

**Wei Wai Kum First Nation  
Interim Agreement on Forest Opportunities  
(the "Agreement")**

**Between:**

**The Wei Wai Kum First Nation (also known as the Campbell River Indian Band)**

As represented by  
Chief Robert Pollard  
(the "Wei Wai Kum 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") have entered into a New Relationship in which they are committed to reconciliation of Aboriginal and Crown titles and jurisdiction, and have agreed to implement a government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights.**
- B. This Agreement is in the spirit and vision of the "New Relationship".**
- C. Work is underway regarding the implementation of the New Relationship and that this Agreement may need to be amended in the future to reflect the outcomes of that work.**
- D. The Wei Wai Kum 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 Wei Wai Kum First Nation has aboriginal Rights and/or aboriginal title within the Traditional Territory.**

- F. The Parties wish to enter into an interim measures agreement in relation to forest resource development within the Traditional Territory.**
- G. References in this Agreement to Crown Lands are without prejudice to the Wei Wai Kum 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 Wei Wai Kum First Nation on forest resource development activities proposed within the Wei Wai Kum First Nation Traditional Territory that may lead to the infringement of the Wei Wai Kum First Nation's Aboriginal Interests.**
- I. The Wei Wai Kum First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest resource development activities proposed within the Wei Wai Kum First Nation's Traditional Territory, that may lead to an infringement of the Wei Wai Kum First Nation's Aboriginal Interests.**
- J. British Columbia and the Wei Wai Kum First Nation wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.**

**Therefore the Parties agree as follows:**

## **1.0 Definitions**

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

- 1.1 "Operational Decision" means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has potential effect in the Traditional Territory.**
- 1.2 "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 Traditional Territory.**
- 1.3 "Aboriginal Interests" means asserted or claimed aboriginal rights and/or aboriginal title.**
- 1.4 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation.**
- The making, varying or postponing of Allowable Annual Cut (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 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 Tree Farm Licence; and,
  - The establishment of an interpretive forest site, recreation site and/or recreation trail.
- 1.5 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6 “Range Tenure” means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.7 “Traditional Territory” means the Wei Wai Kum First Nation’s asserted Traditional Territory as shown on bold black on the map attached in Appendix A.
- 1.8 “Licensee” means a holder of a Forest Tenure or a Range Tenure.
- 1.9 “Positive Logging Chance” means that the operating area for a licence has at least a representative timber profile that gives the licence holder at least a logging chance that is comparable to other licensees and BC Timber Sales.
- 1.10 “Interim Accommodation” means the accommodation provided in this Agreement, of the potential infringements of the economic component of the Wei Wai Kum 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.

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

## **3.0 Economic Benefits to the Wei Wai Kum First Nation**

**During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Wei Wai Kum 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 Wei Wai Kum First Nation, or such legal entity as the Wei Wai Kum First Nation has appointed as its representative to hold the licence to apply under the *Forest Act* for one or more non-replaceable licences (the "Licences") on a non-competitive basis for up to 14,208 cubic metres annually in the Strathcona Timber Supply Area and 3,777 cubic metres annually in Tree Farm Licence 25 over a five year term.**

- 3.1.1 For greater certainty, the maximum volume that may be available under the Licences referred to in Section 3.1 will be up to 89,925 cubic metres over 5 years.**
- 3.1.2 The Parties will strive to ensure that the assigned operating areas for the Licences in the Strathcona Timber Supply Area and Tree Farm Licence 25 have a positive logging chance**

relative to other licensees and BC Timber Sales, taking into account the quality of timber, access and commercial viability. Prior to the Wei Wai Kum First Nation making an application for the Licences, the Parties will work together to identify the location of an operating area for the Licence, which to the extent that it is operationally feasible will be within the Traditional Territory; and

- 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 Wei Wai Kum 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 Wei Wai Kum First Nation of approximately \$ 299,738 annually. Payments will be made quarterly.
- 3.2.2 The funding commitment set out in section 3.3.1 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 Wei Wai Kum 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 First Nation 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 Wei Wai Kum 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 Wei Wai Kum 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 Wei Wai Kum First Nation agrees that British Columbia will have provided Interim Accommodation with respect to the economic component of potential infringements of the Wei Wai Kum 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 Wei Wai Kum 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 Wei Wai Kum First Nation's Aboriginal Interests within their Traditional Territory. Appendix B contains an interim consultation process that will apply until the Parties have developed the consultation processes noted above.**
- 4.5 Where Wei Wai Kum 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 Wei Wai Kum 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 Wei Wai Kum 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 written 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 3.0 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.**
- 6.7 If notice to terminate this Agreement is provided by either party pursuant to section 6.3.2, the Government of British Columbia agrees that the Ministry of Forests will not seek to accelerate decisions that are contemplated by the terms of this Agreement solely for the purpose of trying to ensure that such decisions are made before the termination of this Agreement, but that the Minister may cancel the benefits under section 3.0 of this Agreement once the Agreement terminates.**

## **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 Wei Wai Kum First Nation will seek the necessary authorities and approvals to renew this Agreement.**
- 7.2 Any subsequent forestry agreement between British Columbia and the Wei Wai Kum 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.

- 7.3 During any subsequent negotiation leading to a renewed Agreement, the Minister may take into consideration in a new invitation to apply for a Forest Tenure, whether the Wei Wai Kum First Nation were able to harvest all timber available to them under the original licence.
- 7.4 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 the Wei Wai Kum First Nation have agreed to accept as an interim measure only for the term of this Agreement.

### **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 Wei Wai Kum First Nation may choose to opt into such approaches as they become available, through amendment to this Agreement or otherwise.

### **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

**Wei Wai Kum First Nation**

Chief Robert Pollard  
Wei Wai Kum Band  
1400 Weiwaikum Road,  
Campbell River, B.C. V9W 5W8  
Telephone: (250) 286 6949  
Facsimile: (250) 287 8838

**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, amend, recognize, affirm, or deny the existence of or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.**
- 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 rights and/or aboriginal title of the Wei Wai Kum First Nation.**

- 11.6 This Agreement shall be interpreted as addressing any infringement that may result during the term of this Agreement from decisions contemplated by this Agreement. Nothing in this Agreement shall be interpreted to authorize or justify 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 Wei Wai Kum 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 will encourage Licensees to enter into mutually-beneficial arrangements with the Wei Wai Kum First Nation.**
- 11.13 This Agreement is not intended to limit any obligation of Licensees or other third parties to the Wei Wai Kum 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 Wei Wai Kum 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 Wei Wai Kum First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Wei Wai Kum 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 Wei Wai Kum 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 Wei Wai Kum 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:

**Wei Wai Kum First Nation**

Date: June 8/06

  
\_\_\_\_\_  
**Chief Robert Pollard**

  
\_\_\_\_\_  
**Witness of Wei Wai Kum First Nation signature**

Signed on behalf of:

Government of British Columbia Date:

*July 25/06*

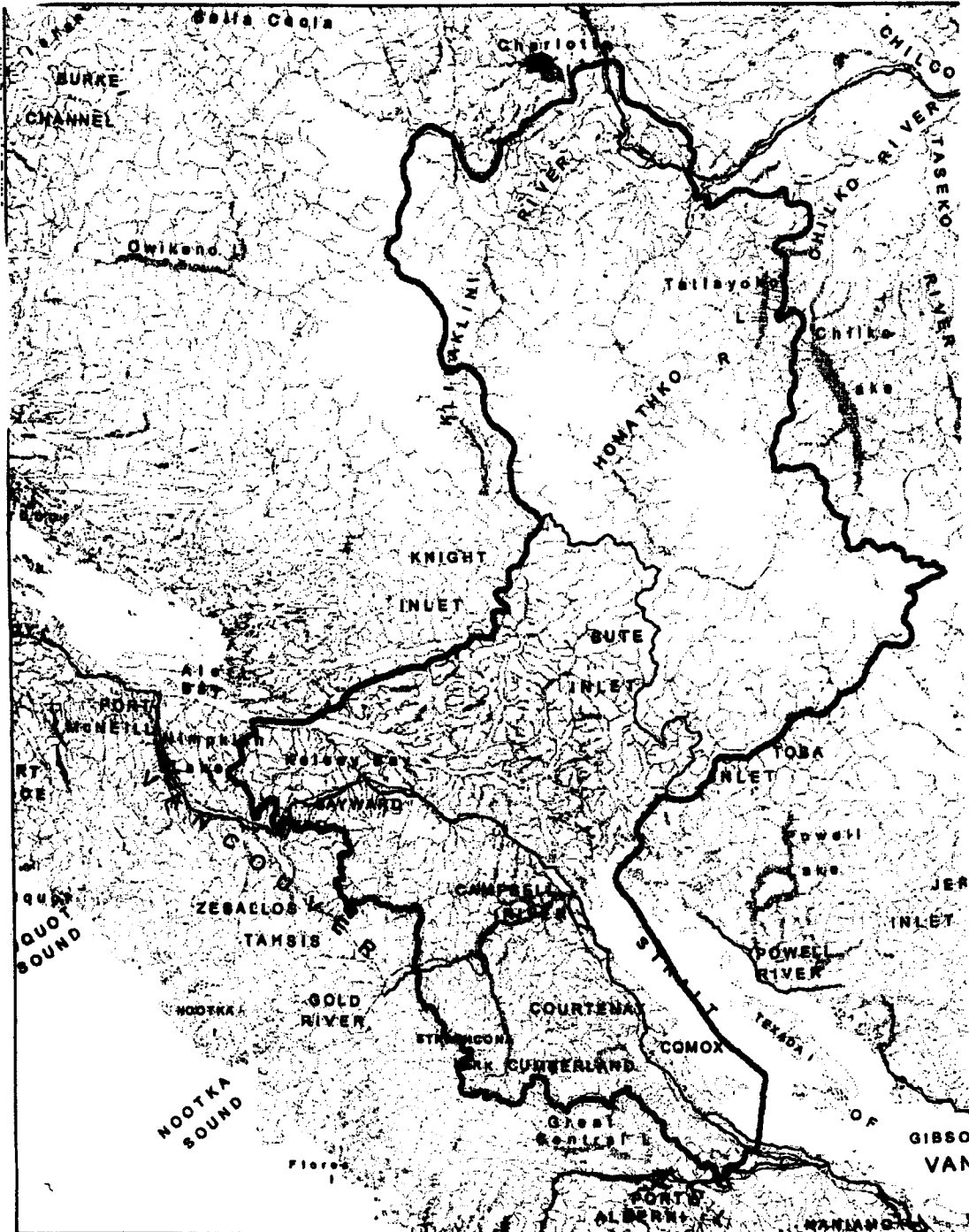


Rich Coleman  
Minister of Forests and Range



Witness of Minister's signature

**APPENDIX A**  
**Map of the Wei Wai Kum Traditional Territory**



## Appendix B

### Consultation Regarding Operational and Administrative Decisions and Plans

This appendix B contains an interim consultation process as referred to in Section 4.4 of the Agreement. This interim consultation process will remain in place until the Parties develop the consultation process referred to in s. 4.4 provided that this Agreement remains in force.

#### 1.0 Consultation Regarding Operational Plans

- 1.1 The Government of British Columbia agrees to consult with Wei Wai Kum first nation on Operational Plans that may potentially infringe Wei Wai Kum 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 Wei Wai Kum 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, Wei Wai Kum First Nation will, within the Response Period of 60 days, provide the party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Traditional Territory, 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 Wei Wai Kum First Nation as specified in Section 1.3 of this appendix B, the Government of British Columbia and/or the licensee will discuss and attempt to resolve with Wei Wai Kum First Nation any site specific operational impacts on Wei Wai Kum 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 Wei Wai Kum First Nation within the Response Period, then the Government of British Columbia may conclude that Wei Wai Kum 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 Wei Wai Kum First Nation, whether received directly or through a licensee, and will consider whether concerns identified by Wei Wai Kum First Nation have been addressed.**

## **2.0 Consultation Regarding Administrative Decisions**

**2.1 The Government of British Columbia will provide to Wei Wai Kum 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 Wei Wai Kum First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Wei Wai Kum First Nation an updated list.**

**2.2 The Government of British Columbia will meet with Wei Wai Kum First Nation at mutually agreed times throughout the year to provide an opportunity for Wei Wai Kum 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 Wei Wai Kum First Nation in that stage of the timber supply review process referred to as “the public timber supply review process” that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Strathcona timber supply area and tree farm licences 25 and 47.**

**2.4 Wei Wai Kum First Nation agrees to fully participate, within the Response Period, 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 Wei Wai Kum First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Wei Wai Kum 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 Wei Wai Kum First Nation as to how their concerns raised in Section 2.2 of this Appendix have been addressed.**
- 2.8 Wei Wai Kum First Nation further agrees that, in consideration of Section 4 of the Agreement and Sections 1 and 2 of appendix B, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim accommodation process with respect to the economic component of potential infringements of their Aboriginal Interests resulting from Operational and Administrative Decisions made by delegated decision-makers from time to time during the term of this Agreement.**