

NORTH COAST STRATEGIC LAND USE PLANNING AGREEMENT

BETWEEN

KITSUMKALUM FIRST NATION

('Kitsumkalum')

AND

THE PROVINCE OF BRITISH COLUMBIA

(the 'Province')

as represented by
the Minister of Agriculture and Lands

(each a 'Party' and collectively 'the Parties')

WHEREAS

- (a) The Kitsumkalum First Nation and the Province entered into the "Tsimshian Nation Tripartite Accord on Lands and Resources," in February 2001 wherein the Parties committed to work together on a Government to Government basis, in a spirit of mutual recognition, respect, and reconciliation, to resolve land use conflicts and implement interim measures initiatives.
- (b) The Province and the Kitsumkalum First Nation worked cooperatively during the North Coast Land and Resource Management Plan (NCLRMP) process on a Government to Government basis.
- (c) The Kitsumkalum First Nation participated in the North Coast LRMP and related Government to Government discussions with the same understandings as other First Nations. Kitsumkalum First Nation participation was tailored to reflect Kitsumkalum Aboriginal Interests in Traditional Resource Use Areas.
- (d) Kitsumkalum has Traditional Resource Use Areas within the North Coast LRMP Planning area.
- (e) The Kitsumkalum First Nation supports the Aboriginal Interests and land and marine use plans of the coastal Tsimshian peoples within the North Coast LRMP area in a manner that is consistent with Kitsumkalum Traditional Resource Use Areas management objectives.

- (f) The NCLRMP planning table completed its work on June 12, 2004 and referred a draft NCLRMP package to the Province and to subsequent Government to Government discussions.
- (g) The Government to Government process as an extension of the NCLRMP process is intended to harmonize the NCLRMP recommendations of June 12, 2004 with the various First Nations Land Use Plans and reports, to the greatest extent possible, while honouring the intent and content of the NCLRMP, as put forward by the NCLRMP planning participants.
- (h) The Parties seek to work collaboratively on the future implementation of the NCLRMP table recommendations and the Government to Government harmonization recommendations.

THE PARTIES AGREE AS FOLLOWS:

1 Definitions

1.1 In this Agreement and any Attachments:

- (a) **"Aboriginal Interests"** means any asserted or proven aboriginal rights, including aboriginal title, recognized and affirmed under s. 35 of the *Constitution Act, 1982*;
- (b) **"Adaptive Management"** means a systematic approach to resource management that engages the Parties and stakeholders in structured, collaborative research and monitoring with the goal of improving land and resource management policies, objectives and practices over time. Adaptive Management is a component of EBM and includes passive and active management approaches;
- (c) **"Detailed Strategic Plan"** means a plan developed pursuant to this Agreement undertaken to implement the NCLRMP and may include sustainable resource management plans and other area specific plans for landscapes, watersheds and cultural areas whose content is consistent with EBM, but does not include plans that will be approved under the *Forest Act* or the *Forest and Range Practices Act*;
- (d) **"Ecosystem-Based Management"** (herein "EBM") in the Central and North Coast LRMP areas means an adaptive, systematic approach to managing human activities, guided by the Coast Information Team EBM Handbook, that seeks to ensure the co-existence of healthy, fully functioning ecosystems and human communities;
- (e) **"Government to Government"** means formal opportunities for bilateral discussions between the Parties which seek to resolve land use and resource management issues and includes the bilateral discussions between the Parties held pursuant to this Agreement which seek to foster a cooperative relationship amongst the Parties related to land use and resource policy, planning and management, including implementation of any Strategic Land Use Planning Agreement;

- (f) **“Land and Resource Management Plan”** (herein “LRMP”) means a strategic land use plan developed and approved by the Province in accordance with its laws and policies which identifies land use zones and defines objectives, strategies and/or policies that will provide guidance and direction for the planning, management and use of land and resources within a specific geographic area;
- (g) **“Land Use Zone”** means an area of land as shown on Attachment A that has been assigned a strategic land and resource management direction that is distinct from adjacent areas;
- (h) **“Management Objective”** means a clearly articulated description of a measurable standard, desired condition, threshold value, amount of change or trend to be achieved for a specific resource value, feature or attribute. Management Objectives may have general application across the planning area or apply only to specific areas. With reference to Attachment C of this Agreement, Management Objectives encompass all text under the headings “objective”, “measure/indicator”, “targets” and “comment/management consideration”; and
- (i) **“Traditional Resource Use Areas”** means areas identified by Kitsumkalum in Government to Government discussions where Kitsumkalum has noted that, through various arrangements with other Tsimshian First Nations, they have harvested traditional resources in the North Coast LRMP area.

2 Intention of the Parties

- 2.1 Kitsumkalum would like to make the Province and other Tsimshian First Nations aware of the Kitsumkalum Traditional Resource Use Areas, so that these Areas may be considered to the greatest degree possible in the finalization and implementation of the NCLRMP and associated Government to Government recommendations.
- 2.2 This Agreement is intended to enable both Parties to be supportive of the Land Use Zones and Management Objectives for the North Coast LRMP and lead to the successful implementation of the NCLRMP.
- 2.3 The Parties intend that this Agreement will enable them to work jointly on:
 - (a) Implementing the results of Government to Government land use discussions in a spirit of cooperation;
 - (b) Establishing, with other North Coast region First Nations, a regional policy forum to facilitate the development and implementation of policies and the resolution of bilateral issues, in a manner that respects the Government to Government relationship;
 - (c) The refinement of resource Management Objectives at a technical level; and
 - (d) Addressing land use issues as they arise in the future.
- 2.4 The Parties are committed to working together during the implementation of the NCLRMP and associated Government to Government recommendations.

3 Purpose and Scope of this Agreement

3.1 This Agreement describes the results of negotiations between the Parties to harmonize Land Use Zones and Management Objectives at strategic and smaller scales.

3.2 This Agreement sets out a framework for a continuing Government to Government relationship within which the Parties can work cooperatively to:

- (a) Refine Management Objectives;
- (b) Monitor and review strategic land and resource planning outcomes and related interim economic measures; and
- (c) Jointly address related land use management concerns.

4 Land Use Zones and Management Objectives

4.1 Through Government to Government discussions the Parties have reached an understanding and agree to support the implementation of the recommended North Coast LRMP Land Use Zones and Management Objectives set out in Attachments A, B and C.

5 Implementation Activities

Management Objectives

5.1 Through the Government to Government relationship, the Parties agree to undertake activities at a technical level, to support implementation of the NCLRMP, and that the further technical work may be pursued through the Regional Policy Forum (under section 6) or with Kitsumkalum directly.

5.2 Attachment C contains Management Objectives that are recommended by the Chief Negotiators to their respective principals, to enable the sustainable management of the Traditional Resource Use Areas.

5.3 The Parties acknowledge that the NCLRMP has recommended a number of Management Objectives and that these Management Objectives may be reviewed, refined and revised over time based on new information, Adaptive Management and EBM, including input from First Nations, through Government to Government discussions, and community consultations.

Detailed Strategic Plans

5.4 The Integrated Land Management Bureau ("ILMB") of the Ministry of Agriculture and Lands may undertake Detailed Strategic Plans to implement the NCLRMP at a more detailed scale. Such Plans will be undertaken in a manner that is consistent with this Agreement and the approved NCLRMP or any subsequent amendments.

5.5 On initiation of a Detailed Strategic Plan, ILMB will contact the Kitsumkalum First Nation and the Regional Policy Forum. If Kitsumkalum wishes to be involved in the development of the Detailed Strategic Plan, ILMB will work with Kitsumkalum to discuss the nature, scope and process for that participation.

EBM Implementation

- 5.6 The Parties agree to work cooperatively to implement EBM within the North Coast LRMP area.

Protection Areas Management

- 5.7 Kitsumkalum and the Province are in the process of drafting a collaborative planning and management agreement for any Protection Areas that may be established by the Province as a result of the NCLRMP. The Parties may also include areas in the Kalum Land and Resource Management Plan area that includes Kitsumkalum Aboriginal Interests.

NCLRMP Implementation Monitoring

- 5.8 ILMB will provide a seat for the Kitsumkalum First Nation on any NCLRMP plan implementation committee.. Participation will be in a manner consistent with a Government to Government relationship and specifically, this will mean:
- (a) The Terms of Reference for the Plan Implementation Committee will confirm that First Nations are participating on a Government to Government basis; and
 - (b) If First Nations' issues with respect to monitoring are not resolved at the monitoring team level, after efforts are made to seek a consensus agreement, then the Province and the First Nation may meet on a Government to Government basis to seek resolution to the unresolved items.
- 5.9 Where Kitsumkalum chooses not to participate in the plan implementation committee or the Regional Policy Forum, the Province will consult with the Kitsumkalum First Nation on proposed amendments to the NCLRMP that may adversely affect Traditional Resource Use Areas.
- 5.10 ILMB and the Kitsumkalum First Nation will cooperate on efforts to improve the type of monitoring data that is available with respect to First Nations' indicators.

6 Regional Policy Forum

- 6.1 The Parties support the continued work of the Tsimshian Stewardship Committee, or similar successor body (the "Regional Policy Forum"), as a regional forum for Government to Government discussions of land use and resource management topics that are of common concern to North Coast First Nations and the Province, including discussions related to the general engagement of First Nations in land use planning, the implementation of land use plans, further refinement and implementation of EBM, and the development of interim economic measures and joint economic projects.

7 Dispute Resolution

- 7.1 If a dispute arises between the Province and the Kitsumkalum First Nation regarding the interpretation of a provision of this Agreement, or the obligation of a Party under this Agreement, the Parties or their duly appointed representatives will meet as soon as practicable to resolve the dispute.

7.2 If the matter cannot be resolved under section 7.1, the Parties will advise one another in writing of the specific nature of the dispute, and their proposed solution to the dispute.

7.3 Following 7.2, the Parties may agree to seek a meeting of the Minister or Deputy Minister and Chief Councilor to seek a solution to the matters outlined in 7.2.

7.4 Notwithstanding 7.3, the Parties may agree to engage an independent third party to help resolve a dispute through special studies, facilitated discussions or mediation

8 Funding

8.1 Following the execution of this Agreement, the Province will provide Kitsumkalum with a minimum of \$50,000, subject to:

(a) Preparation of a workplan, developed in collaboration with the Tsimshian Stewardship Committee, and approved by the Parties, and which addresses land use planning matters throughout the traditional territory as well as for Traditional Resource Use Areas;

(b) An appropriation by the Legislature; and

(c) The *Financial Administration Act*.

8.2 The Province will provide the First Nation with sufficient funding to support ongoing implementation of this Agreement, after March 31, 2006, subject to:

(a) Preparation of a workplan developed in collaboration with the Tsimshian Stewardship Committee and approved by the Parties;

(b) An appropriation by the Legislature; and

(c) The *Financial Administration Act*

9 Term and Termination

9.1 This Agreement will take effect once the Parties have obtained their respective authorizations and signed this Agreement.

9.2 This Agreement will remain in effect until

(a) The date on which the Parties mutually agree to terminate this Agreement;

(b) It is terminated by either Party on sixty (60) days notice to the other Party in writing, stating the reasons for termination; or

(c) The execution of other agreements or outcomes (such as a treaty or settlement agreement) that would render this Agreement moot.

9.3 Where written notice to terminate provided pursuant to 9.1(b) above is the result of a dispute, the Parties will discuss the potential to return to the process described in 7 above.

10 General Provisions

10.1 Kitsumkalum acknowledge that the process of consultation undertaken for the NCLRMP and subsequent Government-to-Government phase was meaningful and

acknowledges the good faith efforts of the Province in this process. The Province acknowledges that Kitsumkalum engaged actively and effectively in the process, and appreciates the honesty and dedication that Kitsumkalum brought to the NCLRMP process.

- 10.2 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 10.3 Except as the Parties may agree otherwise in writing, this Agreement will not limit the positions that either Party may take in any future negotiations or court actions.
- 10.4 This Agreement does not change or affect the positions either Party has, or may have, regarding its jurisdiction, responsibilities and/or decision-making authority, nor is it to be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority.
- 10.5 Section 10.4 is not intended to prevent a statutory decision-maker from considering this Agreement and its Attachments in the exercise of a statutory discretion.
- 10.6 Nothing in this Agreement shall be interpreted in a way that requires the Parties to act in a manner inconsistent with provincial or federal legislation, traditional customs, or the common law.
- 10.7 This Agreement is intended to improve the working relationships and communications between the Parties. It is legally binding, but is not a treaty or land claims agreement within the meaning of ss. 25 and 35 of the *Constitution Act, 1982*.
- 10.8 For clarity, the NCLRMP and this Agreement do not address
- (a) Tenure allocation or the process for awarding such tenures or licences;
 - (b) Final reconciliation of Provincial and Kitsumkalum First Nation assertions of Aboriginal Interests;
 - (c) Marine issues, including aquaculture, offshore oil and gas, federal marine protected areas, or management of marine resources; and
 - (d) Statutory decision-making, such as the setting of allowable annual cuts.
- 10.9 The Province has continuing lawful obligations to consult and seek workable accommodation with Kitsumkalum, in accordance with an applicable consultation protocol, if any, including:
- (a) Approval of resource development plans, land and resource tenures and other administrative or operational resource development decisions;
 - (b) The preparation and implementation of Detailed Strategic Plans;
 - (c) The implementation of the North Coast LRMP;
 - (d) Proposed amendments to the North Coast LRMP;
 - (e) The establishment and amendment of any legislated objectives; and
 - (f) Changes proposed to a Land Use Zone or Management Objective.

- 10.10 Other than as expressly indicated in this Agreement, this Agreement does not abrogate any legal obligations of the Province to Kitsumkalum; and does not create, recognize, define, deny, limit or amend any of the rights or responsibilities of the Parties.
- 10.11 This Agreement between the Parties does not define, deny, limit or amend any of the rights or responsibilities of any other aboriginal group.
- 10.12 Nothing in this Agreement affects the ability of the Parties to respond to any emergency circumstances.
- 10.13 The Parties may jointly agree in writing to invite other governments, including First Nations, to participate in the implementation of this Agreement.
- 10.14 The Parties will monitor progress in the "New Relationship" discussions and, at the request of either Party, consider jointly whether to amend this Agreement to reflect developments in those discussions.
- 10.15 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of the
Kitsumkalum First Nation by:



Steve Roberts
Chief Councillor

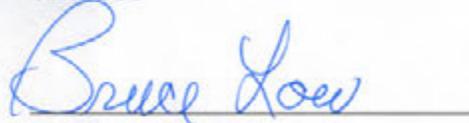


Alex Bolton
Hereditary Chief

Date: _____



Witness



Witness

Signed on behalf of the Ministry of
Agriculture and Lands by:



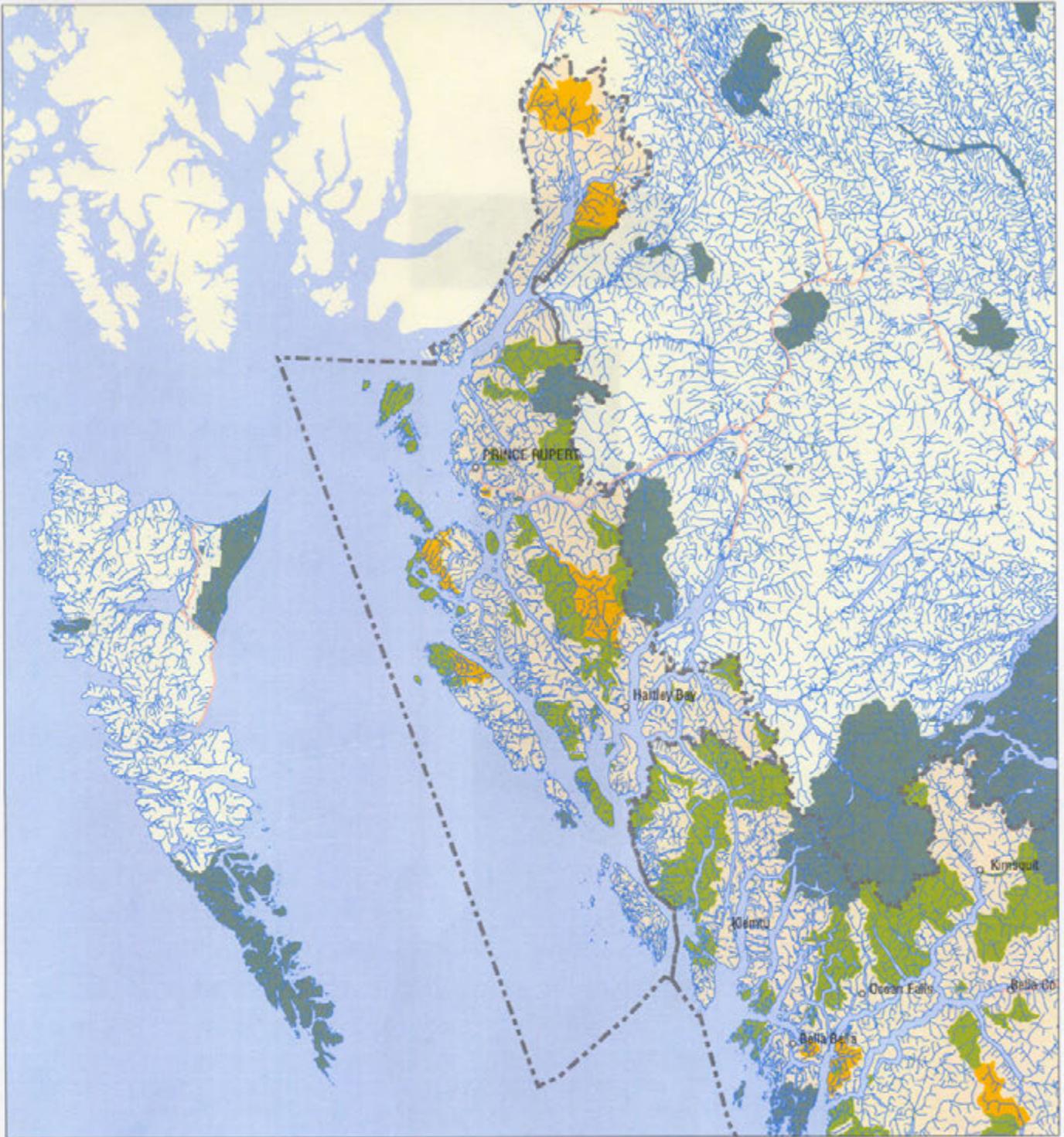
The Honourable Pat Bell

Date: APRIL 12/06



Witness

Attachment A - Kitsumkalum



- Existing Protected
- Protection
- Biodiversity (Tourism/Mining)
- Operating
- LRMP Boundary

Data Sources:

Basemapping, ILMB
First Nations Traditional Territory
Individual First Nations Land Use Plans
Statement of Intent Areas Database (ILMB)
http://maps.bcgov.ca/cbd/ntm/Ministry/min_main.jsp

Produced by Hillcrest Geographics



March 24, 2006

ATTACHMENT B

Land Use Zones, Designations and Allowable Uses

Land Use Zone		Purpose	Excluded Uses ^{1 2}	Potential Legal Designation ^{3,4}	Areas where Legal Designation may be applied
Protection	Ecological Reserve	Protect representative ecosystems and rare, special, unique natural phenomena	Commercial timber harvesting, mining, hydro electric, recreation and tourism	Ecological Reserve Act	Selected areas where primary conservation value is ecological representation or rarity
	Park	As above, plus integrate and balance tourism and recreation	Commercial timber harvesting, mining, hydro electric, industrial development	Park Act (Class A Park)	Selected areas where primary conservation value is ecological representation, ecotourism
	Conservancy	As above, with more flexibility for approving non-recreational uses, access development, and/or specific provisions not permissible under the Park Act	Commercial timber harvesting, mining, commercial hydro electric ^{5,6}	Park Act (Conservancy Amendment) Environment & Land Use Act	Areas with concerns about Aboriginal Interests, utility corridors and resource access, shellfish development, and/or alternative economic uses
Provincial Forest	Biodiversity Areas	Retain landscape in a predominantly natural condition, while also allowing specified resource extraction activities and access development	Commercial timber harvesting (commercial hydro electric may also be excluded in some areas) ⁷	Land Act/Land Amendment Act/ Forest & Range Practices Act	Areas of high ecological value or biological richness with a history of little or no commercial timber harvesting
	Management Areas	Integrate and balance extractive resource uses while protecting or sustaining identified resource values	No excluded uses. Specific objectives may be developed for management areas within these zones	Land Act/Land Amendment Act/ Forest & Range Practices Act	Areas not zoned as Protection or Biodiversity areas

¹ The CCLRMP, NCLRMP and this Kitsumkalum Agreement do not address or act to approve or prohibit offshore oil and gas.

² These Excluded Uses and any allowable uses may be dealt with in more detail in the applicable Protection Area Management Plan developed through Government to Government discussions.

³ Designation of Protection Areas will not limit First Nations claims of Aboriginal Rights and Title or First Nations traditional use activities in these areas, subject to conservation and public health and safety.

⁴ Prior to legal designation, Protection Areas will be subject to a detailed review to confirm precise boundaries and to confirm that they do not create any significant impediments to transportation access.

⁵ Small-scale hydro development may occur in Conservancies where such uses are associated with another permitted use such as a tourism development.

⁶ Tourism lodges may be allowed within Conservancies; adjacent water-based development may be allowed foreshore access to Conservancies; and critical access corridors for resource development in adjacent areas may be allowed through Conservancies.

⁷ Minor timber harvesting or small-scale hydro development may occur in Biodiversity Areas where these uses are associated with another permitted use such as a tourism development or mineral exploration and development.

ATTACHMENT C

Recommended Draft Management Objectives North Coast LRMP Government to Government Jointly Recommended Management Objectives By Kitsumkalum and the Province

These recommended Management Objectives are in addition to those already recommended by the North Coast LRMP planning table. Where a Management Objective below is different from one already recommended by the North Coast LRMP planning table, the Chief Negotiators for Kitsumkalum and the Province recommend to their respective principals that the Management Objective below be considered as an alternative.

AREA: BAKER INLET

Management Intent:

Provide for continued viability as a First Nations' Traditional Resource Use Area while permitting carefully planned resource development.

Objective	Measure/Indicator	Targets	Management Direction
Avoid impacts to trapping and trap trails	Impact on trapping areas and trails	Minimal impact	Work with First Nations during landscape level planning to design old growth reserves that include traplines and trails. Where harvesting on traplines and trails cannot be avoided, consider replacement options within old growth reserves.
Preserve cabin sites, campsites and other major First Nations' cultural features from development	Incidence of negative impacts on First Nations' cultural features, including gravesites, village sites, or other major cultural features	Minimal impact	Work with First Nations during landscape level planning to design old growth reserves that incorporate their major cultural features. Promote use of traditional ecological knowledge in landscape level planning, in collaboration with First Nations, to identify and protect these values.
Maintain the productive capacity of fish habitat	Presence of unaltered high-value fish habitat and adjacent riparian forest	Reserve high-value fish habitat and adjacent riparian forest from logging	Incorporate reserves into Old Growth Management Areas. Where no practical alternative exists, permit road construction according to DFO Guidelines.
	Future use of logging practices that damage marine fisheries values	Minimal impact	Undertake assessments of fisheries values, including traditional fishing sites, prior to approving helicopter logging drop zones, log storage, or log dumps.

AREA: PORT ESSINGTON

Management Intent:

Maintain historic cultural values of Port Essington, including a natural environment in the surrounding area, by establishing a Protection Area for the crown land portion.

Objective	Measure/Indicator	Targets	Management Direction
Maintain cultural heritage values within the Protection Area	Apply for National Historic Site Designation	Application completed by June 2006	<p>Undertake a feasibility study to determine the land status of Port Essington, the physical condition of buildings etc, and opportunities for conservation of cultural heritage values.</p> <p>Promote partnerships to manage his area with all First Nations and local government.</p> <p>Examine opportunities to purchase private land for cultural heritage protection.</p> <p>As a measure of applying for National Historic Site designation seek support of all First Nations and from local government and associated organizations.</p>
Promote cultural tourism	Include concept in application for National Historic Site Designation		

OTHER SITES:

Management Intent:

Important Sites for future Detailed Strategic Plans

Objective	Site	Value	Management Direction
Maintain the integrity of First Nations' traditional use sites and related cultural landscapes	Island Point (North end of Porcher Island)	Herring Egg Gathering Camp	Identify these sites in landscape level plans.
	Arthur Island	Harvest Camp (seaweed and kelp)	<p>Ensure any adjacent development considers these sites.</p> <p>Avoid damaging the sites or the values they are associated with.</p>