

**Xáxli'p  
Forest & Range  
Consultation and Revenue Sharing Agreement (FCRSA)  
(the "Agreement")**

**Between:  
Xáxli'p**

As Represented by  
Chief and Council  
(the Xáxli'p)

**And**

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

(Collectively the "Parties")

**WHEREAS:**

- A. British Columbia and Xáxli'p have undertaken a shared commitment to strengthening relationships by focusing efforts to close the socio-economic gaps between Indigenous and non-Indigenous people. This will require strengthened relationships between Xáxli'p and British Columbia, based on enhanced collaboration, effective working partnerships and mutual respect and accountability.
- B. Xáxli'p maintains that their Indigenous Title and Rights give Xáxli'p unique responsibilities for stewardship of lands, resulting in a relationship where the health of the land is directly linked to the health of Xáxli'p culture, traditions, and way of life, including the maintenance of Xáxli'p's community, governance, and economy.
- C. British Columbia recognizes that Xáxli'p has a unique history, culture, traditions and relationship to the land and its resources, with its social and cultural distinctiveness defining Xáxli'p. With these characteristics, along with the relationship with British Columbia, assists in formulating the important context for the cooperative efforts needed to enhance Xáxli'p community's well-being and prosperity.
- D. In accordance to the *Declaration of the Lillooet Tribe* signed on May 10, 1911, by the St'át'imc Chiefs, Xáxli'p maintains they hold unceded Aboriginal Title and Rights within Xáxli'p Traditional Territory and Shared Area.
- E. Xáxli'p has developed their Traditional Use Study ("Ntsuwa7Ihkálha Tl'ákmen") and an Ecosystem-based Management Plan for their Traditional Territory and Shared Area, currently used as the management plan for their Community Forest Agreement.
- F. The Province has passed into law the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) which requires the Province to take all measures necessary to ensure provincial laws are consistent with *United Nations Declaration of the Rights of Indigenous Peoples*

(UNDRIP) and creates opportunities for the Province and Indigenous governing bodies to negotiate and enter into decision-making agreements or other arrangements.

- G. The Parties hold differing views with regard to Aboriginal title, Crown sovereignty, jurisdiction and authority over the lands and resources within the Traditional Territory of Xaxlip, and without prejudice to the differing viewpoints, the Parties seek a more productive government to government relationship with regard to forest resource management and revenue sharing.
- H. References in this Agreement to Crown lands are without prejudice to the Xáxli'p's Aboriginal Title and Rights over those lands.
- I. This Agreement does not attempt to define Xáxli'p Title and Rights and does not reconcile or resolve all potential infringements of Xáxli'p Title and/or Rights, nor does it intend to compromise or prejudice any future process that seeks to define those. Rather, the Parties wish to set out a process for consultation regarding forest and range resource development within Xáxli'p Traditional Territory and Shared Area and to provide an accommodation for any adverse impacts to Xáxli'p's Aboriginal Title and Rights resulting from forest and range resource development.

#### **THEREFORE THE PARTIES AGREE AS FOLLOWS:**

#### **ARTICLE 1 - INTERPRETATION**

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

**"Aboriginal Title and Rights"** means:

- (a) aboriginal rights, including aboriginal title held by the Xáxli'p people, which are recognized and affirmed under section 35(1) of the Constitution Act, 1982;

**"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 that is included in the First Annual List and/or Annual List as defined and set out in Appendix B;

**"Band Council Resolution"** means a resolution of Xáxli'p having the form of Appendix D;

**"BC Fiscal Year"** means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

**"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;

**"Designate"** means the entity described in section 4.2;

**"Effective Date"** means the last date on which this Agreement has been fully executed by the Parties;

**"Eligible Volume"** means the volume of timber provided to Xáxli'p in a Direct Award tenure under Section 47.3 of the *Forest Act* originating from the volume reallocation of the *Forestry Revitalization Act* that is appraised through the Market Pricing System;

**"First Fiscal Year of the Term"** means the BC Fiscal Year in which the Effective Date falls;

**"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*;

**"Licensee"** means a holder of a forest tenure or a range tenure;

**"Matrix"** means the table set out as a part of section 1.10 of Appendix B;

**"Minister"** means the Minister of Forests, Lands, Natural Resource Operations and Rural Development having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

**"Operational Plan"** means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan, as those terms are defined in provincial forest and range legislation;

**"Payment Account"** means the account described in subsection 4.4(a);

**"RA"** means a reconciliation agreement between British Columbia and Xáxli'p that creates a foundation for the reconciliation of Aboriginal Title and/or Aboriginal Rights with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*;

**"Revenue Sharing Contribution"** means each payment to be made by British Columbia to Xáxli'p under Article 3 of this Agreement;

**"SEA"** means a strategic engagement agreement between British Columbia and Xáxli'p that includes agreement on a consultation process between Xáxli'p and British Columbia in relation to the potential adverse impacts of proposed provincial land and natural resource decisions on Xáxli'p's Aboriginal Title and Rights.

**"Shared Area"** area of land located between the traditional territories of Bonaparte, Ts'kw'áylaxw and Xáxli'p, which is traditionally referred to as *T'epumen*, as shown in Appendix A.

**"Term"** means the term of this Agreement set out in section 14.1;

**"Timber Harvesting Land Base"** means the portion of the total land area of a management unit considered by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to contribute to, and be available for, long-term timber supply;

**"Traditional Territory"** means the traditional territory occupied and used by Xáxli'p for millennia, having a deep sense of place embedded in all forms of connectivity that defines and distinguishes Xáxli'p relationship to their territory, which is referred to in Xáxli'p's traditional language as "Ta Tmixwíhkálha Muta7 Ní'akmenhálha" (our land and way of life). As shown in bold black on the map attached in Appendix A.

**1.2 Interpretation.** For purposes of this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) the recitals and headings are inserted for convenience of reference only, do not form part of this Agreement and are not intended to define, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (c) any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute or its regulations;
- (d) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*;
- (e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- (f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

**1.3 Appendices.** The following Appendices and Schedule are attached to and form part of this Agreement:

Appendix A - Map of Xáxli'p Traditional Territory and Shared Area;

Appendix B - Consultation Process

- Schedule 1 – List of Decisions;

Appendix C - Revenue Sharing Contribution Methodology;

Appendix D - Band Council Resolution Appointing Delegate;

Appendix E - Statement of Community Priorities Format; and,

Appendix F- Annual Report.

Appendix G – Xaxli'p Meaningful Consultation Process

## **ARTICLE 2 - PURPOSE AND OBJECTIVES**

**2.1 Purpose and objectives.** The purposes and objectives of this Agreement are:

- (a) to establish a consultation process through which the Parties will seek to meet their respective consultation obligations in relation to potential adverse impacts of

proposed forest and range resource development activities, including Operational Plans or Administrative and/or Operational Decisions on Xáxli'p's Aboriginal Title and Rights;

- (b) to provide a Revenue Sharing Contribution as a form of economic accommodation for any adverse impacts to Xáxli'p's Aboriginal Title and Rights resulting from Administrative and/or Operational Decisions, and any forest or range resource development that may be carried out under an Operational Plan in Xáxli'p Traditional Territory and Shared Area.
- (c) provide capacity to Xáxli'p for the purposes of participating in the consultation process set out in Appendix B; and
- (d) to assist in achieving stability and greater certainty through the implementation of DRIPA in relation to forest and range resource development within Xáxli'p Traditional Territory and Shared Area.

### **ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS**

- 3.1 Calculation and timing of payments.** Subject to section 4.5 and Articles 5 and 13, during the Term, British Columbia will:
- (a) make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to Xáxli'p (or its Designate under section 4.2, as the case may be); and
  - (b) pay the annual Revenue Sharing Contribution in two equal instalments, the first to be made on or before September 30<sup>th</sup> and the second to be made on or before March 31<sup>st</sup> for the First Fiscal Year of the Term and each subsequent BC Fiscal Year.
- 3.2 First Fiscal Year.** Notwithstanding section 3.1, for the First Fiscal Year of the Term, the Revenue Sharing Contribution is deemed to be \$206,221 the first instalment of which will be paid on September 30, 2021.
- 3.3 Prorated amounts.** For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated to the month in which the Agreement is terminated by either Party under section 13, or; to the end of the month in which the Agreement expires.
- 3.4 Subsequent BC Fiscal Year amounts.** Before November 30<sup>th</sup> of each year during the Term, British Columbia will provide written notice to Xáxli'p of the amount of the Revenue Sharing Contribution for the following BC Fiscal Year and the summary document(s) and calculations identified in Appendix C.
- 3.5 Amount agreed to.** Xáxli'p agrees that the amount set out in the notice provided under section 3.4 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year. Notwithstanding, British Columbia agrees to cooperate with Xáxli'p in a timely manner, should Xáxli'p wish to examine the accuracy of British Columbia's calculation for any Revenue Sharing Contribution.

- 3.6 Adjustments.** If it has been determined, pursuant to Section 3.5 that British Columbia has:
- (a) made an overpayment, it will be deducted from the next scheduled instalment; or
  - (b) made an underpayment, it will be added to the next scheduled installment; and
  - (c) for greater certainty, in the final BC Fiscal Year for which the Revenue Sharing Contribution is payable under this Agreement, any overpayment or underpayment will be addressed through the final payment, or second instalment, as provided for under Section 3.1.

#### **ARTICLE 4 - DELIVERY OF PAYMENTS**

- 4.1 Recipient entity.** Unless Xáxli'p notifies British Columbia that it has made an election under to section 4.2, Revenue Sharing Contributions will be paid to Xáxli'p.
- 4.2 Election of Designate.** Xáxli'p may elect to have a Designate receive Revenue Sharing Contributions provided that the Designate:
- (a) is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.1; and
  - (b) is duly appointed to receive the Revenue Sharing Contribution on behalf of Xáxli'p and such appointment is confirmed by a Band Council Resolution of Xaxli'p.
  - (c) As per Appendix D, Xaxli'p delegates Xaxli'p Community Forest Corporation as the designate of this Agreement.
- 4.3 Obligations continue.** The election of a Designate under section 4.2 does not relieve Xáxli'p of its obligations under this Agreement.
- 4.4 Payment Account.** Xáxli'p or its Designate will:
- (a) establish and, throughout the Term, maintain an account in the name of Xáxli'p (or its 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"); and
  - (b) 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.
- 4.5 Requirement to make a payment.** Notwithstanding Section 3.1, British Columbia may withhold a Revenue Sharing Contribution it would otherwise be required to make until Xáxli'p (or its Designate, as the case may be) has met the requirements set out in section 4.4.

## ARTICLE 5 - CONDITIONS OF PAYMENT

**5.1 Reporting and compliance requirements.** For each BC Fiscal Year following the First Fiscal Year of the Term, the requirement to make a Revenue Sharing Contribution is subject to:

- (a) Xáxli'p having published all of the necessary statements and reports before the applicable dates as set out in Article 8 of this Agreement;
- (b) Xáxli'p being in all other respects in compliance with the terms of this Agreement; and
- (c) Revenue Sharing Contributions not having been suspended under Article 13 of this Agreement.

**5.2 Appropriation.** Notwithstanding any other provisions of this Agreement, the payment of the Revenue Sharing Contribution by British Columbia to Xáxli'p pursuant to this Agreement is subject to:

- (a) 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
- (b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

## ARTICLE 6 - CONSULTATION

**6.1 Satisfaction of consultation obligations.** The Parties agree that subject to 6.3, the process set out in Appendix B of this Agreement will be the means by which they will fulfill their obligations to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on Xáxli'p's Aboriginal Title and Rights resulting from Operational Plans or Administrative and/or Operational Decisions.

**6.2 Xáxli'p Meaningful Consultation Policy (May 2006)** that differs from Appendix B, Consultation Process. The Parties will undertake to advance mutual understanding of respective interests relating to these consultation processes.

**6.3 Map may be shared.** British Columbia may share the map attached as Appendix A, including digital versions of the map, with other provincial agencies or with a Licensee responsible for information sharing associated with Operational Plans or Administrative and/or Operational Decisions.

**6.4 SEA or RA applies.** The Parties agree that notwithstanding 6.1:

- (a) if before the Effective Date Xáxli'p enters into a SEA, or RA that includes a consultation process which addresses forest and range management and

decision making, the consultation process set out in the SEA or RA will continue after the Effective Date;

- (b) if after the Effective Date Xáxli'p enters into a SEA, or RA that 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; and
- (c) if the SEA or RA referred to in (a) or (b) comes to the end of its term or is terminated prior to the end of the Term, the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.

**6.5 Capacity funding.** The Parties acknowledge and agree that to assist Xáxli'p to engage in consultation under this Agreement and in consultation under any SEA or RA that addresses but does not provide capacity funding for forest and range related consultation, Xáxli'p will, under 1.4 of Appendix C, receive capacity funding of no less than \$35,000 per annum.

## **ARTICLE 7 - ACKNOWLEDGMENTS AND COVENANTS**

- 7.1 Revenue Sharing Contributions will vary.** Xáxli'p acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 7.2 Revenue Sharing Contributions are an accommodation.** Xáxli'p agrees that, without predetermining the sufficiency of such accommodation, the Revenue Sharing Contributions made under this Agreement constitute a form of economic accommodation for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plans, on Xáxli'p's Aboriginal Title and Rights.
- 7.3 Where consultation process followed.** Xáxli'p agrees that if the consultation process set out in this Agreement is completed by the Parties, British Columbia has consulted with respect to potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Xáxli'p's Aboriginal Title and Rights. For greater certainty, Section 7.3 is without prejudice to Xáxli'p's ability to declare that British Columbia has not meaningfully consulted it within the agreed to consultation process.

## **ARTICLE 8 - COMMUNITY PRIORITIES, ANNUAL REPORTS and RECORDS**

- 8.1 Statement of Community Priorities.** Xáxli'p covenants and agrees that it will:
  - (a) within 60 days of the Effective Date, based on the First Fiscal Year Revenue Sharing Contribution, prepare a statement of community priorities for the Term substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives referred to in section 2.1(b); and



- (b) before the end of each BC Fiscal Year, consider whether the statement of community priorities identified in subsection (a) should be revised based on the updated Revenue Sharing Contribution for subsequent BC Fiscal Years agreed to under section 3.5.

- 8.2 Annual Report.** Within 90 days of the end of each BC Fiscal Year, Xáxli'p 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 in furtherance of the purposes and objectives referred to in section 2.1.
- 8.3 Publication.** The statement of community priorities and annual report referred to in sections 8.1 and 8.2 will be published by Xáxli'p in a manner that can reasonably be expected to bring the information to the attention of its Members and the public within 90 days of the end of each BC Fiscal Year.
- 8.4 Audit.** British Columbia may, at its sole discretion, require an audit of the expenditures made from the Payment Account to determine that all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.5 Delivery of Report.** The annual report referred to in section 8.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 8.6 Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after Xáxli'p receives the final Revenue Sharing Contribution from British Columbia.

## ARTICLE 9 - SECURITY DEPOSITS

- 9.1 Silviculture Deposit.** In consideration of Xáxli'p entering into this Agreement, British Columbia may choose not to require a silviculture deposit pertaining to a licence entered into as a result of a direct award tenure agreement entered into between Xáxli'p, or a legal entity controlled by Xáxli'p, and British Columbia.

## ARTICLE 10 – SET OFF

- 10.1 Set off.** In addition to any other right under this Agreement, British Columbia may set off against any payment that Xáxli'p is entitled to receive under this Agreement, any unfulfilled financial obligations of Xáxli'p to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Xáxli'p, or a legal entity controlled by Xáxli'p, and British Columbia.
- 10.2 Notice.** British Columbia will notify Xáxli'p of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 10.1.

## ARTICLE 11 - ASSISTANCE

- 11.1 Cooperation and Support.** Xáxli'p will work in partnership with British Columbia and in a timely manner to discuss and seek to resolve issues in relation to any action that might be taken by a member of Xáxli'p that is inconsistent with this Agreement.

## **ARTICLE 12 - DISPUTE RESOLUTION**

- 12.1 Dispute Resolution Process.** If a dispute arises between British Columbia and Xáxli'p regarding the interpretation of a provision of this Agreement:
- (a) duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute;
  - (b) if the Parties' representatives are unable to resolve the dispute, the issue will be referred to more senior representatives of British Columbia and Xáxli'p; and
  - (c) if the dispute cannot be resolved by the Parties directly under subsections (a) or (b), the Parties may agree to other appropriate approaches to assist in reaching resolution of the issue.

## **ARTICLE 13 - SUSPENSION and TERMINATION**

- 13.1 Suspension of Revenue Sharing Contributions.** In addition to any other right under this Agreement, British Columbia may suspend further Revenue Sharing Contributions under this Agreement where Xáxli'p:
- (a) is in material breach of its obligations under Articles 6, 8 or 11 or Appendix B of this Agreement; or
  - (b) has outstanding unfulfilled financial obligations to British Columbia arising from a licence issued further to an agreement between Xáxli'p and British Columbia.
  - (c) Notwithstanding, Xáxli'p may suspend or terminate this Agreement if British Columbia breaches its obligations under Article 6 or Appendix B of this Agreement.
- 13.2 Notice of Suspension.** Where Revenue Sharing Contributions are suspended under section 13.1, British Columbia will provide notice to Xáxli'p of the reason for the suspension, including the specific material breach or the outstanding unfulfilled financial obligation on which it relies, and the Parties will meet to attempt to resolve the issue giving rise to the suspension.
- 13.3 Termination following suspension.** If the issue giving rise to the suspension of Revenue Sharing Contributions is not resolved within 60 days after notice is provided under section 13.2, British Columbia may terminate the Agreement at any time by written notice.
- 13.4 Termination of obligations by Xáxli'p.** Xáxli'p may terminate this Agreement if it determines, acting reasonably, that British Columbia is not fulfilling its obligations under the terms of this Agreement.

- 13.5 Proceedings inconsistent with acknowledgments.** Notwithstanding any other provision of this Agreement, British Columbia may suspend Revenue Sharing Contributions and may terminate this Agreement at any time by written notice where Xáxli'p challenges or supports a challenge to an Administrative and/or Operational Decision, an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that:
- (a) contrary to section 7.2, a Revenue Sharing Contribution provided for under this Agreement does not constitute a form of economic accommodation for adverse impacts of such decisions, plans or activities on Xáxli'p's Aboriginal Title and Rights; or
  - (b) contrary to section 7.3, by British Columbia following the consultation process described in Appendix B, British Columbia has not consulted with Xáxli'p regarding the potential adverse impacts of such decisions, plans or activities on Xáxli'p's Aboriginal Title and Rights.
- 13.6 Termination by Either Party.** This Agreement may be terminated by either Party on ninety (90) days written notice or on a date mutually agreed on by the Parties.
- 13.7 Meet to attempt to resolve issue.** If a Party gives written notice under section 13.5, the Parties will, prior to the end of the notice period, meet and attempt to resolve any issue that may have given rise to the termination notice.
- 13.8 Effect of Termination.** Where this Agreement is terminated under this Article 13, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

## **ARTICLE 14 - TERM**

- 14.1 Term.** The term of this Agreement will be three (3) years commencing on the Effective Date unless it is extended under section 14.2 or terminated under Article 13.
- 14.2 Extension of the Term.** At least two months prior to the third anniversary of the Effective Date, the Parties will evaluate the effectiveness of this Agreement and decide whether to extend the Term.
- 14.3 Terms of the Extension.** Where the Parties agree to extend the Term they will negotiate and attempt to reach agreement on the terms of the extension.
- 14.4 Evaluation.** Either Party may, on an annual basis, request the participation of the other Party to review the effectiveness of this Agreement and to consider potential amendments to it.

## **ARTICLE 15 – REPRESENTATIONS and WARRANTIES**

- 15.1 Legal power, capacity and authority.** Xáxli'p represents and warrants to British Columbia, with the intent and understanding that they will be relied on by British Columbia in entering into this Agreement, that it enters into this Agreement for, and on behalf of

itself and its members and that as represented by its Chief and Council, it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.

## ARTICLE 16 - NOTICE and DELIVERY

**16.1 Delivery of Notices.** Any notice, document, statement or report contemplated under this Agreement must be in writing and will be deemed validly given to and received by a Party, if delivered personally, on the date of delivery, or, if delivered by mail, email or facsimile copier, when received by the Parties at the addresses as follows:

if to British Columbia:

Deputy Minister  
Ministry of Indigenous Relations and Reconciliation  
P.O. Box 9100 STN PROV GOVT  
Victoria B.C. V8W 9B1  
Telephone: (778) 974-2080  
Fax: (250) 387-6594

and if to Xáxli'p:

Chief Colleen Jacob  
Xáxli'p  
P.O. Box 1330  
Lillooet, BC, V0K 1V0  
Telephone: (250) 256-4800  
Fax: (250) 256-4803

**16.2 Change of Address.** Either Party may, from time to time, give notice to the other Party of a change of address or facsimile number and after the giving of such notice, the address or facsimile number specified in the notice will, for purposes of section 16.1, supersede any previous address or facsimile number for the Party giving such notice.

## ARTICLE 17 - GENERAL PROVISIONS

**17.1 Governing law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia.

**17.2 Not a Treaty and Non-Derogation.** The Parties agree as follows:

- (a) this Agreement does not constitute a treaty or a lands claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982* (Canada); and
- (b) this Agreement does not affirm, recognize, abrogate or derogate from any Xáxli'p's Aboriginal Title and Rights; and

- (c) the Province of British Columbia and Xáxli'p acknowledge and enter into this Agreement on the basis that Xáxli'p holds Aboriginal Title within its respective traditional territory and Shared Area and the specific nature, scope or geographical extent of Xáxli'p's Title has yet to be determined. A broader engagement process in recognition and reconciliation will result in a common understanding of the nature, scope, and geographic extend of Xáxli'p Title.

**17.3 No Admissions.** Nothing in this Agreement will be construed as:

- (a) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of Xáxli'p's Aboriginal Title and Rights;
- (b) an admission or acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate; or
- (c) in any way limiting the position the Parties may take in any proceedings or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.

**17.4 No Fettering.** Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by British Columbia or its agencies of any statutory, prerogative, executive or legislative power or duty.

**17.5 No Implied Waiver.** Any waiver of any term or breach of this Agreement is effective only if it is in writing and signed by the waiving Party and is not a waiver of any other term or breach.

**17.6 Assignment.** Xáxli'p must not assign, either directly or indirectly, this Agreement or any right of Xáxli'p under this Agreement without the prior written consent of British Columbia.

**17.7 Emergencies.** Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.

**17.8 Acknowledgment.** The Parties acknowledge and enter into this Agreement on the basis that Xáxli'p has Aboriginal Title and Rights within the Traditional Territory but that the specific nature, scope or geographic extent of those Aboriginal Title and Rights have yet to be determined. The Parties intend that broader processes that may be engaged in to bring about reconciliation may lead to a common understanding of the nature, scope and geographic extent of Xáxli'p Aboriginal Title and Rights.

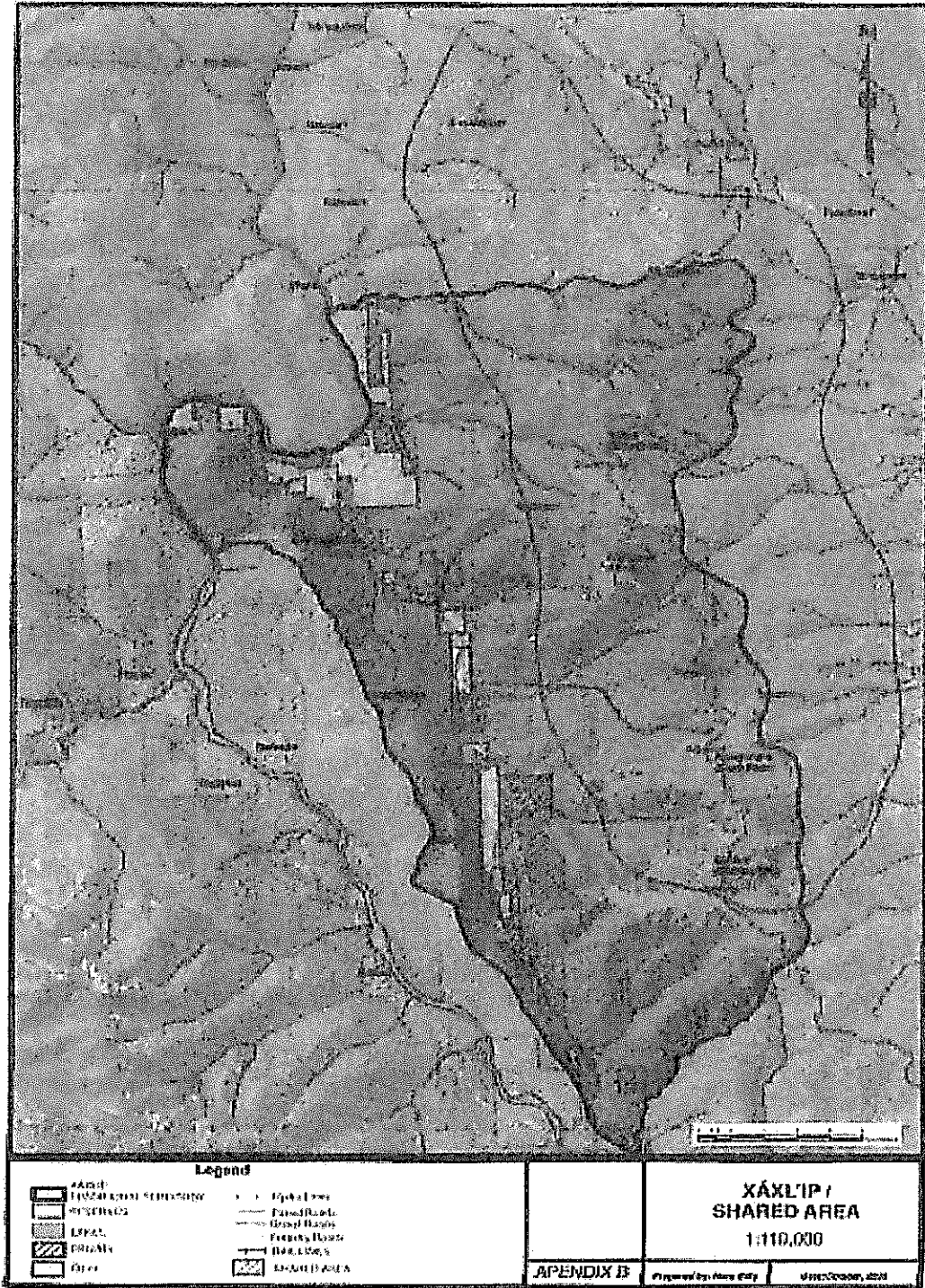
**17.9 Third Parties.** This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Xáxli'p.

**17.10 Other Economic Opportunities and Benefits.** This Agreement does not preclude Xáxli'p from accessing forestry economic opportunities and benefits, which may be available to it, other than those expressly set out in this Agreement.

- 17.11 Validity of Agreement.** If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.
- 17.12 Entire Agreement.** This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.
- 17.13 Further Acts and Assurances.** Each Party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.
- 17.14 Execution in Counterpart.** This Agreement may be entered into by a separate copy of this Agreement being executed by each Party and that executed copy being delivered to the other Party by a method provided for in Article 16 or any other method agreed to by the Parties.
- 17.15 Amendment in Writing.** No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.

# APPENDIX A

## Map of Xáxli'p Traditional Territory



Signed on behalf of:

Xáxli'p

Colleen Jacob \_\_\_\_\_ Date Aug 26, 2021  
Chief Colleen Jacob

Christy Allen \_\_\_\_\_  
Councillor

Rankin Michael \_\_\_\_\_  
Councillor

Roma Joseph \_\_\_\_\_  
Councillor

\_\_\_\_\_ Councillor

[Signature] \_\_\_\_\_  
Councillor

\_\_\_\_\_ Councillor

Karen Mitchell \_\_\_\_\_  
Witness of Xáxli'p signatures

Signed on behalf of:

Government of British Columbia

Murray Rankin \_\_\_\_\_ Date September 13, 2021  
Minister of Indigenous Relations and Reconciliation

[Signature] \_\_\_\_\_  
Witness of Minister's signature



## APPENDIX B

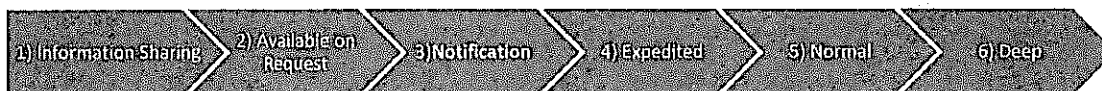
### Consultation Process for Administrative and/or Operational and Operational Plans within First Nation Traditional Territory

- 1.1 British Columbia will consult with Xáxli'p on proposed Administrative and/or Operational Decisions and Operational Plans that may potentially adversely impact Xáxli'p's Aboriginal Title and Rights within the Traditional Territory, in accordance with this Appendix B.
- 1.2 Xáxli'p will fully participate in information sharing and/or consultation with British Columbia, Licensees or proponents regarding proposed Administrative and/or Operational Decisions or Operational Plans within Xáxli'p Traditional Territory in accordance with this Appendix B.
- 1.3 In order to facilitate consultation, the Parties will use the Matrix set out in section 1.10 of this Appendix to determine which proposed Administrative and/or Operational Decisions and Operational Plans will require consultation, as well as the appropriate level of consultation for those decisions and plans.
- 1.4 The level of consultation required for the types of Administrative and/or Operational Decisions and Operational Plans listed in Schedule 1 (the "List of Decisions") will be the level indicated in the column of Schedule 1 headed "Consultation Level", unless the Parties agree to a different consultation level under section 1.11 of this Appendix.
- 1.5 If on or before January 31<sup>st</sup> a Party requests that the List of Decisions or the consultation level for a type of decision or plan set out in it be revised for a subsequent BC Fiscal Year, the Parties will discuss that request and if the Parties agree to a revision, update the List of Decisions on or before March 31<sup>st</sup> of the current fiscal year.
- 1.6 If British Columbia becomes aware of proposed Administrative and/or Operational Decisions or Operational Plans not contained in the List of Decisions that will have effect within the Traditional Territory of Xáxli'p during the current fiscal year, British Columbia will notify the Xáxli'p of those decisions or plans and the Parties will, with reference to the criteria set out in the Matrix, seek to agree on the consultation levels that will be applicable to those decisions or plans.
- 1.7 If the Parties cannot agree upon which consultation level in section 1.10 of this Appendix should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Xáxli'p on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.
- 1.8 In reviewing and responding to a proposed Administrative and/or Operational Decision or Operational Plan submitted to them, Xáxli'p will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, Licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential adverse impacts to their Aboriginal Title and Rights that may occur as a result of the proposed Administrative and/or Operational Decision or Operational Plan within the Traditional Territory or forest or range resource development practices that may be carried out pursuant to that decision or plan.
- 1.9 If a proposed Administrative and/or Operational Decision or Operational Plan is submitted to Xáxli'p and no response is received within the consultation period set out in section 1.10 of this Appendix for the consultation level applicable to the proposed

Administrative and/or Operational Decision or Operational Plan, then British Columbia may proceed to make a decision regarding the decision or plan.

1.10 The Parties agree that:

- (a) as set out in the table below (the "Matrix") there will be six (6) potential levels of consultation for a proposed Administrative and/or Operational Decision or Operational Plan;
- (b) subject to the List of Decisions, the appropriate consultation level for a proposed Administrative and/or Operational Decision or Operational Plan will be determined by reference to the criteria set out in the Matrix; and
- (c) the consultation period applicable to a consultation level is the period referred to in the Matrix, the List of Decisions or as otherwise agreed to by the Parties, whichever period is the longest.



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

Level	Description	Intent
		notify Xáxli'p of the final decision where requested by the Xáxli'p.
<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 Xáxli'p with the final decision and rationale in writing.

- 1.11 The Parties may agree to increase or decrease the consultation level for a specific proposed Administrative and/or Operational Decision or Operational Plan where detailed Aboriginal Interest information is provided that indicates a different consultation level is appropriate.
- 1.12 Where Xáxli'p has engaged with British Columbia on a proposed decision, British Columbia will inform Xáxli'p of the Delegated Decision Maker's decision.

## Schedule 1 – List of Decisions

## 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, a summary document will be prepared of the Cascades and Kamloops Forest Districts 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 the Cascades and Kamloops Forest Districts.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Eligible Volume in Xáxli'p's Forest License (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Xáxli'p's Traditional Territory will be calculated by determining the percent of Xáxli'p's Traditional Territory and Shared Area that falls within the Timber Harvesting Land Base in the Cascades and Kamloops Forest Districts, applied against the forest revenue described in section 1.0 of this Appendix.
- 1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Xáxli'p as described in section 1.2 of this Appendix.
- 1.4 If Xáxli'p is not receiving capacity funding for forestry consultation through a SEA or RA, then it will receive \$35,000 or the amount calculated in accordance with section 1.3, whichever is greater, which may be used by Xáxli'p as capacity funding to participate in the consultation process in accordance with section 6.0 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, a summary document will be prepared detailing of Xáxli'p's Forest License (if applicable) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year from Eligible Volume within the Forest Licence.
- 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 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 a transition to revenue sharing based entirely on Forest Revenue will be phased in over the Term.

- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Traditional Territory Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.
- 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 Xáxli'p in any given full year under the *Xáxli'p Forest and Range Opportunity Agreement* ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.2.1 2021/22 BC Fiscal Year 40 percent;
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2021/22 under section 3.1 provides:
- (a) an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *Xáxli'p Forest and Range Opportunity Agreement*, then Xáxli'p will receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1 for BC Fiscal Years 2021/22; and
  - (b) an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the *Xáxli'p Forest and Range Opportunity Agreement*, then Xáxli'p will receive an annual payment for BC fiscal Years 2021/22 that is equal to the annual payment received under the *Xáxli'p Forest and Range Agreement*.

**APPENDIX D**

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

**APPENDIX E**

**Xáxli'p Statement of Community Priorities**

*(Example only)*

<b>Socio-economic Priority</b>	<b>Annual Amount</b>			<b>Specific Outcomes</b>	<b>Measurement Criteria</b>
	2021/22	2022/2023	2023/2024		

2021/2022 Revenue Sharing Contribution \$206,221



**APPENDIX F**

**Xáxli'p Statement of Community Priorities**

**Annual Report**

*(Example only)*

<b>Socio-economic Priority</b>	<b>2021/2022 Planned Expenditures</b>	<b>2021/2022 Actual Expenditures</b>	<b>Outcomes Achieved</b>	<b>Variance Explanation</b>

**Confirmation**

In accordance with section 8.2 of the Agreement, Xáxli'p confirms that aside from reasonable administrative expenses, all actual expenditures were made for the purpose of furthering the purposes and objectives set out in section 2.1 of the Agreement.

Signed this \_\_\_\_ day of \_\_\_\_\_:

Colleen Jacobs  
(Signature)

Colleen Jacobs  
(Print Name) On behalf of Xáxli'p

## APPENDIX G

# Xâxli'p Meaningful Consultation Policy

May 2006

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People who wish to plan and carry out activities in Xâxli'p Territory must have the consent of the Xâxli'p government and must follow this Xâxli'p Meaningful Consultation Policy. The Xâxli'p First Nation holds aboriginal title and rights to our territory, which flow from the planning, management, and active stewardship of our territory for centuries. Xâxli'p title and rights are protected in the Constitution of Canada. Respect for Xâxli'p culture, including our laws and day-to-day needs, requires meaningful consultation, which includes accommodation of Xaxli'p's aboriginal title and rights. Meaningful consultation is a process of negotiation, a two-way street where Xâxli'p direction and input is substantially incorporated into the planning process and activities that occur on the land. The legal requirement for meaningful consultation, including accommodation, in dealings with Xâxli'p and other First Nations has been supported and strengthened through the 1998 Delgamuukw and the 2004 Haida decisions of the Supreme Court of Canada.

We have outlined below the basic ingredients of meaningful consultation with the Xâxli'p First Nation. Xâxli'p consent for activities in our territory will not be granted without adequate meaningful consultation which fulfils the following three ingredients.

### 1. Timely and complete receipt of information . . .

Consultation with Xâxli'p requires timely and complete receipt of relevant information associated with various potential activities or developments, including background materials, research, studies, plans, prescriptions, permits, and other documents associated with a particular proposed activity in Xâxli'p territory.

Complete information is required for Xâxli'p to adequately assess the potential impact(s) of a proposed activity on our aboriginal title and rights, and to determine what is necessary for accommodation of our needs.

All information must be received in adequate time for our internal review and response, including adequate time for Xâxli'p to seek and incorporate technical and legal advice of our choosing. If we do not receive complete information and/or are not provided with adequate time to review, analyze, and respond to this information, there is not a foundation for meaningful consultation.

As an example, information associated with and the contents of forest stewardship plans prepared by timber companies and the Ministry of Forests are lacking in the details necessary for us to assess the potential impacts of planned operations on Xâxli'p's aboriginal title and rights. Therefore, forest stewardship plans, as prepared under the Forest and Range Practices Act, contain insufficient information to achieve meaningful consultation with Xâxli'p.

## Xâxli 'p Meaningful Consultation Poli'q

2. Substantive consideration of incorporation of, and response to Xâxli'p's reviews of proposals, research, studies, plans, prescriptions, permits, and other informing documents, and processes—accommodation of Xaxli'p needs. . .

Xâxli'p does not see consultation as a "one-way" process. Instead, meaningful consultation must not only consider but incorporate Xâxli'p needs into government and private sector proposals, research, studies, plans, prescriptions, permits, and other information, documents and/or processes. Without this approach, consultation does not meet the requirements of Delgamuukw and Haida to provide accommodation of Xaxli'p's aboriginal title and rights. The government is required to substantially consider, incorporate, and respond to Xaxli'p's consultation efforts, because: "the Crown must act honourably. Nothing less is required if we are to achieve the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown" (Haida, 2004).

Delgamuukw and Haida decisions both require the government to act in good faith in carrying out meaningful consultation that recognizes and incorporates accommodation of Xâxli'p's aboriginal title and rights in potential activities in Xâxli'p territory. Such meaningful consultation by government needs to include a full explanation of how government has attempted to accommodate Xaxli'p's needs, and to provide a process whereby Xaxli'p may negotiate improvements to government's recommendations for accommodating Xaxli'p's aboriginal title and rights.

Xâxli'p will be the final arbiter of whether or not protection and accommodation of Xâxli'p's aboriginal title and rights have been adequately addressed in a consultation process. In other words, only Xâxli'p can adequately decide whether our culture has been protected and whether our needs have been met through a consultation process. Until this test has been met to our satisfaction, meaningful consultation has not occurred and Xâxli'p consent will not be granted.

3. Developing ecosystem-based planning and management. . .

Xâxli'p expects that an ecosystem-based approach to planning and management will be used throughout Xâxli'p territory. Not only is this approach consistent with Xâxli'p culture, but it is also strongly supported by current scientific research and progressive economic thinking. An ecosystem-based approach to planning and using the land, water, and resources of Xâxli'p territory is necessary to protect our aboriginal title and rights. We recognize that, in some cases, government and/or private interests may require a period of time to phase into ecosystem-based planning and management. However, we expect that those contemplating development of processes and activities in Xâxli'p territory will make genuine and measurable efforts to move towards ecosystem-based planning and management in research, studies, plans, prescriptions, permits, and other information, documents, and/or processes in our territory.

Points 1 through 3 above outline the basic requirements for meaningful consultation with the Xâxli'p First Nation. However, any agency or individual wishing to carry out

## Xâxli 'p Meaningful Consultation Policy

activities in Xâxli'p territory is advised that the specific details of meaningful consultation must be worked out with Xâxli'p prior to initiating proposals, research, studies, plans, and any other actions related to a potential development.

We expect that an initial face-to-face meeting will be required in order for all parties to define and understand the scope of future consultation and proposed activities. After this initial meeting, Xâxli'p will develop a budget for Xâxli'p participation in meaningful consultation. This budget must be covered by the proponent.

Before undertaking any activities in our territory, please contact us at 250-256-4800, or stop in at our offices in the Fountain Valley. We will be pleased to provide you with more details of how we may work together through meaningful consultation to meet our various needs, while maintaining our responsibility to those unborn, and to our land and water.