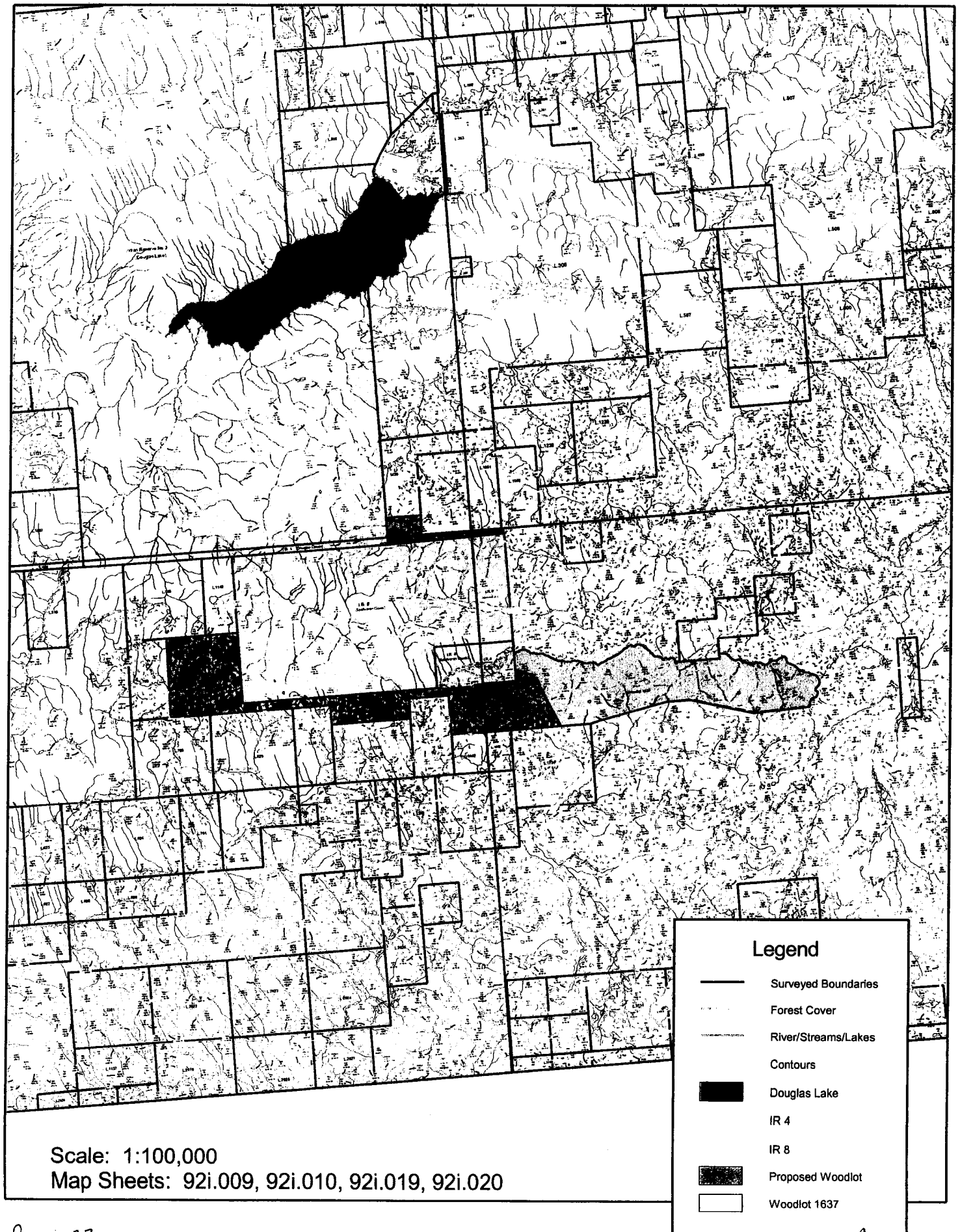
**APPENDIX A**  
**UPPER NICOLA BAND ASSERTED TRADITIONAL TERRITORY**

Upper Nicola Band  
Area of Interest / Merritt TSA  
Scale: 1:750,000



**APPENDIX B**  
**AREA OF WOODLOT LICENCE**

# Woodlot Areas of Interest



*Handwritten signature/initials*

**APPENDIX C**  
**DESCRIPTION AND DOCUMENTATION PERTAINING TO THE INTENDED**  
**HOLDER OF THE LICENCE**

Please complete **part A or B, whichever is appropriate**, and attach appropriate documentation:

A) Applicant for the license (i.e. Upper Nicola Band):

UPPER NICOLA INDIAN BAND

**OR**

B) Full legal name, or corporate description of the legal entity, authorized to represent the applicant of the licence(s):

\_\_\_\_\_  
\_\_\_\_\_

- (i) Copy attached of legal instrument (band council resolution) authorizing that legal entity to be duly appointed;
- (ii) Copy attached of the ownership structure of the legal entity (the intended holder of the licence); and,
- (iii) Copy of verification that the applicant has the controlling interest in that legal entity.