

**Tseshah First Nation  
Forest & Range  
Consultation and Revenue Sharing Agreement (FCRSA)  
(the "Agreement")**

**Between:  
The Tseshah First Nation**

As Represented by  
Chief and Council  
(the Tseshah First Nation)

**And**

**Her Majesty the Queen In Right of the Province of British Columbia  
as represented by the Minister of Aboriginal Relations and Reconciliation  
("British Columbia")**

(Collectively the "Parties")

**WHEREAS:**

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Tseshah First Nation have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist the Tseshah First Nation in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to economic challenges among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Tseshah First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Tseshah First Nation community's well-being.

- E. The Tseshaht First Nation has Aboriginal Interests within its Traditional Territory.
- F. British Columbia intends to consult with the Tseshaht First Nation and to accommodate its Aboriginal Interests as appropriate (including accommodation by way of the payments provided through this Agreement), with respect to impacts on the Tseshaht First Nation's Aboriginal Interests arising from forest and/or range resource development activities proposed within the Tseshaht First Nation Traditional Territory.
- G. This Agreement is intended to assist Tseshaht First Nation in participating in consultation and provide an opportunity for Tseshaht First Nation to affirm their aboriginal rights and seek accommodation for potential impacts from timber harvesting within their traditional territory.
- H. The Tseshaht First Nation intends to fully participate in any consultation or information sharing with British Columbia or a Licensee in relation to forest and/or range resource development activities proposed within the Tseshaht First Nation's Traditional Territory that may impact the Tseshaht First Nation's Aboriginal Interests.
- I. This Agreement is intended to assist in achieving stability and greater certainty for forest and/or range resource development on Crown lands within the Traditional Territory of the Tseshaht First Nation which will enhance the ability of the forestry and ranching industries to exercise timber harvesting and grazing rights in a timely, economic, and environmentally sustainable manner while longer term interests of the Tseshaht First Nation are addressed through other agreements or processes.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

## **1.0 Definitions**

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

- 1.1 "Aboriginal Interests" means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2 "Administrative and/or Operational Decision" means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation as identified in the First Annual List and/or Annual List as defined in Appendix B.
- 1.3 "Band Council Resolution" means a resolution of Tseshaht First Nation having the form of Appendix D.
- 1.4 "BC Fiscal Year" means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year.

- 1.5 "Delegated Decision Maker" and "DDM" means a person with authority, to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time.
- 1.6 "Designate" has the meaning given to that term in section 3.1.1.
- 1.7 "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.8 "First Fiscal Year of the Term" has the meaning given to that term in section 3.3.
- 1.9 "Licensee" means a holder of a forest tenure or a range tenure.
- 1.10 "Matrix" means the framework in Appendix B which will be used to define consultation between the Parties with respect to Operational and Administrative Decisions.
- 1.11 "Minister" means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters.
- 1.12 "Operational Plan" means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan (as those terms are defined in forest and range legislation) that has or will have effect in the Tseshah First Nation's Traditional Territory.
- 1.13 "Payment Account" has the meaning given to that term in section 3.1.3.
- 1.14 "RA" means a reconciliation agreement between British Columbia and the Tseshah First Nation that creates a foundation for the reconciliation of aboriginal rights and/or aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*.
- 1.15 "Revenue Sharing Contribution" means each payment to be made by British Columbia to the Tseshah First Nation in accordance with Section 3.0 of this Agreement.
- 1.16 "SEA" means a strategic engagement agreement between British Columbia and the Tseshah First Nation that describes a consultation process between the Tseshah First Nation and more than one natural resource ministry of the Government of British Columbia.
- 1.17 "Forest Tenure Opportunity Agreement" means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*.
- 1.18 "Term" has the meaning given to that term in section 11.1.
- 1.19 "Timber Harvesting Land Base" means the portion of the total land area of a management unit considered by Ministry of Forests, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply

- 1.20 "Traditional Territory" means the Tseshaht First Nation's claimed or asserted Traditional Territory as shown in bold black on the map attached in Appendix A.
- 1.21 "Treasury Board" means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

## **2.0 Purpose and Objectives**

The purposes and objectives of this Agreement are:

- 2.1 In relation to potential impacts on Tseshaht First Nation's Aboriginal Interests resulting from forest and range development in its Traditional Territory, to facilitate the Parties in meeting their respective legal consultation obligations by supporting the capacity of Tseshaht First Nation to participate in consultation initiated by British Columbia and by establishing a consultation process which results in appropriate accommodation measures being implemented, where appropriate, in addition to the Revenue Sharing Contribution provided as an accommodation in this Agreement; and
- 2.2 To provide an opportunity for the Tseshaht First Nation to identify and pursue activities that will enhance and improve the social, cultural and economic well-being of its community and assist the Tseshaht First Nation in achieving progress towards closing socio-economic gaps between the members of Tseshaht First Nation and non-Aboriginal people in British Columbia.

## **3.0 Forest Revenue Sharing Contribution**

- 3.1 Recipient Entity:
- 3.1.1 Unless the Tseshaht First Nation elects to have another entity (its "Designate") receive Revenue Sharing Contributions pursuant to section 3.1.2, recognizing that any such election does not relieve Tseshaht First Nation of its obligation under this agreement, the Tseshaht First Nation will be the recipient of the Revenue Sharing Contributions.
- 3.1.2 Where the Tseshaht First Nation chooses to have its Designate receive Revenue Sharing Contributions under this Agreement, British Columbia may withhold payment of the Revenue Sharing Contribution until it is satisfied that the Designate is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.0 and that it has been appointed by Band Council Resolution documented in Appendix D to receive the Revenue Sharing Contribution on behalf of the Tseshaht First Nation.

- 3.1.3 Tseshah First Nation will establish and throughout the Term maintain a separate bank account in the name of Tseshah First Nation (or the Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"), which bank account will be used solely for the purpose of receiving monies payable under this Agreement and implementing the objectives described in section 2.0. Tseshah First Nation will provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.
- 3.2 Subject to section 3.1.2 and section 10.0 of this Agreement, British Columbia will during the Term make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to the Tseshah First Nation, or to its Designate, as the case may be, and, subject to section 3.4 and 3.6, the Revenue Sharing Contribution will be disbursed in two equal payments: the first payment to be paid on or before September 30<sup>th</sup>, and the second payment to be paid on or before March 31<sup>st</sup>.
- 3.3 Notwithstanding section 3.2, for the BC Fiscal Year 2010/2011 (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix C is deemed to be \$ 307,853.
- 3.4 For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated for each month or part thereof that this Agreement is in effect.
- 3.5 Before November 30<sup>th</sup> of each year during the Term, Tseshah First Nation will receive written notification from British Columbia of the Revenue Sharing Contribution for the following BC Fiscal Year (including the summary document(s) and calculations identified in Appendix C) and the Tseshah First Nation agrees that such written notification will have the effect for the purposes of this Agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for that following BC Fiscal Year.
- 3.6 For each BC Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by British Columbia to the Tseshah First Nation or its Designate in the manner specified in section 3.2 only if Tseshah First Nation has published all of the necessary statements and reports before the appropriate dates as set out in section 6.0 of this Agreement, is in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to section 10.0.
- 3.7 In addition to section 3.2, on the Effective Date, the Tseshah First Nation will be paid a payment to bridge the period from the date of the last

payment to which the Tseshah First Nation is entitled under its *Tseshah First Nation Interim Agreement* to the Effective Date of this Agreement (the "Bridging Amount"), which additional payment will be calculated on the basis of the Revenue Sharing Contribution for the First Fiscal Year of the Term but prorated for the period from the date of the last payment under the *Tseshah First Nation Interim Agreement* to the Effective Date.

- 3.8 Tseshah First Nation agrees that for the period between the end of the term of its *Tseshah First Nation Interim Agreement* and the Effective Date, it has been adequately consulted and British Columbia has provided an economic accommodation in the form of a bridging payment in relation to all Administrative Decisions, Operational Decisions, and Operational Plans made during that period that could impact its Aboriginal Interests.
- 3.9 Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to the Tseshah First Nation pursuant to this Agreement is subject to:
  - 3.9.1 there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
  - 3.9.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in section 3.9.1.

#### **4.0 Consultation Process**

- 4.1 The Parties agree that consultation with respect to impacts to Tseshah First Nation's Aboriginal Interests arising from any Operational or Administrative Decisions or Operational Plans is to be carried out in accordance with the process set out in Appendix B of this Agreement.
- 4.2 British Columbia will use the map of the Tseshah First Nation's Traditional Territory used in the *Tseshah First Nation Interim Agreement* which map will be set out in this Agreement as Appendix A, unless this is the first such agreement between British Columbia and Tseshah First Nation in which event the Tseshah First Nation will provide a hard copy map of its Traditional Territory and a digital copy of the Traditional Territory boundary conforming to current government mapping standards, which hard copy will be set out in this Agreement as Appendix A.
- 4.3 Tseshah First Nation agrees that British Columbia may share the map of the Traditional Territory as set out in Appendix A with another provincial government agency and/or a licensee responsible for information sharing associated with a decision that is subject to this Agreement.
- 4.4 The Parties agree that in the event Tseshah First Nation enters into a SEA or RA with British Columbia after the Effective Date which includes a consultation process which addresses forest and range management and

decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA if the SEA or RA so provides; and in any such case, if the SEA or RA terminates prior to the end of the Term, the Parties agree that the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.

- 4.5 In the event that the Effective Date falls after the date on which Tseshah First Nation enters into a SEA or RA with British Columbia that includes a consultation process which addresses forest and range management and decision making, and the SEA or RA is subsequently terminated prior to the end of the Term, the Tseshah First Nation agrees that this Agreement will be amended within 60 days of the date of termination of the SEA or RA to include a consultation process in this Agreement.

## **5.0 Acknowledgments and Covenants by Tseshah First Nation**

- 5.1 Tseshah First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 5.2 Tseshah First Nation agrees that the Revenue Sharing Contributions made under section 3.0 of this Agreement constitute an accommodation for impacts on Tseshah First Nation Aboriginal Interests of Administrative Decisions, Operational Decisions and/or Operational Plans in the Traditional Territory.
- 5.3 Tseshah First Nation agrees that during the term of this Agreement, if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted and has provided an accommodation with respect to potential infringements of Tseshah First Nation's Aboriginal Interests in the context of Operational Decisions and Administrative Decisions that British Columbia will make and any forest or range practices that may be carried out under an Operational Plan in the Traditional Territory

## **6.0 Community Priorities, Annual Reports and Records**

- 6.1 Tseshah First Nation covenants and agrees as follows:
  - 6.1.1 Within 60 days of the Effective Date of this Agreement, Tseshah First Nation or its Designate will prepare a statement of community priorities covering the term of the Agreement, substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives identified in section 2.2. This statement will outline the community priorities based on the First Fiscal Year Revenue Sharing Contribution.
  - 6.1.2 Before the end of each BC Fiscal Year, Tseshah First Nation or its Designate will update the statement of community priorities identified in section 6.1.1 based on the updated Revenue Sharing Contribution

described in section 3.5.

- 6.1.3 Within 90 days of the end of each BC Fiscal Year, Tseshah First Nation or its Designate will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report (or, in the case of the first such report, since the Effective Date of this Agreement) and confirming that, aside from reasonable administrative expenses, all such expenditures were made for the purpose of accomplishing the purposes and objectives referred to in section 2.0.
- 6.1.4 British Columbia retains the right at its sole discretion, such discretion to be exercised reasonably, to require an audit of expenditures made from the Payment Account to ensure that all such expenditures were made for appropriate purposes under this Agreement, such audit to be at the expense of the Tseshah First Nation or its Designate.
- 6.1.5 The documents referred to in sections 6.1.1, 6.1.2, and 6.1.3 will be published by Tseshah First Nation or its Designate in a manner that can reasonably be expected to bring the information to the attention of its communities and the public.
- 6.1.6 Notwithstanding the termination or expiry of this Agreement, Tseshah First Nation or its Designate will continue to comply with the provisions of section 6.1 until 90 days after it receives the last Revenue Sharing Contribution from British Columbia.
- 6.2 If Tseshah First Nation requires funding ("capacity") to engage in consultation processes agreed to in Appendix B of this Agreement on forest and range decisions, or with other provincial Ministries on other types of decisions as agreed to where Tseshah First Nation has entered into an SEA and/or RA with British Columbia, up to \$35,000 annually of the Revenue Sharing Contribution will be used by Tseshah First Nation for that capacity during the Term of this Agreement.

## **7.0 Security Deposits**

- 7.1 In recognition of Tseshah First Nation entering into this Agreement, British Columbia may choose not to request a silviculture deposit(s) pertaining to licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Tseshah First Nation (or a legal entity controlled by the Tseshah First Nation) and British Columbia.
- 7.2 Tseshah First Nation agrees that British Columbia may apply any payment that Tseshah First Nation is entitled to receive under this Agreement, to a maximum of the amounts that British Columbia would have obtained in a silviculture deposit, in order to fully or partially satisfy any unfulfilled financial obligations of Tseshah First Nation to British Columbia arising from a



licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Tseshah First Nation (or a legal entity controlled by the Tseshah First Nation) and British Columbia.

- 7.3 Prior to British Columbia applying any payment to satisfy unfulfilled Tseshah First Nation financial obligations arising from a licence(s) in accordance with section 7.2, British Columbia will notify the Tseshah First Nation of the unfulfilled financial obligation(s) and will discuss the proposed action with the Tseshah First Nation.

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

- 8.1 Tseshah First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Tseshah First Nation with provincially authorized forest and/or range activities and will work co-operatively with British Columbia to assist in resolving any such matters.

## **9.0 Dispute Resolution**

- 9.1 If a dispute arises between British Columbia and the Tseshah First Nation regarding the interpretation of a provision of this Agreement, the duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.
- 9.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Tseshah First Nation.
- 9.3 If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **10.0 Suspension and Termination**

- 10.1 British Columbia may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, acting reasonably, that Tseshah First Nation is not fulfilling its obligations under sections 4.0 and 6.0 or sections 8.1 or 10.3 of this Agreement, or where the Tseshah First Nation has outstanding unfulfilled financial obligations to British Columbia arising from a licence(s) issued further to an agreement between the Tseshah First Nation and British Columbia. Upon making any such determination, British Columbia will provide notice to Tseshah First Nation of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 10.2 If the alleged non-compliance by Tseshah First Nation is not resolved within 60 days of the notice provided in section 10.1, British Columbia will notify Tseshah First Nation that the alleged non-compliance remains

unresolved and, without limiting the actions that may be taken by British Columbia, may terminate this Agreement.

- 10.3 If, during the term of this Agreement, Tseshah First Nation 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 or plans, by way of legal proceedings or otherwise, on the basis that, contrary to section 5.2, the Revenue Sharing Contribution provided for in section 3.0 of this Agreement does not provide an accommodation for impacts on Tseshah First Nation's Aboriginal Interests then, without limiting any actions that may be taken by British Columbia, the Revenue Sharing Contribution provided for in section 3.0 may be suspended or this Agreement may be terminated by British Columbia.
- 10.4 This Agreement will terminate prior to the end of the Term in any one of the following circumstances; 90 days' written notice of termination is given by one Party to the other; termination occurs in accordance with any of the provisions of section 10.0; or upon mutual agreement of the Parties. In the event of such early termination of this Agreement, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.
- 10.5 If a Party gives written notice of its intention to terminate this Agreement effective 90 days from the date of the notice, the Parties will, prior to the end of the 90-day period, meet and will attempt to resolve any issue that may have given rise to the termination notice.

#### **11.0 Term**

- 11.1 The term of this Agreement commences on the Effective Date and, unless terminated earlier in accordance with any of the provisions hereof, will end on the day immediately before the third anniversary of the Effective Date.

#### **12.0 Renewal of the Agreement**

- 12.1 Prior to the expiry of the Term, if the terms and conditions of this Agreement are being met, British Columbia and Tseshah First Nation will, if each party has received such authorizations as it may require, begin negotiations for the renewal of this Agreement or for a new agreement.

#### **13.0 Amendment of Agreement**

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

#### **14.0 Entire Agreement**

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

## **15.0 Notice**

- 15.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 15.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 15.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

### **British Columbia**

Deputy Minister  
Ministry of Aboriginal Relations and Reconciliation  
P.O. Box 9100 STN PROV GOVT  
Victoria B.C. V8W 9B1  
Telephone: (250) 356-1394  
Fax: (250) 387-6594

### **Tseshah First Nation**

Chief Les Sam  
Tseshah First Nation  
5091 Tsuma-as Drive  
Port Alberni, BC V9Y 8X9  
Telephone:(250) 724-1225  
Facsimile:(250) 724-4385

## **16.0 Miscellaneous**

- 16.1 This Agreement shall be interpreted in a manner consistent with provincial and federal law.
- 16.2 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 16.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 16.4 Subject to paragraph 10.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 British Columbia acknowledges and enters into this Agreement on the basis that the Tseshaht First Nation has Aboriginal Interests within their Traditional Territory but that the specific nature, scope or geographic extent of Aboriginal Interests of the Tseshaht First Nation have yet to be determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Tseshaht First Nation.
- 16.6 References in this Agreement to Crown lands are without prejudice to the Tseshaht First Nation's Aboriginal title and/or rights claims over those lands.
- 16.7 With the exception of matters or decisions dealt with in section 3.8, this Agreement does not address or affect any claims by the Tseshaht First Nation regarding impacts on its Aboriginal Interests resulting from past Operational or Administrative Decisions made by British Columbia prior to the effective date of this Agreement
- 16.8 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities
- 16.9 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.
- 16.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.12 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Tseshaht First Nation.
- 16.13 This Agreement does not exclude the Tseshaht First Nation from accessing forestry economic opportunities and benefits, which may be

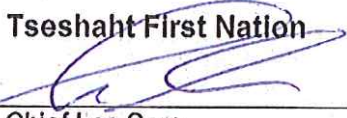
available to the Tseshah First Nation, other than those expressly set out in this Agreement.

- 16.14 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of fact or liability.
- 16.15 This Agreement does not constitute an admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the British Columbia's obligation to consult and accommodate.
- 16.16 If any part of this Agreement is void or unenforceable at law, that part shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 16.17 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.
- 16.18 All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 16.19 In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 16.20 The appendices to this Agreement form part of the Agreement.


16.21 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:

**Tseshah First Nation**

  
\_\_\_\_\_  
Chief Les Sam

MAR. 30. 2011  
Date

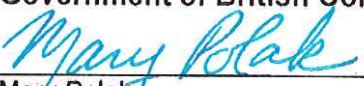
  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Witness of Tseshah First Nation signatures

Signed on behalf of:

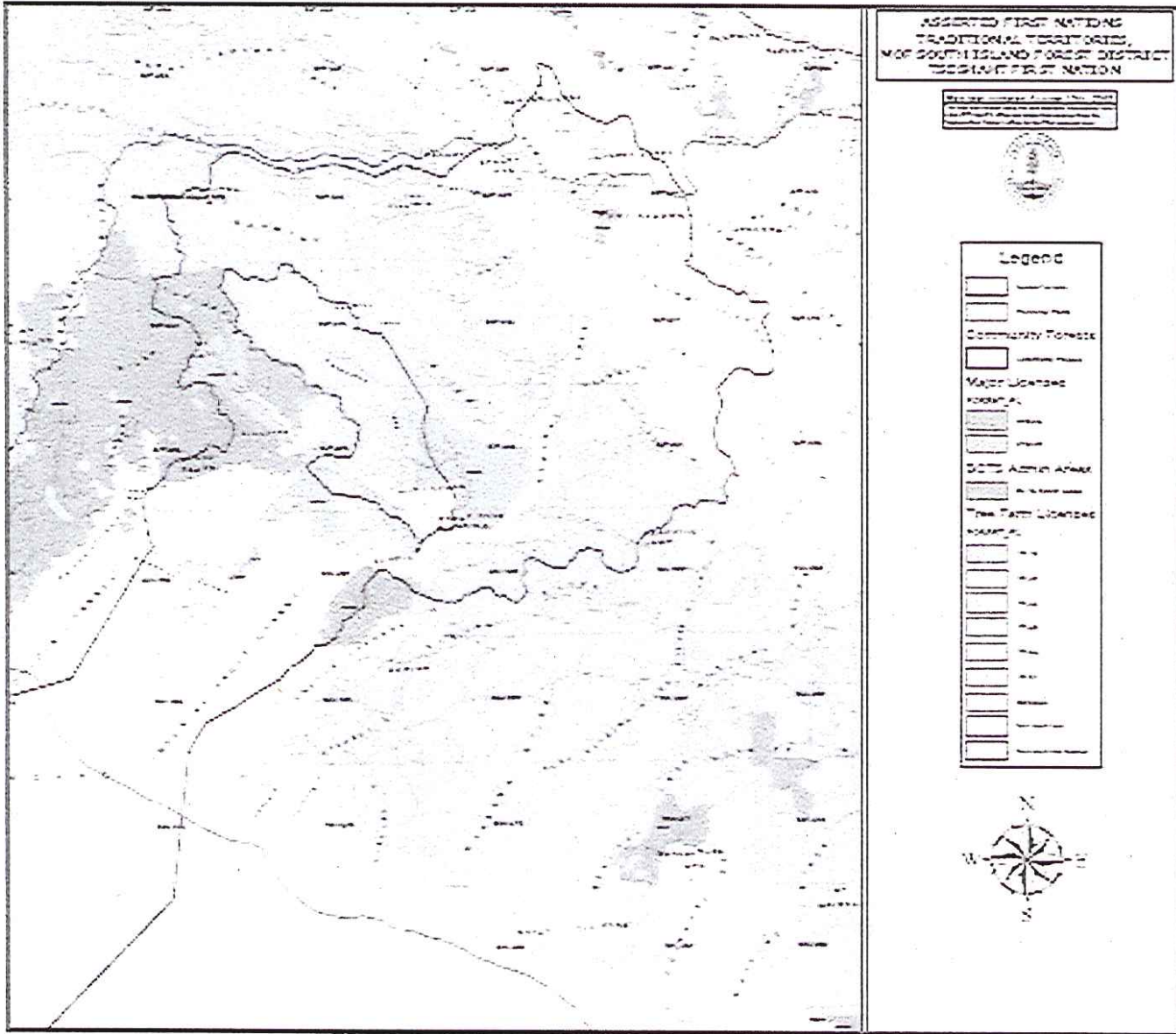
**Government of British Columbia**

  
\_\_\_\_\_  
Mary Polak  
Minister of Aboriginal Relations and  
Reconciliation

04. 26. 11  
Date

\_\_\_\_\_  
Witness of Minister signature

**APPENDIX A**  
**Map of Tseshaht First Nation Traditional Territory**





## **APPENDIX B**

### **Consultation**

#### **On Operational and Administrative Decisions and Operational Plans.**

In order to facilitate consultation with respect to Operational and Administrative Decisions and Operational Plans, the Parties have agreed to use the Matrix framework set out in section 1.10 of this Appendix ("section 1.10"), which allows the Parties to determine which Operational and Administrative Decisions and Operational Plans will require consultation, as well as the associated appropriate level of consultation for those decisions and plans.

- 1.1 British Columbia agrees to consult with Tseshaht First Nation in accordance with the applicable consultation level agreed to by the Parties under section 1.10 on Operational Plans, Operational Decisions, and Administrative Decisions that may potentially adversely impact Tseshaht First Nation's Aboriginal Interests within the Traditional Territory.
- 1.2 Tseshaht First Nation agrees to fully participate with British Columbia and/or Licensees or licence proponents, as set out in this Agreement and in accordance with the applicable level of consultation to which the Parties have agreed under section 1.10, in information sharing and/or consultation regarding proposed Operational Decisions, Administrative Decisions, and Operational Plans dealing with forest and range development within the Traditional Territory.
- 1.3 In this Appendix, "First Annual List" means a list of Operational and Administrative Decisions and Operational Plans, which may require consultation during the First Fiscal Year of the term or part thereof in which the Effective Date occurs, that is provided to the Tseshaht First Nation by British Columbia in advance of the Parties entering into this Agreement.
- 1.4 Prior to entering into this Agreement, the Parties will agree on the applicable consultation levels for the decisions on the First Annual List, using the consultation levels described in section 1.10.
- 1.5 In this Appendix, "Annual List" means an annual list of Operational and Administrative Decisions and Operational Plans that may require consultation in a fiscal year of the Agreement in which those decisions are anticipated to be made, and that will be provided to the Tseshaht First Nation by British Columbia before March 31<sup>st</sup> of each year after the First Fiscal Year of the Term.
- 1.6 For fiscal years subsequent to the First Fiscal Year of the Term, the Parties will meet annually on or before March 31st to discuss the Annual List and, in the case of decisions and plans for which the Parties have not already agreed to a consultation level described in section 1.10 in a preceding fiscal year, the Parties will agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans on the Annual List, in accordance with section 1.10.

- 1.7 When British Columbia becomes aware of proposed types of Operational or Administrative Decisions or Operational Plans not contained in the Annual List that will have effect within the Traditional Territory of Tseshaht First Nation during the current fiscal year, British Columbia will notify the Tseshaht First Nation of those new types of decisions or plans and the Parties will seek to agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans, in accordance with section 1.10.
- 1.8 In reviewing and responding to an Operational Decision, Administrative Decision, or Operational Plan submitted to them, Tseshaht First Nation will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, a licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities pursuant to that Operational Decision, Administrative Decision or Operational Plan within the Traditional Territory.
- 1.9 If no response is received from Tseshaht First Nation within the timeframe set out in section 1.10, then British Columbia may conclude that Tseshaht First Nation does not intend to respond or participate in the consultation process in respect of the Operational or Administrative Decision or Operational Plan and that a decision may proceed.
- 1.10 The Parties agree to the following description and intent of the consultation levels:



Level	Description	Intent
<b>1. Information Sharing:</b> prior to formal consultation process	Referral to Tseshaht First Nation during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Decision Maker.	Proponent or tenure holder engages directly with Tseshaht First Nation, and provides summary of communications to British Columbia.
<b>2. Available on Request</b>	Type of notification whereby British Columbia informs Tseshaht First Nation they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Tseshaht First Nation can request more detail if they wish.
<b>3. Notification</b>	Notify in writing Tseshaht First Nation about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Tseshaht First Nation base level information and a short reasonable time (21-30 calendar day consultation period determined by the Parties) to comment. Limited follow-up.

Level	Description	Intent
<b>4. Expedited Consultation Process</b>	Where there is an imminent threat to a resource value (e.g. mountain pine beetle spread control) an expedited consultation process is undertaken.	Intense but short timeline (about 10 calendar days). A justification for shortening the period would be given by describing the imminent threat. May require a meeting.
<b>5. Normal Consultation</b>	Follow on "normal" track for consultation guided by up-to-date consultation policy. Meetings to resolve issues where possible and make decision in a timely manner.	Intent to follow this course in most circumstances. Usually a 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Tseshah First Nation of the final decision where requested by the Tseshah First Nation.
<b>6. Deep Consultation</b>	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary. Preliminary assessments may indicate a significant aboriginal interest and a significant impact to that interest.	Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Tseshah First Nation with the final decision and rationale in writing.

- 1.11 The Parties may agree to adjust the consultation levels for specific circumstances where detailed aboriginal interest information is shared that would suggest a different consultation level.
- 1.12 Tseshah First Nation agrees that the province is not obligated, unless requested by the Tseshah First Nation, to inform the Tseshah First Nation of the Delegated Decision Maker's decision for decisions on which the consultation level has been level three (3) or lower.
- 1.13 If the Parties cannot agree upon which consultation level in section 1.10 should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Tseshah First Nation on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.

## APPENDIX C

### Revenue Sharing Contribution Methodology

#### Traditional Territory Forest Revenue Sharing Component

- 1.0 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of British Columbia, a summary document will be prepared of the South Island District's forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for South Island District.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Tseshah First Nation's Forest License (A79344 and A81582) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Tseshah First Nation's Traditional Territory will be calculated by determining the percent of Tseshah First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in South Island District, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.
- 1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Tseshah First Nation as described in section 1.2 of this Appendix.
- 1.4 Where the calculation in section 1.3 of this Appendix is less than \$35,000, Tseshah First Nation will receive a maximum of \$35,000 to provide capacity to participate in the consultation process in accordance with section 4.0 of this Agreement.
- 1.5 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

#### Direct Award Tenure Forest Revenue Sharing Component

- 2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of British Columbia, a summary document will be prepared of Tseshah First Nation's Forest License (A79344 and A81582) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 35 percent of the forest revenue as described in section 2.0 of this Appendix.

- 2.2 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

**Forest Revenue Sharing Transition**

- 3.0 The Parties agree that new methods to calculate the Revenue Sharing Contribution will be phased in over the next 4 years.
- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by determining the total of the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year ("the sum") and applying the following percentages to that sum:
- 3.1.1 2010/11 BC Fiscal Year: 10 percent;
  - 3.1.2 2011/12 BC Fiscal Year: 50 percent; and
  - 3.1.3 2012/13 BC Fiscal Year: 80 percent.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Tseshah First Nation in any given full year under the *Tseshah First Nation Interim Agreement* which expired on 3/31/2010 ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.2.1 2010/11 BC Fiscal Year: 69 percent;
  - 3.2.2 2011/12 BC Fiscal Year: 59 percent; and
  - 3.2.3 2012/13 BC Fiscal Year: 55 percent.
- 3.3 The Parties agree that if this Agreement is renewed in accordance with section 12.0 of this Agreement, or this Agreement expires in the 2013/2014 BC Fiscal Year, the Revenue Sharing Contribution will be the sum of:
- 3.3.1 the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component calculated in this Appendix; and
  - 3.3.2 50 percent of the value of the Annual Amount identified in section 3.2 of this Appendix.

**APPENDIX D**

**Band Council Resolution Appointing  
the  
Recipient Entity for this Agreement ("Designate")**

**N/A**

## APPENDIX E

### Tseshahat First Nation Statement of Community Priorities

(Example only)

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2010/2011	2011/2012	2012/2013		

2010/2011 Revenue Sharing Contribution \$307,853

2011/2012 Revenue Sharing Contribution \$ To Be Determined

2012/2013 Revenue Sharing Contribution \$To Be Determined

2013/2014 Revenue Sharing Contribution \$To Be Determined

## APPENDIX F

### Tseshaht First Nation Statement of Community Priorities

#### Annual Report

*(Example only)*

<b>Socio-economic Priority</b>	<b>2010/2011 Planned Expenditures</b>	<b>2010/2011 Actual Expenditures</b>	<b>Outcomes Achieved</b>	<b>Variance Explanation</b>



**Tseshah First Nation  
First Annual List for 2010/2011**

Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period	Comments/Pending Decisions
<b>ADMINISTRATIVE DECISIONS</b>					
TFL	Deletion of Crown land	Minister of Forests, Lands and Natural Resource Operations	5	30-60 days	Unknown until application arrives
TFL	TFL consolidation, and subdivision	Minister of Forests, Lands and Natural Resource Operations	3	21-30 days	Unknown until application arrives
TFL & Forest Licence (FL)	Licence transfer	Minister of Forests, Lands and Natural Resource Operations	3	21-30 days	Unknown until application arrives
FL	Forest licence/Non-replacable forest licence (NRFL) Issuance	Regional Executive Director	5	30-60 days	
FL	Forest licence/Non-replacable forest licence (NRFL) extension	Regional Executive Director	3	21-30 days	
FL	FL consolidation, and subdivision	Regional Executive Director	3	21-30 days	
FL	FL replacement	Regional Executive Director	5	30-60 days	
Community Forest Agreement (CFA)	Timber supply reviews for AAC determination	Regional Executive Director	5	60 days	
CFA	CFA management plan approvals	Regional Executive Director	5	30-60 days	
CFA	CFA management plan amendments	Regional Executive Director	3	21-30 days	
CFA	Probationary CFA transition into a CFA	Regional Executive Director	3	21-30 days	
CFA	Boundary/Area amendment	Regional Executive Director or District Manager	5	21-30 days	
CFA/ Woodlot Licence (WL)	Establishment and advertising of WL area. Establishment of CFA	District Manager	5	30-60 days	
WL	Timber supply reviews for AAC determination	District Manager	5	60 days	
WL	WL plan approvals	District Manager	5	30-60 days	
WL	WL plan amendments	District Manager	3	21-30 days	
WL	Boundary/Area amendment	District Manager	5	21-30 days	
WL	First Nations direct award of WL	District Manager	5	30-60 days	
Timber Licence (TL)/WL and Forestry Licence to Cut (FLTC)	Licence transfer	Regional Executive Director	3	21-30 days	

TL	Extension	Regional Executive Director	5	30-60 days	
First Nation Woodland Licence (FNWL)	FNWL through treaty or interim measures agreement	Regional Executive Director	5	21-30 days	
Land Act	Issue new <i>Land Act</i> Tenure over previously un-impacted site/submerged land generally related to forestry activities. Examples may include dryland sort and foreshore lease tenures	Minister of Forests, Lands and Natural Resource Operations	5	30-60 days	
Land Act	<i>Land Act</i> tenure amendments related to forestry activities. Examples may include dryland sort and foreshore lease tenures	Minister of Forests, Lands and Natural Resource Operations	3	21-30 days	
Special Use Permits (SUP)	Issue new permit over previously un-impacted site. Examples may include logging camps, log sorts, and log dumps	District Manager	5	30-60 days	
SUP	SUP amendment/ replacement/ issuance over previously developed site. Examples may include logging camps, log sorts, and log dumps	District Manager	3	21-30 days	
Government Actions Regulation Orders (GARS)	Generally GARS serve to protect lands from development	District Manager	3	21-30 days	Consultation level set at notification.
Old Growth Management Areas (OGMA)	Establishment of OGMA. OGMA serve to protect existing old growth stands from harvest or alternatively serve to recruit old growth from younger stands	District Manager	3	N/A	
Recreation Sites and Trails (RST)	The establishment of new interpretive forest sites, recreation sites and recreation trails and their objectives. (Section 56 FRPA)	Sites and Trails BC Assistant Deputy Minister	3	21-30 days	
RST	Dis-establish recreation sites and trails	Sites and Trails BC Assistant Deputy Minister	2	0-30 days	

RST	Authorize trail construction (Section 57 FRPA)	Sites and Trails BC Regional Manager/ District Recreation Officer	3	21-30 days	
RST	Protection of recreation resources on Crown land (Section 58 FRPA) - Protect a recreation resource or to manage public recreation use	Sites and Trails BC Regional Manager	1-2	0-30 days	
<b>OPERATIONAL DECISIONS</b>					
TFL/FL/CFA/WL	Cutting permit (CP) issuance	District Manager	1-5	0-60 days	Supplemental consultation by MFLNRO subject to outcome of licensee lead information sharing.
TFL/FL/CFA/WL	Road permit (RP) issuance	District Manager	1-5	0-60 days	Supplemental consultation by MFLNRO subject to outcome of licensee lead information sharing.
TFL/FL/CFA/WL	CP/RP minor amendments	District Manager	1	10-30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
BC Timber Sales (BCTS) TSL/RP	TSL/RP issuance	Timber Sales Manager	1	30-60 days	Supplementary consultation levels subject to outcome of licensee led information sharing procedures.
Road Use Permit (RUP) Issuance	RUP over existing Forest Service Roads for industrial use	District Manager		N/A	No consultation required
Forest Investment Account - Stewardship	Sustainable forest management planning; management unit and watershed level strategies/plans; resource inventories; monitoring; decision support; stand treatments; recreation, etc. Intended to improve the economic and ecological stability of the forest land base	District Manager	2-5	0-60 days	Consultation levels guided by the <i>Land Based Investment Interim First Nations Information Sharing Guidelines 2010</i>
Free Use Permits	Free Use Permits for First Nations' traditional and cultural activities	District Manager	1	N/A	Applicant to notify Tseshaht and provide evidence of communication and support to MFLNRO.
Misc. Forest Tenure	Authority to harvest timber by Crown agents. ( <i>Forest Act</i> Sec 52) May be used FSR realignments, heli pad clearing for BCTS, research branch destructive sampling, and parks staff	District Manager and Timber Sales Manager	1	N/A	Applicant to notify Tseshaht and provide evidence of communication and support to MFLNRO
Misc. Forest Tenure	Permit to grow and/or harvest Christmas trees on Crown land. Often in association with compatible land use such as BC Hydro power line right of ways	District Manager	2	N/A	

Occupant Licence to Cut (OLTC) /FLTC	Licence to cut issuance (minor cutting, small scale salvage, recreation sites and trails)	District Manager and Regional Executive Director	1	N/A	
OLTC/ FLTC	Community wildfire protection.(FLTC) Non-emergency licence to cut for wildfire prevention	Regional Executive Director	1	21-30 days	
OLTC/ FLTC	OLTC issuance. Tree removal required for new infrastructure/ facilities installations. Most are consulted on in association with Land Act tenures	District Manager	1	N/A	Applicant to notify Tseshaht and provide evidence of communication and support to MFLNRO
OLTC/ FLTC	Forestry licence to cut issuance by BC Timber Sales	Timber Sales Manager	1	N/A	Applicant to notify Tseshaht and provide evidence of communication and support to MFLNRO
<b>OPERATIONAL PLANS</b>					
TFL/FL/CFA/WL/ BCTS	Forest Stewardship Plan (FSP) /Woodlot Licence Plan (WLP) review and approval, including major amendments to FSP	District Manager	5	30-60 days	Alberni Valley CFA
TFL/FL/CFA/WL/ BCTS	FSP and WLP extensions	District Manager	3	21-30 days	BCTS