

REGIONAL COAL AGREEMENT

This Agreement is dated for reference the 16th day of November, 2015.

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation, the Minister of Energy and Mines, and the Minister of Forests Land and Natural Resource Operations

(the "Province")

AND:

West Moberly First Nations, a "band" within the meaning of subparagraph 2(1) of the *Indian Act*, R.S.C. 1985, c. I-5, as represented by its Chief and Council

(the "West Moberly")

(Collectively referred to as the "Parties" and individually referred to as a "Party")

In consideration of the agreements set out in this Coal Agreement, the receipt and sufficiency of which is acknowledged by each Party, the Parties agree as follows:

PART 1 DEFINITIONS

1.1 Defined Terms. In this Coal Agreement:

- (a) **"Activity Table"** means the table set out as "Table A: Activity Table" in Schedule 3: Engagement Level Assessment Criteria;
- (b) **"Annual Mineral Tax Revenue Sharing Payment"** has the same meaning as in the Economic and Community Development Agreement;
- (c) **"BC Fiscal Year"** means a period beginning on April 1st of a calendar year and ending on March 31st of the next calendar year;
- (d) **"Business Day"** means any day other than Saturday, Sunday, National Aboriginal Day, statutory holidays and December 15th to January 1st;
- (e) **"Coal Agreement"** means this Regional Coal Agreement entered into between the West Moberly and the Province and dated for reference as of the date first noted above, as amended from time to time in accordance with its terms;

- (f) **“Coal Applicant”** means any person, corporation, society, entity or agency, including the Province and any agent of the Province, that makes or plans to make a Coal Related Application;
- (g) **“Coal Area”** means the geographic area identified as the “Coal Area” in Schedule 1;
- (h) **“Coal Benefits Agreement”** means an agreement between one or more Treaty 8 First Nations and one or more Coal Applicants respecting information sharing, engagement processes, education, training, employment, procurement, capacity funding or revenue sharing;
- (i) **“Coal Land Reserve”** means those coal lands that are established as a “coal land reserve” under section 21 of the *Coal Act* following notice from the West Moberly to the Province in accordance with section 3.4, as such coal land reserve is amended from time to time;
- (j) **“Coal Related Activity” or “Activity”** means an activity relating to the use or development of land or resources within the Coal Area for purposes of coal exploration, coal development, coal production or related remediation, which may adversely impact the exercise of West Moberly Treaty Rights, and in respect of which a Coal Related Application is submitted to a Provincial Agency and, as the context requires, includes a Coal Related Authorization issued or that may be issued in relation to that activity;
- (k) **“Coal Related Application”** means an application for the authorization of a proposed Coal Related Activity that is submitted to a Provincial Agency for a decision, including the application document, any material for an amendment, renewal or replacement approval, and all available supporting material submitted by the Coal Applicant, but does not include an application for an Environmental Assessment Certificate under the British Columbia *Environmental Assessment Act* or an application for any permit, authorization or approval under the *Heritage Conservation Act*;
- (l) **“Coal Related Authorization”** means an authorization issued by a Decision Maker in relation to a Coal Related Application;
- (m) **“Contributing Project”** has the same meaning as in the Economic and Community Development Agreement;
- (n) **“Decision Maker”** means the person or body authorized under provincial law to make a decision regarding a Coal Related Application;
- (o) **“Discussion Period”** means, as applicable, the 20 or 45 Business Day period within the Shared Decision Making Process referred to in section 5.26, including any time extensions, during which the Parties implement

an Engagement Plan;

- (p) **“Dispute”** means any disagreement regarding the interpretation or implementation of this Coal Agreement, but does not include a disagreement regarding the interpretation or implementation of the Shared Decision Making Process as it applies to a particular Coal Related Application, including any disagreement to which the Issue Resolution Process applies, or a decision regarding a particular Coal Related Application;
- (q) **“Dispute Resolution”** means the processes by which the Parties will seek to resolve Disputes respecting the interpretation or implementation of this Coal Agreement as set out in Part 8;
- (r) **“Economic and Community Development Agreement”** means the Economic and Community Development Agreement respecting mineral tax revenue-sharing in relation to coal mines in the Coal Area contemplated by section 6.1 that is entered into by the West Moberly and the Province concurrently with this Coal Agreement, as that agreement is amended from time to time in accordance with its terms;
- (s) **“Effective Date”** means the last date upon which this Coal Agreement is signed by the Parties;
- (t) **“Engagement Coordinator”** means an individual appointed by each Party in accordance with section 4.11 to undertake or oversee engagement activities on Coal Related Applications and having the responsibilities described in section 4.13;
- (u) **“Engagement Level” or “Level”** means an engagement process within the Shared Decision Making Process as set out in Part 5 and summarized in Table C: Engagement Levels of Schedule 3: Engagement Level Assessment Criteria;
- (v) **“Engagement Level Modifiers”** means those modifiers to an Engagement Level set out in “Table B: Engagement Level Modifiers” in Schedule 3: Engagement Level Assessment Criteria;
- (w) **“Engagement Plan”** means the document included within the Shared Engagement Record that is developed by the Parties in accordance with sections 5.29, 5.30 and 5.31 to identify, guide and set timelines for the Shared Engagement Process;
- (x) **“Initial Response”** means the information provided by West Moberly to the Province within the Initial Response Period in accordance with section 5.21;

- (y) **“Initial Response Period”** means the 15 Business Day period within the Shared Decision Making Process referred to in section 5.12, together with any relevant time extensions, during which the West Moberly may provide a response to the Engagement Level proposal or an Initial Response;
- (z) **“Issue Resolution Process”** means the process described in sections 5.46 to 5.53 to be used in resolving issues that may arise during the Discussion Period in relation to a particular Coal Related Application;
- (aa) **“Notice of Dispute”** means a notice to commence dispute resolution provided in accordance with section 8.4;
- (bb) **“Operator”** has the same meaning as in the Economic and Community Development Agreement;
- (cc) **“Project”** has the same meaning as in the Economic and Community Development Agreement;
- (dd) **“Provincial Agency”** means a ministry, agency or office of the Province that has responsibility under provincial law for matters associated with the tenuring, exploration, development, production or remediation of coal resources, not including the Environmental Assessment Office;
- (ee) **“Provincial Representative”** means the individual identified in a Referral Package in accordance with sections 5.10 or 5.11 as the primary contact person for a Provincial Agency in relation to a Coal Related Application for the purposes of the Shared Decision Making Process;
- (ff) **“Recommended Coal Land Reserve Area”** means those coal lands identified as the “Recommended Coal Land Reserve Area” in Schedule 2 that the Parties intend to recommend be established as a coal land reserve in accordance with section 3.1;
- (gg) **“Referral Package”** means the information to be provided by a Provincial Agency to the West Moberly Engagement Coordinator in accordance with sections 5.10 or 5.11;
- (hh) **“Senior Coal Official”** means the senior representative appointed by each Party in accordance with section 4.8 to oversee implementation of this Coal Agreement and having the responsibilities described in section 4.10;
- (ii) **“Shared Decision Making Process”** means the processes by which the Parties will collaborate to consider Coal Related Applications through the principles, structures, processes and initiatives set out in Parts 2, 4 and 5 of this Coal Agreement;

- (jj) **“Shared Engagement Objectives”** means those objectives of the Parties set out in section 2.1 (f) (iv) A to E;
- (kk) **“Shared Engagement Record”** means the document created during the Shared Engagement Process, including a copy of the Coal Related Application and all other correspondence and documents added by either Party, and provided to a Decision Maker for their consideration at the conclusion of the Shared Decision Making Process;
- (ll) **“Timeline Extension Principles”** means those timeline extension principles set out in section 5.44;
- (mm) **“Tumbler Ridge Zone”** means those lands identified as the “Tumbler Ridge Zone” in Schedule 1;
- (nn) **“West Moberly Core Coal Area”** means that area within the Coal Area identified as the “West Moberly Core Coal Area” on the confidential map initialled by the Parties concurrently with the execution and delivery of this Coal Agreement as amended from time to time in accordance with this Coal Agreement;
- (oo) **“West Moberly Treaty Rights”** means the rights of the West Moberly First Nation recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

1.2 The following Schedules are attached to and form part of this Coal Agreement:

- Schedule 1: Map of Coal Area, Recommended Coal Land Reserve Area and Tumbler Ridge Zone
- Schedule 2: Joint Recommendation Letter for Coal Land Reserve
- Schedule 3: Engagement Level Assessment Criteria
 - Table A: Activity Table
 - Table B: Engagement Level Modifiers
 - Table C: Engagement Levels

1.3 The West Moberly Core Coal Area Map forms part of this Coal Agreement.

PART 2 PURPOSE AND PRINCIPLES

2.1 The purposes of this Coal Agreement are:

- (a) to foster an enduring and respectful government-to-government relationship;

- (b) to facilitate meaningful engagement and, if applicable, accommodation with respect to the development of coal resources within the Coal Area and thereby facilitate reconciliation of West Moberly Treaty Rights with the development of coal resources within the Coal Area;
- (c) to encourage opportunities for the West Moberly to participate in the economic opportunities associated with the development of coal resources including the implementation of the Economic and Community Development Agreement for specific coal mines;
- (d) to obtain the West Moberly support for, and to provide opportunities for participation in, the development of coal resources in balance with the protection and maintenance of West Moberly Treaty Rights within the Coal Area;
- (e) to establish a strategic approach to coal development within the Coal Area in relation to West Moberly Treaty Rights by:
 - i. recommending the establishment of a Coal Land Reserve where lands will not be taken up for the purposes of coal development;
 - ii. establishing a Shared Decision Making Process that will inform efforts to balance the taking up of lands for coal development and opportunities for the exercise of West Moberly Treaty Rights; and
 - iii. emphasizing coal development in the Tumbler Ridge Zone;
- (f) to establish an efficient, effective, and meaningful approach to engagement and decision making that:
 - i. will facilitate the Province's fulfilment of its legal obligation to consult, and where appropriate accommodate, and avoid unjustifiably infringing West Moberly Treaty Rights in respect of Coal Related Authorizations;
 - ii. is systematic, transparent, and adaptable to the needs of specific circumstances;
 - iii. optimizes the use of the West Moberly and provincial engagement resources; and
 - iv. is guided by the following engagement objectives:
 - A. to understand the West Moberly interests in relation to proposed Coal Related Activities;

- B. to credibly assess the nature and seriousness of potential impacts of Coal Related Activities on West Moberly Treaty Rights;
- C. to identify and evaluate the adequacy of options to avoid, mitigate, or otherwise accommodate such impacts;
- D. to allocate time and resources to engagement efforts that correlates to the complexity and significance of the potential impacts on West Moberly Treaty Rights; and
- E. to make informed recommendations on options to avoid, mitigate, or otherwise accommodate potential impacts on West Moberly Treaty Rights.

2.2 The Parties intend that the implementation of the elements of the strategic approach to coal development within the Coal Area as set out in section 2.1(e) are West Moberly Treaty Rights reconciliation measures.

PART 3 COAL LAND RESERVES

- 3.1** On the Effective Date, the Parties will recommend that the coal land within the Recommended Coal Land Reserve Area be established as a coal land reserve under section 21 of the *Coal Act* in which no person may explore for, develop or produce coal, and no coal license or lease may be issued, by signing and delivering to the Chief Gold Commissioner the joint recommendation letter attached to this Coal Agreement as Schedule 2.
- 3.2** If, after receipt of the recommendation referred to in section 3.1, the Chief Gold Commissioner agrees to establish all or a portion of the Recommended Coal Land Reserve Area as a coal land reserve, the Chief Gold Commissioner will, in advance of making the required regulation under the *Coal Act*, provide the West Moberly Chief and Council with detailed mapping of the proposed boundaries and applicable terms and conditions of the proposed coal land reserve.
- 3.3** The West Moberly will hold the mapping and other information that may be provided to the West Moberly by the Chief Gold Commissioner in accordance with section 3.2 in strict confidence and not disclose that mapping or other information to any third party.
- 3.4** Within 20 Business Days of receipt of the mapping and information referred to in section 3.2, or such other date as the Parties may agree, the West Moberly will notify the Province as to whether the proposed boundaries and terms and conditions of the proposed coal land reserve identified by the Chief Gold Commissioner are acceptable to the West Moberly for the purposes of this Coal Agreement.

- 3.5** If the West Moberly notifies the Province that the proposed coal land reserve boundaries and terms and conditions of the coal land reserve are acceptable for the purposes of this Coal Agreement and the Chief Gold Commissioner establishes the identified coal land as a coal land reserve on the proposed terms and conditions by way of regulation under section 21 of the *Coal Act*, the Province will notify the West Moberly that the Coal Land Reserve has been established.
- 3.6** Notification by the Province to the West Moberly that the Coal Land Reserve has been established is a condition precedent to the coming into force of Parts 4, 5 and 6 of this Coal Agreement and, for certainty, those Parts of this Coal Agreement come into force on the date that notice is delivered.
- 3.7** In recognition of the importance of the Coal Land Reserve to the West Moberly, the Province will provide advance notice to the West Moberly of any proposed cancellation of, or amendment to, the boundaries or the terms and conditions of the Coal Land Reserve in sufficient detail to permit the West Moberly to prepare its views on the matter.
- 3.8** The Province and the West Moberly will engage, including by meeting, to discuss and attempt to resolve any issues related to the proposed cancellation or amendment of the Coal Land Reserve, including the effect of any such proposal on this Coal Agreement.
- 3.9** Following engagement with the West Moberly in accordance with section 3.8, the Province will provide notice to the West Moberly of any amendment to or cancellation of the Coal Land Reserve.
- 3.10** Within 120 Business Days of the receipt of a notice of an amendment to or cancellation of the Coal Land Reserve in accordance with section 3.9, the West Moberly may terminate this Coal Agreement in accordance with section 7.7.

PART 4 SHARED DECISION MAKING PROCESS– GENERAL

Proponent Engagement

- 4.1** The Province will encourage Coal Applicants to engage and build respectful relations with the West Moberly and discuss contemplated activities with the West Moberly in advance of submitting a Coal Related Application.
- 4.2** The Province may, with prior notice to the West Moberly and after providing the West Moberly with an opportunity to comment, delegate specific aspects of the Shared Decision Making Process to a Coal Applicant, including provision of information on:
- (a) proposed Coal Related Activities;

- (b) site access;
 - (c) wildlife, ecosystem and other environmental values; and
 - (d) any proposed mitigation measures.
- 4.3** If the Province delegates specific aspects of the Shared Decision Making Process to a Coal Applicant in accordance with section 4.2, the West Moberly will make all reasonable efforts to undertake a respectful dialogue with the Coal Applicant concerning the delegated matters.
- 4.4** The Province will ensure that any such delegation will not compromise the Province's fulfillment of the Shared Engagement Objectives.
- 4.5** For certainty, delegation of specific aspects of the Shared Decision Making Process in accordance with section 4.2 does not release the Province from its obligation to engage with the West Moberly in relation to any Coal Related Application in accordance with this Coal Agreement or any other obligation set out in this Coal Agreement.
- 4.6** The Province will lower the Engagement Level otherwise applicable to a Coal Related Authorization where a Coal Applicant has undertaken specific aspects of the Shared Decision Making Process and the West Moberly has sent the Province a written request to lower the otherwise applicable Engagement Level.
- 4.7** If the West Moberly and a Coal Applicant enter into a Coal Agreement and voluntarily provide the Province with all or part of that agreement or any related information on a confidential basis, the Province will:
- (a) hold all such information as strictly confidential and not disclose that information except with the written consent of the West Moberly and the Coal Applicant or as required by law, unless that information is in the public domain; and
 - (b) consider including any mitigation measures or other provisions that the West Moberly and the Coal Applicant jointly request be included as a term or condition of any applicable Coal Related Authorization, provided that the mitigation measure or other provision is in accordance with provincial law.

Coordinated Engagement

- 4.8** Within 20 Business Days of the coming into force of Parts 4, 5 and 6, the West Moberly and the Province will each designate a Senior Coal Official for the purposes of this Coal Agreement and notify the other Party of the designated individual's name, position and contact information.

- 4.9** Each Party may from time to time change the individual they designate as a Senior Coal Official in accordance with section 4.8 by delivering notice in writing to the other Party.
- 4.10** The responsibilities of the Senior Coal Officials include:
- (a) overseeing implementation of this Coal Agreement;
 - (b) undertaking periodic reviews of this Coal Agreement, in accordance with section 5.55 and other relevant provisions;
 - (c) discussing implementation progress and any related issues;
 - (d) recommending modifications to this Coal Agreement;
 - (e) facilitating the resolution of issues arising through the Issue Resolution Process; and
 - (f) facilitating the resolution of issues arising through the Dispute Resolution Process.
- 4.11** Within 20 Business Days of the coming into force of Parts 4, 5 and 6, the West Moberly and the Province will each designate an Engagement Coordinator for the purposes of this Coal Agreement and notify the other Party of the designated individual's name, position and contact information.
- 4.12** Each Party may from time to time change the individual they designate as an Engagement Coordinator in accordance with section 4.11 by delivering notice in writing to the other Party.
- 4.13** The responsibilities of the Engagement Coordinators are to:
- (a) participate in, coordinate, and oversee the implementation of the Shared Decision Making Process, such that they are the Parties' primary representatives responsible for managing the Shared Decision Making Process in accordance with this Coal Agreement;
 - (b) in the case of the Provincial Engagement Coordinator, oversee the implementation of those aspects of the Shared Decision Making Process assigned to the Provincial Representative;
 - (c) report to the Parties annually on implementation of the Shared Decision Making Process in accordance with the performance management system developed under section 5.54;
 - (d) facilitate the resolution of questions or issues that arise in relation to the Shared Decision Making Process;

- (e) facilitate the resolution of issues arising prior to and through the Issue Resolution Process;
- (f) liaise with, or identify and oversee other representatives who may liaise with, relevant internal authorities, community members, provincial government agencies and other external parties in relation to Coal Related Applications; and
- (g) raise any implementation issues that may arise in connection with this Coal Agreement with Senior Coal Officials.

4.14 The Engagement Coordinators will meet at least twice per calendar year, or as more often as reasonably necessary, to discuss:

- (a) the progress being made on Coal Related Applications within the Initial Response or Discussion Period;
- (b) the potential sequence, type, and volume of Coal Related Applications, if any, which may be sent to the West Moberly over the next 6 months;
- (c) the Parties' current engagement workloads;
- (d) unusual volumes of referrals and Coal Related Application cycles;
- (e) unforeseen circumstances;
- (f) the needs and time sensitivities associated with any specific Coal Related Application;
- (g) plans for addressing any of the matters agreed to in accordance with section 4.15; and
- (h) tenure and permit conditions that Decision Makers have imposed to address First Nation interests in coal related authorizations, within or outside of the Coal Area, that have been used to address First Nations' concerns or that may assist the parties in fulfilling the Shared Engagement Objectives.

4.15 The Engagement Coordinators will discuss and may agree to plans to address any matter discussed in accordance with section 4.14, including plans for:

- (a) addressing significant Coal Related Application or referral backlogs;

- (b) bundling multiple Coal Related Applications within a Referral Package in areas with similar characteristics or related to the same Coal Related Activity;
- (c) including Coal Related Applications for tenure with notices of work, excluding bulk samples;
- (d) undertaking landscape level consultation to identify potential impacts on West Moberly Treaty Rights that are related to the development of a coal resource within a larger landscape which may contain multiple coal tenures;
- (e) efficient delivery of Referral Packages to the West Moberly, including scheduling;
- (f) coordination with cultural events; and
- (g) other arrangements that provide for improvements to consultation on specific Coal Related Applications.

4.16 The Parties will endeavor to meet annually together with Saulteau First Nations, Halfway River First Nation and potentially other First Nation representatives to discuss strategic issues related to coal development in the Coal Area.

Further Information Sharing

4.17 The Province will, at least once per calendar year, provide to the West Moberly further information that is reasonably available and relevant to assessing the biophysical and development context of Coal Related Activities including:

- (a) established protected areas such as Parks, ecological reserves, Old Growth Management Areas, Wildlife Habitat Areas, Ungulate Winter Ranges, Map Reserves, Special Management Areas, the Coal Land Reserve and other protected areas and protection measures;
- (b) other relevant contextual information such as the status of environmental values that is reasonably available such as:
 - i. updated wildlife population and habitat information;
 - ii. air quality and water quality analyses;
 - iii. biodiversity studies; and
 - iv. development infrastructure and associated disturbance levels.

- 4.18 The Province will, at least once per calendar year, provide to the West Moberly a summary of outcomes of Coal Related Applications that were subject to the Information Only Engagement Level.
- 4.19 For certainty, nothing in section 4.17 obligates the Province to undertake any additional studies that are not provided for within existing program authorities and approved budgets.

Compliance and Enforcement

- 4.20 The West Moberly may notify the Regional Director of Mines in writing of any concerns it may have about non-compliance with Coal Related Authorizations.
- 4.21 The Regional Director of Mines will, subject to any applicable restrictions under provincial law, provide a report to the West Moberly regarding actions taken as a result of any concerns identified by the West Moberly in accordance with section 4.20.

Environmental Assessment

- 4.22 For certainty, the Shared Decision Making Process does not apply to consultation that is required as part of an environmental assessment undertaken pursuant to the *Environmental Assessment Act*.
- 4.23 The Shared Decision Making Process is not intended to constrain in any way the West Moberly's ability to participate in environment assessments undertaken pursuant to the *Environmental Assessment Act*.

Mine Review Committee and Mine Development Review Committee

- 4.24 The West Moberly will be provided with an opportunity to have a representative participate in any mine review committee that may be established under the *Mines Act* in relation to any Coal Related Application, or proposed coal mine, in the Coal Area.

Implementation Funding

- 4.25 To assist in the implementation of this Coal Agreement, the Province will, subject to sections 4.27 and 4.28, provide the West Moberly with a total of three hundred thousand dollars (\$300,000) payable as follows:
- (a) the sum of one hundred thousand dollars (\$100,000) as soon as practicable after the coming into force of Parts 4, 5 and 6 of this Coal Agreement;

- (b) the sum of one hundred thousand dollars (\$100,000) in the BC Fiscal Year following the payment made in accordance with subsection (a) within 60 days of receiving a report from the West Moberly in accordance with section 4.28; and
- (c) the sum of one hundred thousand dollars (\$100,000) in the BC Fiscal Year following the payment made in accordance with subsection (b) within 60 days of receiving a report from the West Moberly in accordance with section 4.28.

4.26 Unless otherwise agreed, the Parties will discuss further funding options to assist the West Moberly in the implementation of this Coal Agreement three years after the date that Parts 4, 5 and 6 of this Coal Agreement come into force.

4.27 Notwithstanding any other provision of this Coal Agreement, any contribution required of the Province for the implementation of this Coal Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year or part thereof when such payment is required to make such payment; and
- (b) the Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

4.28 Thirty days prior to the first and second annual anniversaries of the date of the payment made in accordance with section 4.26(a), or at such other date as the Parties may agree, the West Moberly will provide to the Province a report in a mutually agreeable form that includes a detailed description of how funding provided under this Coal Agreement in the preceding BC Fiscal Year has been utilized by the West Moberly to assist in implementing this Agreement.

Suspension of Shared Decision Making Process in relation to a Contributing Project

4.29 If the Province does not obtain the consent of an Operator to disclose information to the West Moberly regarding a Contributing Project and does not make an Annual Mineral Tax Revenue Sharing Payment in relation to a Contributing Project that is otherwise payable in accordance with the Economic and Community Development Agreement, the West Moberly may, upon notice to the Province, suspend the operation of the Shared Decision Making Process to any new Coal Related Application received by the Province in relation to that Contributing Project 30 Business Days after delivery of the notice.

4.30 The suspension of the Shared Decision Making Process and any notice of suspension provided by the West Moberly in accordance with section 4.29 in

relation to a Contributing Project is deemed to have been revoked upon payment by the Province of the applicable Annual Mineral Tax Revenue Sharing Payment.

PART 5 SHARED DECISION MAKING PROCESS FOR COAL RELATED AUTHORIZATIONS

Initial Impact Review and Setting an Engagement Level

- 5.1** After receipt of a Coal Related Application and related information, the Provincial Representative will use:
- (a) the Activity Table;
 - (b) relevant background information;
 - (c) information received from other Provincial Agencies; and
 - (d) if applicable, the Engagement Level Modifiers
- to assign an initial Engagement Level to the Coal Related Application.
- 5.2** If the Coal Related Application concerns a Coal Related Activity that is not specifically identified in the Activity Table, the Provincial Representative will proceed as if the Coal Related Application is for the most similar Coal Related Activity that is shown in the Activity Table and assign an initial Engagement Level to the Coal Related Application accordingly, provided that no such Coal Related Application will be assigned to the Information Only Level.
- 5.3** If the Engagement Level Modifiers are applicable, the Provincial Representative will not modify a Coal Related Application that has otherwise been assigned an initial Engagement Level of Streamlined, Standard, or Complex:
- (a) down to Information Only; or
 - (b) up to an Engagement Level beyond Complex.
- 5.4** A Coal Related Application that has been bundled with a suite of related applications will be assigned the highest Engagement Level within that bundle of Coal Related Applications.
- 5.5** All Coal Related Applications outside of the West Moberly Core Coal Area that would otherwise be assigned a Standard or Complex Engagement Level will be assigned a Streamlined Engagement Level.

- 5.6** The review of the background and other relevant information and the assignment of an Engagement Level in accordance with sections 5.1 to 5.5 constitutes the Province's initial impact review of the Coal Related Application and its potential adverse impact on the exercise of West Moberly Treaty Rights.
- 5.7** The Parties acknowledge that they may develop a spatial reference layer product identifying key values and areas which may inform the application of Engagement Levels within the Coal Area and may result in required amendments to the Engagement Level Modifiers.

Engagement on Coal Related Applications assigned an Engagement Level of Information Only

- 5.8** No further engagement between the Parties is required in relation to a Coal Related Application that has been assigned an Engagement Level of Information Only.

Preparation and Delivery of Referral Packages

- 5.9** The Provincial Representative will provide a Referral Package to the West Moberly for each Coal Related Application that has been assigned an initial Engagement Level of Streamlined, Standard or Complex.
- 5.10** A Referral Package for a Coal Related Application that has been assigned to the Streamlined Level will include:
- (a) the Shared Engagement Record;
 - (b) a copy of the Coal Related Application;
 - (c) a description of the type of Coal Related Activity;
 - (d) the name and contact information of key Provincial staff and the Provincial Representative;
 - (e) the name and contact information of the Coal Applicant;
 - (f) any relevant tracking numbers;
 - (g) a digital survey plan in a GIS compatible digital file of the proposed Coal Related Activity, as available, or mapping at an appropriate scale;
 - (h) the proposed Engagement Level with a supporting rationale for the assignment of that Engagement Level; and
 - (i) if applicable, any relevant background information related to the Engagement Level Modifiers.

5.11 A Referral Package for a Coal Related Application that has been assigned to a Standard or Complex Level will include:

- (a) the Shared Engagement Record;
- (b) a copy of the Coal Related Application;
- (c) the type of Coal Related Activity;
- (d) the name and contact information of the key Provincial staff and the Provincial Representative;
- (e) the name and contact information of the Coal Applicant;
- (f) the consultation log kept by the Coal Applicant where it can be reasonably obtained;
- (g) any relevant tracking numbers, including the associated mine number(s) if applicable;
- (h) the proposed Engagement Level with supporting rationale for the assignment of that Engagement Level;
- (i) if applicable, any relevant background information related to the Engagement Level Modifiers;
- (j) relevant background information on the Coal Related Activity and a description of current activities and any known plans of the Coal Applicant associated with the proposed Coal Related Activity, where that information can be reasonably obtained by the Province;
- (k) comments on or assessments of the Coal Related Activity made by other government agencies where relevant;
- (l) a description of the proposed Coal Related Activities as set out in the Coal Related Application and Coal Related Authorizations required; and
- (m) either a digital survey plan with a GIS compatible digital file, as available, of the proposed Coal Related Activity or both an overview map (1:250,000) and a site specific map (1:5,000 to 1:20,000) identifying the location and details of the Coal Related Activity.

Initial Response Period

5.12 The Initial Response Period for a Coal Related Application is 15 Business Days, commencing from the delivery to the West Moberly of a Referral Package, unless

that time period is extended in accordance with sections 5.15 or 5.20.

- 5.13** Upon receipt of a Referral Package, the West Moberly may undertake its own assessment of the Referral Package and the appropriate Engagement Level based on the Activity Table and the Engagement Level Modifiers and other information relevant to the assessment of how the Coal Related Activity may adversely impact West Moberly Treaty Rights.
- 5.14** The West Moberly Engagement Coordinator may notify the Provincial Representative within 10 Business Days of the receipt of a Referral Package if the West Moberly has any concerns regarding the completeness of required information in the Referral Package by documenting that concern in the Shared Engagement Record and delivering it to the Province.
- 5.15** If the West Moberly Engagement Coordinator identifies a concern regarding the information provided in the Referral Package, the Provincial Representative and the West Moberly Engagement Coordinator will discuss and attempt to resolve the concern as soon as practicable and, if they agree that additional information is required, will agree to extend the Initial Response Period accordingly.
- 5.16** The West Moberly Engagement Coordinator may, within 10 Business Days of the receipt of a Referral Package, propose in the Shared Engagement Record a different Engagement Level than the Level initially assigned by the Provincial Representative, and any such proposal by the West Moberly will include a supporting rationale that is consistent with the Activity Table, Engagement Level Modifiers and any relevant information on the West Moberly Treaty Rights potentially affected by the Coal Related Activity.
- 5.17** The Provincial Representative will review any proposal made by the West Moberly in accordance with section 5.16, and will not unreasonably refuse to change the Engagement Level.
- 5.18** Where the Provincial Representative does not agree to a West Moberly proposal to elevate an Engagement Level, the Provincial Representative will advise the Provincial Engagement Coordinator, and the Provincial Engagement Coordinator will contact the West Moberly Engagement Coordinator and the Engagement Coordinators will attempt to reach agreement on the appropriate Engagement Level within 5 Business Days following receipt by the Province of the West Moberly proposal. If agreement is not reached, then engagement will proceed at the Engagement Level initially assigned by the Provincial Representative in the Referral Package.
- 5.19** Notwithstanding section 5.18, in each calendar year the West Moberly may, at its discretion and upon notice to the Provincial Engagement Coordinator provided within the Initial Response Period, elevate a Coal Related Application initially assigned a Streamlined Level to the Standard Level, provided that the total number of Coal Related Applications that are elevated in each calendar year

does not exceed the greater of:

- (a) 5 Coal Related Applications; or
- (b) 10 percent of the total number of Coal Related Applications assigned to the Streamlined Level during the previous calendar year.

5.20 Prior to the expiry of the Initial Response Period, the West Moberly Engagement Coordinator may request an extension of the Initial Response Period for up to 5 Business Days for reasons such as illness, funerals, and weddings, which the Provincial Representative will not unreasonably deny.

5.21 Prior to conclusion of the Initial Response Period, the West Moberly may provide, where available, information to the Provincial Representative documented in the Shared Engagement Record including:

- (a) the West Moberly interests in the area;
- (b) West Moberly Treaty Rights potentially impacted by the Coal Related Activity;
- (c) for Coal Related Applications in the Streamlined Level, any recommended measures to avoid, mitigate, or otherwise accommodate such potential impacts; and
- (d) for Coal Related Applications in the Standard or Complex Levels, any recommended measures to avoid, mitigate, or otherwise accommodate such potential impacts, and recommended engagement actions as outlined in Table C: Engagement Levels of Schedule 3: Engagement Level Assessment Criteria.

5.22 If the West Moberly does not provide an Initial Response by the conclusions of the Initial Response Period in relation to a Coal Related Application that was assigned a Complex Engagement Level, the Provincial Engagement Coordinator or Provincial Representative will contact the West Moberly Engagement Coordinator to confirm whether or not the West Moberly intends to provide a response.

5.23 Subject to sections 5.22 and 5.24, if the West Moberly does not provide an Initial Response to a Coal Related Application, the Provincial Representative may proceed to make a recommendation to a Decision Maker regarding that Coal Related Application without further engagement.

5.24 Any recommendation made in accordance with section 5.23 will:

- (a) be set out in the Shared Engagement Record;

- (b) give full consideration to all relevant, reasonably available information respecting the exercise of West Moberly Treaty Rights and the potential impact of the Coal Related Activity on those rights;
- (c) be consistent with the Shared Engagement Objectives; and
- (d) document whether or on what terms any potential impact of the Coal Related Activity on West Moberly Treaty Rights may be adequately avoided, mitigated or otherwise accommodated.

5.25 If an Initial Response is received from the West Moberly for a Coal Related Application that has been assigned a Streamlined Engagement Level, the Provincial Representative will forward the Shared Engagement Record to the Decision Maker who will seriously consider the response.

Discussion Period

5.26 The Discussion Period is 20 Business Days for a Coal Related Application that has been assigned a Standard Engagement Level and 45 Business Days for a Coal Related Application that has been assigned a Complex Engagement Level, unless such time period is extended in accordance with the Timeline Extension Principles.

5.27 The West Moberly Engagement Coordinator or the Provincial Representative may request an extension of the Discussion Period in accordance with the Timeline Extension Principles after the Initial Response, and such a request will not be unreasonably denied and will be recorded in the Shared Engagement Record.

5.28 A Discussion Period is required for all Coal Related Applications that have been assigned a Standard or Complex Engagement Level and to which the West Moberly has provided an Initial Response, unless the West Moberly has indicated in the Initial Response that a Discussion Period is not required.

5.29 The Provincial Representative will initiate the Discussion Period by returning the Shared Engagement Record to the West Moberly Engagement Coordinator with a draft Engagement Plan that will include:

- (a) engagement actions that the Province proposes be completed during the Discussion Period; any engagement actions that the West Moberly proposed in the Initial Response; and
- (b) suggested completion dates for the proposed engagement actions.

5.30 As soon as practicable after receipt of the draft Engagement Plan, the Provincial Representative and the West Moberly Engagement Coordinator will:

- (a) meet or otherwise engage via email, phone, video-conference, or other agreed upon means to discuss the draft Engagement Plan;
- (b) exercise reasonable efforts to agree upon all elements of the draft Engagement Plan, in keeping with the Shared Engagement Objectives and any applicable recommended engagement actions identified in Table C: Engagement Levels of Schedule 3: Engagement Level Assessment Criteria; and
- (c) note any elements of the draft Engagement Plan that they do not agree upon and the reasons why in the Shared Engagement Record for potential consideration in the Issue Resolution Process, if such a process is initiated in accordance with section 5.48.

5.31 If a disagreement arises between the Provincial Representative and the West Moberly Engagement Coordinator concerning the Engagement Plan, the Provincial Representative will advise the Provincial Engagement Coordinator accordingly and the Provincial Engagement Coordinator and the West Moberly Engagement Coordinator will meet as soon as practicable and attempt to resolve the issue and document the results in the Shared Engagement Record for consideration in Issue Resolution, if such a process is initiated under section 5.48.

5.32 The Parties will implement all agreed upon components of the Engagement Plan as expediently and cooperatively as is practicable under the circumstances, and will document the process and discussions in the Shared Engagement Record on an on-going basis.

5.33 The Provincial Representative will ensure that the West Moberly Engagement Coordinator has opportunities to review and, if they choose, add comments, recommendations or attachments to the Shared Engagement Record throughout the Discussion Period. Additions to the Shared Engagement Record made by the West Moberly will not be altered or removed by the Provincial Representative and will be clearly identified as West Moberly contributions.

5.34 The Provincial Representative will share the completed Shared Engagement Record with the West Moberly Engagement Coordinator no earlier than the end of the Discussion Period unless the Engagement Coordinators agree otherwise.

5.35 The Provincial Representative will ensure that the following are documented in the completed Shared Engagement Record:

- (a) results from engagement activities;
- (b) a record of communications;

- (c) comments, recommendations or attachments added by the West Moberly under section 5.33;
- (d) a summary of potential impacts to West Moberly Treaty Rights and the Parties' agreed-to or individual recommendations to avoid, mitigate or otherwise accommodate such impacts; and
- (e) agreed to or individual recommendations regarding an overall decision on the Coal Related Application which may include:
 - i. authorize without conditions;
 - ii. authorize with conditions;
 - iii. decline;
 - iv. resubmit with additional information;
 - v. site inspections; or
 - vi. defer.

5.36 The Discussion Period will conclude at the earlier of:

- (a) the Engagement Coordinators' agreement; or
- (b) provision of the completed Shared Engagement Record to the West Moberly Engagement Coordinator in accordance with section 5.34.

5.37 Following conclusion of the Discussion Period and any applicable Issue Resolution process, the Provincial Representative will forward the Shared Engagement Record to the Decision Maker for a decision.

Decision Period

5.38 The Province will provide the West Moberly Engagement Coordinator with the outcome of any decision related to Coal Related Application that was subject to a Streamlined, Standard or Complex Engagement Level after a decision is made.

5.39 The Province will provide the West Moberly Engagement Coordinator with written reasons for decision, which will include a reasonable explanation of why any recommendations of the West Moberly were not adopted by the Decision Maker, as follows:

- (a) within 10 Business Days after a decision is made, for a Coal Related Application that was subject to a Complex Engagement Level;

- (b) within 10 Business Days after a West Moberly request is made, for a Coal Related Application that was subject to a Standard Engagement Level; and
- (c) within 10 Business Days after a decision is made for a Coal Related Application that was subject to the Issue Resolution Process and the issue was not resolved by agreement.

5.40 Subject to any applicable privacy or confidentiality restrictions under provincial law, the Province will provide the West Moberly with copies of Coal Related Authorizations that were subject to Standard and Complex Engagement Levels.

Timeline Extension Principles

- 5.41** The Parties agree that they will use reasonable efforts to meet engagement process timelines.
- 5.42** Neither Party intends the engagement process timelines to function such that they interrupt or prevent effective engagement and decision making.
- 5.43** Wherever possible, foreseeable timeline extension requirements for Coal Related Applications within the Standard and Complex Levels should be discussed and agreed to by the Parties as early in the process as possible.
- 5.44** The Parties may request an extension to the Discussion Period timelines consistent with the following criteria and principles:
 - (a) the Coal Related Application involves potentially significant impacts on West Moberly Treaty Rights that cannot be adequately considered within the timeframes established for the Engagement Period;
 - (b) both Engagement Coordinators agree that a timeline extension is required in order to achieve the Shared Engagement Objectives;
 - (c) information that the Parties have agreed is a necessary component of the Shared Decision Making Process and could be reasonably acquired to support the process will not be available within the timeframe of the Discussion Period;
 - (d) the Coal Related Application is subject to a timeline of another process such as a Mine Review Committee;
 - (e) a reasonable timeframe has been agreed to as part of an Engagement Plan for the extended Discussion Period; and
 - (f) the Provincial Representative or Provincial Engagement Coordinator has not undertaken or completed an activity in accordance with an agreed to

Shared Decision Making Timeline, including undertaking or completing the matters described in section 5.30 as soon as practicable.

- 5.45** A request for a timeline extension that is consistent with the Timeline Extension Principles will not be unreasonably denied and will be recorded in the Shared Engagement Record.

Issue Resolution Process

- 5.46** The Issue Resolution process applies to a disagreement regarding any issues specific to a Coal Related Application that is subject to a Standard or Complex Engagement Level and that relates to any proposed recommendation set out in the Shared Engagement Record provided to the West Moberly Engagement Coordinator in accordance with section 5.34.
- 5.47** For certainty, if applicable, the Issue Resolution Process may include a consideration of any disagreements associated with development and implementation of the Engagement Plan that are noted in the Shared Engagement Record.
- 5.48** Either Party may initiate the Issue Resolution Process:
- (a) no later than five Business Days after the West Moberly Engagement Coordinator receives the completed Shared Engagement Record in accordance with section 5.34; and
 - (b) by notifying the other Party's Engagement Coordinator of the issue in the Shared Engagement Record, including a summary of the issue and the efforts made to resolve it.
- 5.49** Within 10 Business Days of receipt of the notification in accordance with section 5.48, or some other time period agreed upon by the Engagement Coordinators, the Engagement Coordinators will convene an issue resolution meeting to discuss and attempt to resolve the issue.
- 5.50** If an issue remains unresolved after an issue resolution meeting of the Engagement Coordinators held in accordance with section 5.49, the Engagement Coordinators will, within 5 Business Days of the meeting, document and summarize their resolution attempts in the Shared Engagement Record and inform the Senior Coal Officials in writing of the issue by providing them with the Shared Engagement Record.
- 5.51** Within 10 Business Days of receipt of a written notice of an unresolved issue in accordance with section 5.50, or some other time period agreed upon by the Senior Coal Officials, the Senior Coal Officials will make reasonable and expedient efforts to resolve the issue.

- 5.52** If the issue is resolved, the Senior Coal Officials will document the resolution in the Shared Engagement Record and the Provincial Representative Coordinator will provide the Shared Engagement Record to the relevant Decision Maker.
- 5.53** If an issue remains unresolved, both Parties will, within 5 Business Days of the conclusion of the process by the Senior Coal Officials, document the outstanding points of disagreement for information purposes and the Provincial Representative will provide the Shared Engagement Record to the relevant Decision Maker.

Agreement Monitoring and Evaluation

- 5.54** Within one year of Parts 4, 5 and 6 of this Coal Agreement coming into force the Parties will make reasonable efforts to develop and establish performance measures to enable the Engagement Coordinators to report on the effectiveness of the Shared Decision Making Process in meeting the purposes of this Coal Agreement.
- 5.55** The Senior Coal Officials will undertake a review of this Coal Agreement within two years of the coming into force of Parts 4, 5 and 6 of this Coal Agreement and every five years thereafter, unless agreed otherwise, and may recommend amendments to this Coal Agreement.
- 5.56** As part of a review occurring in accordance with section 5.55, the Parties may agree to have an independent evaluation of this Coal Agreement prepared.
- 5.57** Unless otherwise agreed, the cost of any independent evaluation that may be agreed to in accordance with section 5.56 will be shared equally by the Parties.\
- 5.58** The Parties will consider the results of reporting or assessments related to the effectiveness of this Coal Agreement and may make recommendations for amendments to improve it.
- 5.59** For certainty, nothing in this Coal Agreement limits either Party from raising emerging issues regarding this Coal Agreement, including the Shared Decision Making Process, with the other Party.

Covenants and Acknowledgements

- 5.60** The Parties agree that the structures and processes in this Coal Agreement constitute the means by which they will fulfill the procedural and information-sharing obligations arising from the duty to consult with the West Moberly regarding the potential impact of Coal Related Authorizations on West Moberly Treaty Rights.
- 5.61** For greater certainty, West Moberly agreement with the structures and processes in this Coal Agreement does not, in itself, constitute an express or implied

agreement to any proposed Coal Related Activity.

5.62 The West Moberly, on behalf of itself and its members, hereby:

- (a) covenants and agrees that the Shared Decision Making Process is the consultation and engagement process that the Parties will follow in relation to all Coal Related Authorizations in the Coal Area;
- (b) subject to section 5.63, covenants and agrees not to commence legal proceedings during the term of this Coal Agreement in respect of any Coal Related Authorization in the Coal Area made during the term of this Coal Agreement on the basis that the Province has failed to fulfil procedural aspects of its duty to consult the West Moberly; and
- (c) subject to section 5.63, releases and discharges the Province from any and all claims that the Province has failed to fulfil procedural aspects of its duty to consult the West Moberly in relation to any Coal Related Authorizations in the Coal Area made during the term of this Coal Agreement.

5.63 The foregoing covenants and releases do not limit any West Moberly legal proceeding or claim in relation to:

- (a) a breach of this Coal Agreement, including without limitation a failure of the Province to fulfil procedural or information-sharing obligations in respect of Coal-Related Authorizations in accordance with this Coal Agreement;
- (b) the fulfilment of any accommodation obligation; or
- (c) the infringement of any non-procedural West Moberly Treaty Right.

PART 6 REVENUE-SHARING AND ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

6.1 The Parties acknowledge their intention to enter into an Economic and Community Development Agreement concurrently with the execution and delivery of this Coal Agreement which will provide for the sharing of incremental *Mineral Tax Act* revenue received by the Province in accordance with its terms.

PART 7 TERM AND TERMINATION

7.1 This Coal Agreement takes effect on the Effective Date and will apply to Coal Related Applications referred to the West Moberly under the Shared Decision Making Processes after Parts 4, 5 and 6 come into force and effect.

7.2 The Parties intend this Coal Agreement to contribute to an enduring government-

to-government relationship.

- 7.3** The term of this Coal Agreement will be for 20 years from the Effective Date, and the Parties may agree to extend the term of this Coal Agreement within that period for a mutually agreeable period.
- 7.4** Subject to sections 7.5 and 7.6, either Party may terminate this Coal Agreement on the basis of an unresolved Dispute upon 120 Business Days written notice to the other Party, and such notice will set out reasons for the intended termination.
- 7.5** In recognition of the enduring value of a government-to-government relationship, the Senior Coal Officials will meet as soon as practicable after a notice to terminate has been provided in accordance with section 7.4 to discuss the termination and to determine whether there is a basis for rescinding the notice to terminate.
- 7.6** A Party will not provide a notice to terminate in accordance with section 7.4 without first attempting to resolve that Dispute in accordance with the Dispute Resolution Process.
- 7.7** Notwithstanding sections 7.4, 7.5, and 7.6, the West Moberly may upon 60 Business Days written notice to the Province terminate this Coal Agreement:
- (a) if the *Mineral Tax Act* is eliminated or materially amended;
 - (b) if the grounds for termination referred to in section 3.10 applies;
 - (c) if any representation or warranty made by the Province in this Coal Agreement is untrue or incorrect;
 - (d) if the Province is not in material compliance with its obligations under this Coal Agreement or the Economic and Community Development Agreement; or
 - (e) for any reason it determines to do so within 20 Business Days after any of the reviews of this Coal Agreement set out in section 5.55.
- 7.8** Notwithstanding sections 7.4, 7.5, and 7.6, the Province may upon 60 Business Days written notice to the West Moberly terminate this Coal Agreement:
- (a) If the West Moberly is not in material compliance with its obligations under this Coal Agreement or the Economic and Community Development Agreement;
 - (b) if any representation or warranty made by the West Moberly in this Coal Agreement is untrue or incorrect;

- (c) if the West Moberly, in its own name or in the name of its chief acting on behalf of the band or its members, commences any legal proceeding against the Province, or activates a proceeding in abeyance, contrary to its covenants in this Coal Agreement or the Economic and Community Development Agreement; or
- (d) for any reason it determines to do so within 20 Business Days after any of the reviews of this Coal Agreement set out in section 5.55.

7.9 In recognition of the enduring value of a government to government relationship, the Senior Coal Officials will meet as soon as practicable after a notice to terminate has been provided in accordance with section 7.7 or 7.8 to discuss the termination and to determine whether there is a basis for rescinding the notice to terminate.

7.10 The release and discharge of the Province provided by the West Moberly in accordance with sections 5.62(c) and 5.63 survives the termination of this Coal Agreement.

7.11 If:

- (a) the West Moberly is not in material compliance with its obligations under this Coal Agreement or the Economic and Community Development Agreement;
- (b) any representation or warranty made by the West Moberly in this Coal Agreement is untrue or incorrect; or
- (c) the West Moberly, in its own name or in the name of its chief acting on behalf of the band or its members, commences any legal proceeding against the Province, or activates a proceeding in abeyance, contrary to its covenants in this Coal Agreement or the Economic and Community Development Agreement:

the Province may, without limiting any right it may have to terminate this Coal Agreement in accordance with section 7.8, suspend any payment due to the West Moberly under the Economic and Community Development Agreement and is not required to endeavour to reach agreement with the West Moberly on the inclusion of any new Project in the Coal Area as a Contributing Project or share *Mineral Tax Act* revenue in relation to that Project in accordance with the Economic and Community Development Agreement until such time as the West Moberly has addressed the matter and subsections (a) to (c) no longer apply.

- 7.12** If this Coal Agreement is terminated by the West Moberly in accordance with section 7.7 (e) or by the Province in accordance with section 7.8 (d), the Province is not required to endeavour to reach agreement with the West Moberly on the inclusion of any new Project in the Coal Area as a Contributing Project or share *Mineral Tax Act* revenue in relation to that Project in accordance with the Economic and Community Development Agreement.

PART 8 DISPUTE RESOLUTION

- 8.1** The Parties recognize that the successful implementation of this Coal Agreement will depend on their ability and willingness to recognize, explore and resolve differences which may arise between them, and will endeavour to resolve such differences in a manner that fosters an improved, ongoing and respectful government-to-government relationship between them.
- 8.2** The Parties agree that they will endeavour to resolve any Disputes in a co-operative, effective and timely manner in accordance with sections 8.4 to 8.7.
- 8.3** For certainty, Dispute Resolution under this Part does not apply to any disagreement regarding the interpretation or implementation of the Shared Decision Making Process as it applies to a particular Coal Related Application, including any disagreement to which the Issue Resolution Process applies, or a decision regarding a particular Coal Related Application.
- 8.4** If a Dispute occurs a Party may provide to the other Party a notice of dispute that sets out the subject matter of the Dispute and the attempts to resolve the dispute.
- 8.5** Where a Party has issued a Notice of Dispute, the Parties will meet within 10 Business Days and attempt to resolve the dispute through unassisted collaborative negotiation.
- 8.6** If the Dispute remains unresolved after the process provided for in section 8.5, the Parties may undertake one or more of the following measures in attempt to resolve the Dispute:
- (a) non-binding facilitation or mediation, or both, under terms agreeable to both Parties; and
 - (b) other dispute resolution measures as appropriate to the nature of the dispute and as may be mutually agreeable to the Parties.
- 8.7** If the Dispute remains unresolved after the process provided for in sections 8.5 or any measure that may be agreed to in accordance with section 8.6 (a) or (b), the Parties will forward the matter to the West Moberly Chief and an appropriate assistant deputy minister for a further and final effort at resolution.

PART 9 GENERAL PROVISIONS

- 9.1** This Coal Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 9.2** This Coal Agreement does not create, amend, define, affirm, recognize, limit, abrogate, extinguish, replace or derogate from any West Moberly Treaty Rights.
- 9.3** Except as expressly set out herein, this Coal Agreement does not limit the position a Party may take in any legal or administrative proceedings or in any discussions or negotiations between the West Moberly and the Province.
- 9.4** No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Coal Agreement or by any actions of the Parties under this Coal Agreement.
- 9.5** This Coal Agreement does not constitute an admission by the Province that any Coal Related Activity, Coal Related Application or Coal Related Authorization has resulted or may result in any unjustified infringement of any West Moberly Treaty Right.
- 9.6** This Coal Agreement does not constitute an admission by the Province of any obligation to provide financial or economic benefits as part of the Province's obligation to consult and, if applicable, accommodate in relation to any Coal Related Activity, Coal Related Application or Coal Related Authorization.
- 9.7** This Coal Agreement does not address and is not intended to be interpreted as addressing compensation for alleged past or future infringements of West Moberly Treaty Rights that are not related to a Coal Related Activity, Coal Related Application or Coal Related Authorization.
- 9.8** This Coal Agreement is not intended to be interpreted in a manner that would affect or interfere with any legislative authority of the Province or fetter the discretion of any Decision Maker.
- 9.9** Nothing in this Coal Agreement precludes the West Moberly from:
- (a) continuing to negotiate and implement revenue and benefits-sharing agreements with Coal Applicants and other governments;
 - (b) accessing economic opportunities and benefits, which may be available to the West Moberly; or
 - (c) participating in government programs for which the West Moberly may be eligible.

- 9.10** The Parties acknowledge that this Coal Agreement may reflect similar engagement models and processes to potential future strategic engagement type agreements, and that this Coal Agreement is without prejudice to positions the Parties may take in any subsequent negotiations for any such agreement. For certainty, the boundaries of the Coal Area and the West Moberly Core Coal Area are without prejudice to any position the Parties may take on the boundaries to be set out in any subsequent engagement agreement that may be negotiated.
- 9.11** The Parties acknowledge that each has a different position regarding the location of the western boundary of the geographic area of Treaty No. 8 and that nothing in this Coal Agreement is an admission of fact or liability in relation to claims arising with respect to this matter, including the litigation by certain of the Treaty 8 First Nations seeking a declaration of the western boundary of Treaty No. 8 in British Columbia. The boundaries of the Coal Area and West Moberly Core Coal Area do not reflect the extent of traditional use or territory. The delineation of the Coal Area and the West Moberly Core Coal Area is done only for the purposes of this Coal Agreement, and in particular for the purpose of facilitating the consultation and engagement processes set out in this Coal Agreement in relation to Coal Related Applications only. Further, the Parties may negotiate, by mutual agreement, amendments to the Coal Agreement if the western boundary of Treaty No. 8 is finally determined in a binding decision.
- 9.12** Notwithstanding the provisions of any other consultation or engagement agreement between the Province and the West Moberly, the provisions of this Coal Agreement will supersede and prevail to the extent of any inconsistency with provisions in another consultation or engagement agreement between the Province and the West Moberly. For greater certainty, the provisions of this Coal Agreement will apply to provincial consultation or engagement processes in respect of Coal Related Activities and Coal Related Applications, and the provisions of other consultation or engagement agreements between British Columbia and West Moberly that would otherwise apply to consultation or engagement processes for Coal Related Activities or Coal Related Applications will be inapplicable.

Notice and Delivery

- 9.13** If any notice or other communication is required to be given by a Party under this Coal Agreement, it will, unless stated otherwise in this Coal Agreement, be made in writing and it will be effectively given by:
- (a) personal delivery to the address of the other Party set out below, on the date of delivery;
 - (b) pre-paid registered mail to the address of the other Party mentioned in this Coal Agreement, on the date the registered mail is delivered; or
 - (c) facsimile to the facsimile number of the other Party set out in this Coal

Agreement, on the date the facsimile is received.

9.14 The address and facsimile numbers are:

(a) for the West Moberly:

West Moberly Nation Chief and Council
PO Box 90
Moberly Lake, BC
V0C 1X0
Attention: Chief and Council

(b) for the Province:

Ministry of Aboriginal Relations and Reconciliation
PO Box 9100 Stn Prov Govt
Victoria, BC V8W 9B1
Fax: (250) 387-6073
Attention: Assistant Deputy Minister, Strategic Initiatives Division, MARR

Ministry of Energy and Mines
PO Box 9320 Stn Prov Govt
Victoria, BC V8W 9N3
Fax: (250) 952-0491
Attention: Assistant Deputy Minister, Mines and Mineral Resources
Division

Ministry of Forests, Lands and Natural Resource Operations
PO Box 9352 Stn Prov Govt
Victoria, BC V8W 9M1
Fax: (250) 847-7501
Attention: Assistant Deputy Minister, North Area, Regional Operations
Division

9.15 The West Moberly or the Province may at any time give notice to the other of any change of information in subsection 9.14 in accordance with section 9.13.

Interpretation and Amendment

9.16 This Coal Agreement will be governed by and construed in accordance with the applicable laws of British Columbia.

9.17 This Coal Agreement and the Economic and Community Development Agreement, as those agreements may be amended from time to time in accordance with their terms, constitute the entire agreement between the Parties with respect to the subject matter of this Coal Agreement and the Economic and Community Development Agreement, unless otherwise agreed in writing by the

West Moberly and the Province.

- 9.18** There will be no presumption that any ambiguity in any of the provisions of this Coal Agreement should be interpreted in favour of any Party.
- 9.19** If any provision of this Coal Agreement is found by a court of competent jurisdiction to be void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement on a replacement for that provision with a view to achieving the intent of the Parties as expressed in this Coal Agreement and, for certainty, if no agreement is reached, the West Moberly and the Province may agree to refer the matter to Dispute Resolution.
- 9.20** All headings in this Coal Agreement are for convenience only and do not form a part of this Coal Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Coal Agreement or any of its provisions.
- 9.21** In this Coal Agreement, words in the singular include the plural and words in the plural include the singular, unless the context otherwise requires.
- 9.22** The use of the word “including” does not limit the generality of the preceding term or phrase.
- 9.23** In this Coal Agreement, a reference to a statute includes all regulations made under that statute and any amendments or replacements to that statute or regulation.
- 9.24** No term, condition, covenant or other provision of this Coal Agreement will be deemed to have been waived unless such waiver is expressed in writing and signed by the Party giving the waiver.
- 9.25** Any amendment to this Coal Agreement, other than to the Activity Table, the Engagement Level Modifiers, the Coal Area or the West Moberly Core Coal Area, must be agreed to in writing by the Minister of Aboriginal Relations and Reconciliation, the Minister of Energy and Mines and the Minister of Forests, Land and Natural Resource Operations, or their authorized representatives, on behalf of the Province and the Chief and Council of the West Moberly on behalf of the West Moberly.
- 9.26** The Provincial Senior Coal Official and the West Moberly Chief and Council may agree in writing to amendments to the Activity Table, the Engagement Level Modifiers, the Coal Area and the West Moberly Core Coal Area.

9.27 This Coal Agreement may be entered into by the Province and the West Moberly respectively signing a separate copy of this Coal Agreement, including a photocopy or faxed or scanned copy, and delivering it to the other by fax or electronic mail. Each facsimile or scanned copy 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 the West Moberly First Nations this ___ day of _____, 2015 by

Chief Roland Willson

Witness

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia this 16th day of November 2015 by the Minister of Aboriginal Relations and Reconciliation



Honourable John Rustad



Witness

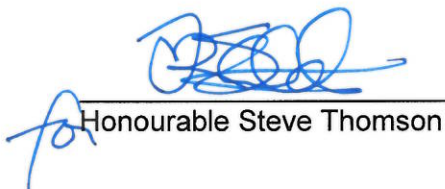
Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia this 26 day of October, 2015 by the Minister of Energy and Mines



Honourable Bill Bennett

Witness

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia this 21 day of OCTOBER, 2015 by the Minister of Forests, Lands and Natural Resource Operations



Honourable Steve Thomson



Witness

10/13/2015 15:40 Devlin Gallus

(FAX)250

P.004/004

9.27 This Coal Agreement may be entered into by the Province and the West Moberly respectively signing a separate copy of this Coal Agreement, including a photocopy or faxed or scanned copy, and delivering it to the other by fax or electronic mail. Each facsimile or scanned copy 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 the West Moberly First Nations this 14 day of October, 2015 by



Chief Roland Willson



Witness

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia this ___ day of _____, 2015 by the Minister of Aboriginal Relations and Reconciliation

Honourable John Rustad

Witness

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia this 26th day of October, 2015 by the Minister of Energy and Mines



Honourable Bill Bennett

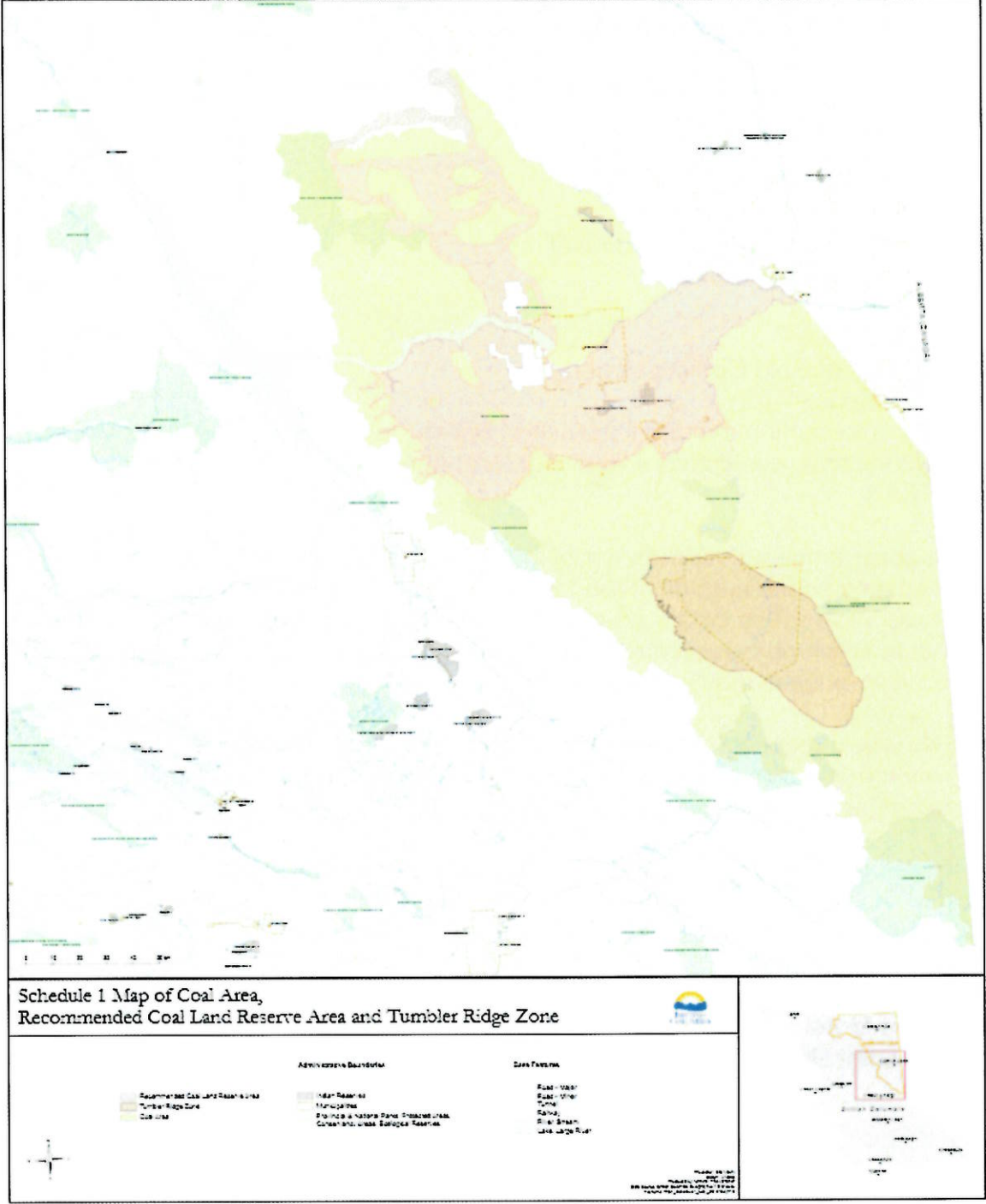
Witness

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia this ___ day of _____, 2015 by the Minister of Forests, Lands and Natural Resource Operations

Honourable Steve Thompson

Witness

SCHEDULE 1: Map of Coal Area, Recommended Coal Land Reserve Area and Tumbler Ridge Zone



SCHEDULE 2: Joint Recommendation Letter for Coal Land Reserve

[NTD: insert Joint Letterhead of the Province of British Columbia and the West Moberly First Nations on the actual letter].

_____, 2015

May Mah-Paulson,
Chief Gold Commissioner
PO BOX 9322 STN PROV GOVT
Victoria, BC V8W 9N3

Dear Chief Gold Commissioner,

This is to confirm that the Province of British Columbia and the West Moberly First Nations have concluded a Regional Coal Agreement dated _____, 2015 (the "RCA").

In accordance with section 3.1 of the RCA, this is to recommend that the area identified on the map attached to this letter as the "Recommended Coal Land Reserve Area" be established as a coal land reserve under section 21 of the Coal Act in which no person may explore for, develop or produce coal and no coal license or lease may be issued.

We would request that any decision you may make in relation to this recommendation be communicated to the West Moberly First Nations in accordance with section 3.2 of the RCA.

Thank you for your consideration of this recommendation.

Yours truly,

David Morel
Assistant Deputy Minister

Chief Roland Willson
Chief West Moberly First Nations

SCHEDULE 3: Engagement Level Assessment Criteria

Table A: Activity Table

Context: the Engagement Levels proposed in this Table are based upon potential physical/environmental adverse impacts of Coal Related Activities.

Intended Use: This Activity Table is to be used in conjunction with Table B: Engagement Level Modifiers to determine the appropriate Engagement Levels for Coal Related Applications.

	Information Only	Streamlined Level	Standard Level	Complex Level
Initial assigned engagement level by Application type for the following Coal Related Applications:				
Coal Related Applications Including Bundled¹ Applications				
Coal Tenure			Coal licences Coal leases	
Coal Exploration	Deemed authorizations under the <i>Mines Act</i> ²	New coal exploration applications or amendments with minor potential disturbance	New coal exploration applications or amendments with moderate potential disturbance Amendments to	New coal exploration applications or amendments with significant potential disturbance Bulk samples

¹ Bundled applications are those containing more than one Coal Related Application for one or more Coal Related Activity.

² From the *Mines Act* Permit Regulation in force September 1, 2013, Deemed Authorizations include: Extending the term of mineral or coal exploration activities by up to two years; induced polarization (IP) surveys using exposed electrodes where an exploration permit is held; and mineral or coal exploration drill programs and IP surveys in the permitted area of disturbance of a producing mineral or coal mine that is currently operating.

	Information Only	Streamlined Level	Standard Level	Complex Level
			underground exploration permits	New underground exploration permit applications
Coal Development	Administrative or minor amendments with no disturbance (e.g. coal proponent or coal project name changes)	Minor amendments to mine plans or final closure plans which involve minor change to the level of site disturbance outside the mine permit area and involve only one authorization (e.g. geotechnical amendments, short-term/duration changes, minor modifications)	Moderate amended mine plans or final closure plans and any associated permit applications (e.g. moderate modifications to permit area boundaries, and interim reclamation and closure plans)	Significant amendments to mine plans or final closure plans and any associated permit applications (e.g. licence of occupation, licence to cut, special use permits, solid and liquid waste permits, liquid and air discharge permits, potable water permits, water licences)
Access		<p>New applications or amendments for coal access (e.g. road, trail, utility right of way) with minor potential disturbance</p> <p>Reopening of existing roads or trails within or to the mineral property provided that such</p>	<p>New applications or amendments for coal access (e.g. road, trail, utility right of way) with moderate potential disturbance</p> <p>Construction of new roads or trails within or to the mineral property or the reopening of</p>	<p>New applications or amendments for coal access (e.g. road, trail, utility right of way) with significant potential disturbance</p> <p>New or reopened roads with known access issues</p> <p>New access</p>

	Information Only	Streamlined Level	Standard Level	Complex Level
		roads have been actively used within the previous 15 years	pre-existing roads that have been inactive for more than 15 years	development linking property to existing road system where previously property was only air or water accessible
Forests and Range	Free use permit (less than 50 m ³)	Occupant Licence to Cut and Special Use Permits with minor potential disturbance	Occupant Licence to Cut and Special Use Permits with moderate potential disturbance	Occupant Licence to Cut or Special Use permit with significant potential disturbance
Land Tenuring	Correction of minor mapping errors (same vicinity, less than 10% increase in new tenure area) Emergency measures required for the protection of life and property	New applications or amendments with minor potential disturbance (e.g. investigative use permits, temporary permits, licence of occupation, lease, statutory right of way) Temporary work camps for up to 20 people Renewals and replacements (including scheduled renewals and replacements) of	New applications or amendments with moderate potential disturbance (e.g. investigative use permits, licence of occupation, lease, statutory right of way) Temporary work camps for 20 to 75 people Tenure for new sand and gravel pits or quarries with annual production that is sub-EA threshold	New applications or amendments with significant potential disturbance (e.g. investigative use permits, licence of occupation, lease, statutory right of way) Permanent work camps or temporary work camps for greater than 75 people New applications for disposition of Crown Land or which include a future option to purchase

	Information Only	Streamlined Level	Standard Level	Complex Level
		existing tenures where there are no changes to terms or footprint	<p>Fee simple transfers (Crown Grants) of lands previously tenured</p> <p>New roads less than 2 km in length</p> <p>New utility rights-of-way less than 2 km in length</p>	<p>Fee simple transfers (Crown Grants) of previously un-tenured lands</p> <p>New roads greater than 2 km in length</p> <p>New utility rights-of-way greater than 2 km in length</p>
Waste Management	<p>Section 87 Orders used to address public safety or immediate environmental impacts</p> <p>Minor amendments to solid waste (refuse), liquid waste (sewage), liquid effluent discharge, and air discharge permit (= less than 10% increase in quality or quantity of discharge)</p>		<p>Significant amendments to solid waste (refuse), liquid waste (sewage), liquid effluent discharge, and air discharge permit (= 10% or greater increase in quality or quantity of discharge)</p> <p>Hazardous waste treatment or disposal project permit</p>	<p>New solid waste (refuse), liquid waste (sewage), liquid effluent discharge, and air discharge permits</p>

<p>Water</p>	<p>Section 18 amendments not involving a material change to the intended use or quantity authorized.</p> <p>Transfer of Appurtenancy, and addition or changes in purpose where the change does not alter the downstream impacts</p> <p>Leave to commence (final authorization to do work as per licence conditions)</p> <p>Section 9 – Type 1 for public safety projects (immediate impact)</p> <p>Water Regulation Section 44 – notification of work in and about a stream</p>	<p>Section 8 – short term use of water where the total withdrawal is less than or equal to 10 000m³</p> <p>Section 18 amendments involving a material change to intended use or quantity authorized, with nil to negligible risk of impact to water quantity/quality.</p> <p>Section 88 Orders used to add conditions to a Water Licence or for another purpose that is not related to public safety or immediate environmental impacts</p> <p>Section 26 Permit over Crown Land with nil to negligible risk of impact to water quality/quantity or habitat values</p>	<p>New water tenures that are low to moderate risk of impact to water quality/quantity.</p> <p>Section 18 amendments involving a material change to intended use or quantity authorized, with low to moderate risk of impact to water quantity/quality.</p> <p>Section 8 – short term use of water where the total withdrawal is greater than 10 000m³</p> <p>Section 9 changes in and about a stream: low to moderate risk of impact to fish and/or fish habitat</p> <p>Section 26 Permit over Crown Land: low to moderate risk of impact to water quality/quantity or</p>	<p>Water management plans</p> <p>New water licences – moderate to high risk of impact to water quality/quantity or habitat values</p> <p>Section 18 amendments involving a material change to intended use or quantity authorized, with moderate to high risk of impact to water quantity/quality.</p> <p>Section 9 changes in and about a stream: for moderate to high risk of impact to fish and/or fish habitat (e.g., presence of an endangered or sensitive species or identified high quality or critical habitat)</p> <p>Section 26 Permit over Crown Land:</p>
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	<p>Dam Safety Regulations – maintenance repair and orders</p> <p>Section 88 Orders used to address public safety or immediate environmental impacts</p>	<p>Section 9 – Type 2 for public safety projects (imminent impact)</p> <p>Section 9 – nil or negligible risk of impact to fish or fish habitat</p>	<p>habitat values</p>	<p>moderate to high risk of impact to water quality/quantity or habitat values</p>
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Table B: Engagement Level Modifiers

Intended Use: This Activity Table is to be used in conjunction with Table A: Activity Table to determine the appropriate Engagement Levels for Coal Related Applications.

Up Modifiers	Down Modifiers
<p>1. The Activity is located:</p> <ul style="list-style-type: none"> a. partially or wholly within a designated Wildlife Habitat Area, Ungulate Winter Range, Old Growth Management Area; b. in proximity to a West Moberly TLE land selection as disclosed to BC through TLE negotiations between the West Moberly, Canada and BC and as accepted by BC for purposes of land selection assessment; c. in proximity to a West Moberly Reserve or other real property owned by or on behalf of the West Moberly; d. registered areas of archaeological importance; 	<p>1. The Activity is within an area that has been consulted on within the last 2 years, including the period before the Effective Date, and the Province has a reasonable expectation that the West Moberly will have no concerns respecting the Application now subject to Engagement.</p>
<p>2. Potential for significant impacts on Treaty Rights that are unlikely to be adequately addressed within the timeframe set out for the Engagement Level.</p>	<p>2. West Moberly has entered an Agreement with the Applicant that involves them in planning activities and has requested that the Application(s) be designated at a lower level of consultation than otherwise required.</p>

<p>3. The Application is associated with an Activity, project, or location where the West Moberly and the Province have agreed that Complex consultation is required.</p>	<p>4. Activity is located wholly within Tumbler Ridge Zone, excluding bulk samples and related authorizations.</p>
<p>5. If the Application is bundled with other Application(s) or requires more than one authorization, the Parties will engage at the highest engagement level that is triggered, unless the Parties agree otherwise.</p>	

TABLE C: Engagement Levels (Timelines and Descriptions)

Engagement Levels	Information Only (no consultation)	Streamlined Level	Standard Level	Complex Level
Potential Impacts on Treaty 8 Rights	<i>None</i>	<i>Low</i>	<i>Moderate</i>	<i>High</i>
Process Steps and Timeframes (Business Days) Step 1: Preparation and provision of Referral Package	N/A			
Step 2: Initial Response period: West Moberly provides a response to Level of Engagement, and/or summary of interests/ impacts / recommendations, and/or recommended next steps for Engagement Discussion Period	N/A	15 days	15 days	15 days
Step 3: Engagement Discussion Period: the Parties develop and implement Engagement Plan and Shared Engagement Record	N/A	N/A	20 days	45 days

<p>Attributes</p>	<ul style="list-style-type: none"> • Notification after decision • No elevation to Engagement 	<ul style="list-style-type: none"> • No Engagement Discussion Period (unless Application is elevated to Standard or Complex) • No opportunity to lower Engagement level 	<ul style="list-style-type: none"> • Opportunity for Engagement Discussion Period • Opportunity to elevate Engagement level with rationale • Issue Resolution Process may apply • Opportunity for extension based on criteria and principles 	<ul style="list-style-type: none"> • Opportunity for extended Engagement Discussion Period • Opportunity for extension based on criteria and principles • Issue Resolution Process may apply
<p>Engagement Activities (one or more may apply by agreement of the Parties, and engagement activities appropriate in one level may also be employed in another level if necessary) <i>Objective: to achieve Engagement Objectives set out in RCA</i></p>	<ul style="list-style-type: none"> • No Engagement 	<ul style="list-style-type: none"> • Information exchange in writing during Initial Response Period 	<ul style="list-style-type: none"> • Coordinated authorization review process • Information exchange in writing • Joint technical meetings • Additional information gathering (applies to currently) 	<ul style="list-style-type: none"> • Any in Standard Level • Traditional Use Studies • Technical studies or assessments • Mitigation Plans prepared by a Qualified Professional • Meetings with Statutory Decision Makers

			<p>available information)</p> <ul style="list-style-type: none">• Site Visits where reasonable• Where necessary to meet Engagement Objectives, measures for Level 3	<ul style="list-style-type: none">• Archaeological Assessments where necessary to meet Engagement Objectives
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