

Briefing Document

First Nations Forestry Council



Cultural Heritage Resources, Non-Timber and First Nations Woodlands Licenses

Sharing the Pen for Success of First Nations Communities

May 07, 2013



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INTRODUCTION

In 2008 the BC First Nations Forest Council (FNFC) submitted a Briefing Document to the BC Forestry Roundtable entitled “Non-Timber Forest Resources For First Nations in BC”.^{1, 2} This 2013 FNFC Briefing Document, rather than simply recreate the 2008 FNFC Briefing Document (which remains a valid core document in 2013), will address the current situation *in addition to* the issues which have been previously presented by the FNFC. One significant change that this 2013 FNFC Briefing Document assessment includes is the consideration of the First Nations Woodlands License³ (FNWL) that did not exist in 2008.

The critical time has come for the paradigm shift that is required for BC First Nations and the BC Ministry of Forests, Lands and Natural Resource Operations (FLNRO) to “share the pen” in developing frameworks and policies that directly and profoundly affect First Nations communities in all levels and phases of decision-making and management. “Sharing the Pen for Success of BC First Nations Communities” is required to meet our generation’s responsibility to the unborn generations of all life that moves and breathes and that depend upon healthy forests, lands, waters and people to thrive.

If we were to start with a blank page to write the story that the future generations will one day look back upon as the history of our times, what would we write on that page and this chapter and moment in time?

THE ISSUE

“We are very concerned about the survival of our community.”⁴ These poignant words speak for themselves as a stark reminder that First Nations and the Government of British Columbia are in a moment of time when the very survival of First Nations communities in British Columbia are in immediate jeopardy. Core to the survival of First Nations as distinct and unique peoples are the continuity of use and accompanying jurisdictional relationships to the cultural,

¹ The core issues and challenges identified by the FNFC in 2008 remain relevant for First Nations in BC. Therefore, the 2008 FNFC paper is incorporated into this 2013 document by reference.

http://www.fnforestrycouncil.ca/downloads/non-timber_forest_products.pdf

² The 2008 FNFC Briefing Document is also attached as an appendix to this 2013 FNFC Briefing Document.

³ http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20F%20--/Forest%20Act%20RSBC%201996%20c.%20157/00_Act/96157_03.xml#part3_division7.11

⁴ Input received from a First Nation representative at a FNFC “Cultural Resources and First Nations Woodlands License Policy Dialogue Session” on the Tseshaht First Nation Reserve near Port Alberni on March 7, 2013



social, ecological and economic use of forests, lands and natural resources within the Traditional Territories of First Nations in British Columbia (BC).

There is an intensified and urgent need for timely and substantive next steps to create effective and practical models and frameworks for the success of First Nations to develop and utilize assessments of lands-use related Cumulative Effects (CEs) and climate change impacts upon Cultural Heritage Resources (CHRs), Non-Timber Values (NTFVs), Non-Timber Forest Resources (NTFRs), and Non-timber Forest Products (NTFPs). These models and assessment tools need to be built utilizing the principles and integration of Traditional Knowledge (TK) as equitable knowledge and values systems⁵.

As investment into extractive resource development expansion occurs in BC (often with the financial support and political prioritization of the Crown), comparable funding support and prioritization of meeting the needs of First Nations to assess and adequately engage in consultation to fully identify and address adverse impacts upon Non-Timber Values and the exercise of TK and First Nations jurisdiction over their resources has not kept pace with the needs or the rate of expansion.

The continued and accelerated focus on economic development of raw natural resources and other activities impacting First Nations land-bases with the adverse impacts upon First Nations forest, land and natural resource interests, absent comparable capacity development within First Nations, has resulted in cumulative effects upon First Nations timber and non-timber interests that continue to be jeopardized. Such resources should be considered to be at high risk due in part to the lack of Crown recognition of and steps towards meaningful shared decision making roles required for First Nations to exercise Free, Full and Prior Informed Consent (FPIC)⁶ decisions as to the use of forestlands and genetic resources.

⁵ It should be noted that no attempt is made in this Briefing Document to define TK on behalf of the multitude of First Nations and knowledge holders in BC. The term TK in this Briefing Document will be used as a necessarily vague term that would include the knowledge and application of traditional laws and practices of jurisdiction, ownership of genetic resources and associated traditional knowledge, resource stewardship principles and aboriginal science.

⁶ The United Nations Declaration on the Rights of Indigenous Peoples, and the principles of Free, Prior and Informed Consent (FPIC) provides a higher level framework for building these needed relationships that are based upon the absolute recognition of First Nations peoples to be fully recognized as holding pre-existing title and rights to decisions impacting their traditional territories.



Forest management practices (i.e., the expanded use of fertilization, use of fire retardants, use of pesticides and/or herbicides) that are utilized absent considerations of the potential hazards of safety risks of consumption of cultural resources such as traditional foods and medicines (and potential impacts upon economic viability of NTFP products and selection of NTFR management sites) further challenges responsible decision making for the current and next generations.

The unknowns associated with these activities and the bio-accumulation functions of botanical species, some of which are used for traditional medicines, traditional foods, and/or NTFPs, potentially places communities at risk in terms of potential contamination and human and animal health of communities. This also results in a tangible loss of territory that could be utilized in development of NTFP as a potential economic development diversification option.

Additionally, the results of accelerated canopy closures and the forage needs of ungulates that First Nations depend upon (as inclusive First Nations definitions of NTVs and CHRs) also are areas of contemporary forest science that is in need of being guided by TK of First Nations traditional use knowledge holders.

Increasing CHR/NTFR potential contamination issues also arise from other natural resource industry activities that also exist, i.e., the potentials of leaching of heavy metals that have been held in the soils and rocks but that are now being exposed at levels not before seen in history due to mining and associated activities. Effects of energy development and exploration, such as the use of water for fracking, waste water disposal, and other energy and mining activities, also have unaddressed and identified unknown impacts upon forestlands CHR needs and uses in terms of both loss of land base and potential contamination issues.

Resource road management decisions, taken without the consideration of First Nations title and rights interests to access and abundance of cultural and non-timber values, also add to the growing list of adverse impacts that are cumulative creating adverse impacts upon First Nations community resiliency needs.

THE CONCERN

For First Nations CHR/NTV needs to be met, shared decision making that is equitably guided by how the impacted First Nation defines and views the resources, uses and impacts is a threshold requirement. From many First Nations' perspectives, the intrinsic and integrated values of healthy forestlands for successful long-term economic development of timber harvesting are



inseparable from the accompanying need of sustaining all non-timber values that communities depend upon for existence. “Timber Values” and “Non-Timber Values” are not mutually exclusive resource values. Forests need both trees and botanicals to exist. Ecosystem resiliency does not exist in isolation of relationships and therefore cannot exist in silos of management objectives.

Extractive timber management terminology and prioritization of timber volume based forest management approaches creates and perpetuates potentials for a conflicts-based or timber constraints-based management objectives. This continues to create artificial barriers to effectively applying TK relating to CHR/ NTV management outcomes which in many applications would actually assist in meeting future timber quality objectives of timber management.

Demonstrable cultural competency in forest lands decision making needs to be a priority in working with respective First Nations communities in BC as relates to CHR/NTVs. This requires an awareness that holders of TK/NTVs practitioners often do not function in “official capacity” roles of forestry management or economic development. Framework development that is designed to specifically be inclusive of TK/NTV practitioners as equitable decision makers is required to meet the “on the ground” objectives and benefits to First Nations communities.

A similar dynamic also exists when relying upon academic studies on cultural resources and/or non-timber as often the lead researcher was not a TK holder or actually engaged in the NTFP business sector but was filtering knowledge through the lenses of academia, NGOs, or western science-based approaches. This “observer” “subject matter” or “project funding based” approach inevitably produces outcomes that views the holders of the knowledge, the community or the NTFP sector as an “object” of study to be validated without consideration that the knowledge and/or experiences are in and of themselves valid.

This not only creates scenarios where the intellectual property interests are exposed to the high risks of exploitation and contravenes long-term capacity building interests of First Nations. This also creates bodies of knowledge that are often relied upon that are not the “best source” of information when working within specific scenarios in specific First Nations Traditional Territories. The existing knowledge of First Nations peoples, and the investment into continued capacity building of First Nations, is a priority that continues that must be addressed for the success of First Nations communities.

Thought processes and world views that hold culture, language, history, economics and social aspects of a community as intrinsically linked with all resource values, and as being mutually inclusive, are required to sustain an abundance-based and access-based approach for CHR/NTV



objectives. This world view recognizes that timber stand level and landscape level views are needed to meet both timber and non-timber resource values such as cultural, spiritual, ceremonial, social, recreational, hunting, trapping, fishing, medicines, traditional foods and/or socio-cultural-economic benefits (such as weavers, carvers, wood for smoking of fish, firewood for home heating and ceremonies, revenues from timber harvesting, silviculture practices, etc.)

The need for the recognition, inclusion and development of a larger body of knowledge to inform land use management decisions that is First Nations based and led continues to be an unresolved challenge due to funding constraints imposed upon First Nations researchers and sector practitioners. To meet specific First Nations needs the appropriate support required to address specific circumstances must be identified and directed by the impacted community.

First Nations led and directed capacity building (with meaningful, substantive and appropriate support from government) is needed to reach liveable wage economies that are essential for First Nations to derive social and cultural benefits from natural resources within their respective traditional territory. Shared decision-making, co-management in traditional territories, equitable positions in policy development, cumulative effects of resource utilization and climate change, built upon solid foundations of robust incorporation of Traditional Knowledge as equitable knowledge and values-based management would provide this way forward.

FIRST NATIONS WOODLANDS LICENSE

The legislative creation of the First Nations Woodlands License (FNWL), although a step forward in partially addressing the issues presented in the 2008 FNFC Briefing Document, cannot be interpreted as being capable of meeting Crown obligations of recognizing First Nations title and rights interests in 100% ownership of all genetic resources within their respective traditional territories. Having stated that, the FNWL would potentially be capable of partially meeting the CHR/NTV needs of First Nations communities provided that the First Nation has a “shared pen” in development of appropriate policy and management for CHR/NTVs that meets their needs while also providing for an economically viable timber harvest volume.

The absence of formalized CHR/NTVs “policy” or “regulation” asserted by FLNRO is a benefit to the development of the FNWL options of management since there are no prescriptive limitations or pre-existing legislative or policy barriers to creating success for First Nations and the BC Crown in meeting First Nations community needs as relates to CHR/NTVs.



There are areas within the existing FNWL Agreement template and accompanying that do need further “shared pen” development and that should be considered as priority areas to address as relates to CHR/NTVs. These include the following as examples:

DETERMINING THE AREA OF FNWLs⁷

This section clearly bases the selection of FNWLs on a timber volume based AAC model. Recognizing that exclusive timber harvesting rights of the First Nation is recognized in this Agreement, and that there needs to be a starting point for area selection, this AAC based model cannot be considered in isolation of management options of other CHR/NTVs that would also meet the needs of the First Nation.

In moving forward with the implementation of the FNWLs for First Nations that choose to incorporate other CHR/NTVs into the management plan there will be a need to reconsider how meeting all needs of a First Nations communities within the context of the FNWL will be accomplished that meets the financial and economically viable timber sector while also supporting successful management for other NTVs that are anticipated to be identified by First Nations communities.

AREA SUITABILITY⁸

Conflicts between crown range tenure holders and management of CHRs/NTVs must be resolved in the favor meeting First Nations title and rights interests of unextinguished ownership of 100% of all genetic resources within their respective Traditional Territory.

Additionally, First Nations selecting areas for CHR/NTVs areas that have been impacted by grazing should also be supported with capacity and funding to restore ecosystems that have been impacted by range use, i.e., restoration of riparian areas, invasive species, restoration of native plants, etc.

RESEARCH⁹

Limiting definitions of acceptable research to specifically “universities or research institutions” is a barrier that needs to be, and can be, eliminated by removal of this overly restrictive language. This restriction effectively alienates and entirely disenfranchises the equitable knowledge values of TK from being utilized in research relevant to First Nations.

⁷ Re: Public Version Forest Tenures Opportunity Guidelines, Updated December 16, 2011, Section VII H, page 5 (The Guidelines document is attached as an Appendix to this FNFC Briefing Document)

⁸ Re: Section IX d iv, supra at page 7

⁹ Re: Section IX j, supra at page 8



This socially and culturally biased-based definitions further act as a prescriptive barrier, and infringement upon self-governance and self-determination, for First Nations desiring to develop management practices research and/or resultant NTFPs via research collaboration with existing sector industry groups. This language is also a barrier in sharing and building upon existing First Nations research capacity to support the success of FNWLs in other First Nations communities.

This approach further entrenches the issue that was identified as a need to be resolved in the 2008 FNFC Briefing Document where the bulk of funding into CHR/NTFR/NTFP had been awarded to a select few academic institutions and/or researchers that deprived First Nations the ability to develop their own research questions and assemble research teams with the skill sets needed to meet a particular First Nation’s needs.

Further and continued disenfranchisement of First Nations from developing research capacity and/or participating in equitable funding distribution (and/or the creation of funding dedicated to First Nations) cannot continue to be supported by the Crown for success of First Nations communities.

This section should be amended to read: “FNWLs should be considered for First Nations who commit to doing research (as determined to be appropriate by that First Nation to meet their needs) regarding traditional use, cultural practices, and/or the management of non-timber forest resources.”

RECOGNITION OF RIGHTS¹⁰

Section 1.02(c) of the Template states a grant of “the right to harvest, manage and charge fees for botanical forest products and other prescribed products as listed in Schedule “C”, from Schedule “B” Land.”

Reaching collaborative solutions that would meet First Nations needs to thrive, and in some situations, to continue their very existence would be met by Crown recognition that First Nations title and rights are pre-existent and unextinguished. This is a needed step to move beyond the perpetual potentialities of conflict generation language such as the “granting of rights to First Nations” from the Crown. These First Nations interests already do exist and have existed since time immemorial.

It is especially important to note that the language of policy and legislation affecting First Nations interests in all resources within their traditional territory are not rights “granted” to the

¹⁰ See: FNWL –Version 1.03.doc, July 4, 2012 p 4 (Attached in Appendix)



First Nation by the Crown governments, but are more appropriately rights that are “recognized” by the Province of BC in natural resource management decisions. As in the 2008 FNFC Briefing Document, BC First Nations assert 100% ownership of all genetic resources and associated Traditional Knowledge within their respective Traditional Territories.

The reconciliation of language and terms to remove resource-based conflicts is needed to move towards shared-decision and co-management of natural resources. Further to the language in this section is the lack of consideration of a First Nation so choosing to exercise the “exclusive” jurisdiction of management of genetic resources within the FNWL (and by extension within their Traditional Territory). This option should be available and considered in consultation on the FNWL when such desire is of importance to the First Nation in management of the FNWL.

MANAGEMENT PLAN

Botanical Forest Products¹¹ inventories as a management plan requirement would need to be done in consideration of capacity, cost efficiencies, proprietary ownership of TK, respect for cultural protocols unique to each First Nation. Such an inventory needs to be cognizant of realistic expectations and barriers such as the costs associated with forest management planning, how this would be auditable within the capacity of the First Nation and auditors for FMWL compliance monitoring, and the challenges of information gathering that would be required to effectively know the end use of utilized resources within a working forest environment by forest planners.

Similar challenges and considerations also exist for the actual and realistic ability of a First Nation to collect auditable data on the “rate of harvest of botanical forest products and other prescribed products listed in Schedule “C”. This requirement also raises concerns as to the proprietary nature of potential NTFP commercialization utilizations by First Nations businesses and/or member practitioner-based utilization. This barrier (and perception of community-level intrusiveness by the Crown) would likely work against the goals of a FNWL to provide a First Nation the area-based management options to meet multiple needs of a First Nation community.

Management plan development of botanical species would also need to be guided by the levels of concerns and/or benefits contemplated for consideration by each First Nation. The information needed for varying degrees of botanical species management plan development and operational implementation would need to be determined by the First Nation.

¹¹ Section 6.02 (c)(ii) “as described in the FNWL Template states “for botanical forest products and other prescribed products listed in Schedule “C”, FNWL –Version 1.03.doc, July 4, 2012 p 9



The level of management required would also be dependent upon that First Nations concerns for mitigation of potential adverse impacts upon botanical species within the FNWL area. Additionally, extreme caution creating a threshold of management of botanical species in terms of the investment required to develop the plan, monitoring and auditable record keeping costs as compared to the return on investment would need to be a guiding principle in the application of this section.

The roles and responsibilities of shared-decision making with the First Nation and FLNRO, as to the design and implementation of monitoring and enforcement, are also considerations that would require consultation with each First Nation in developing this section of the FNWL. This would need to take into consideration the level of management required and capacity building needs to support meeting the First Nation's desired outcomes during the life of the FNWL.

Further to the viability of the FNWL as a whole, since the initial area is chosen based upon an AAC formula, the development of a CHR/NTVs management plan that could potentially constrain harvestable timber areas would require an adjustment in the AAC of the FNWL. The Crown would need to be willing to adjust the area boundaries to include additional timber volumes to maintain the economic viability of the timber harvesting component of the FNWL. Adaptive management in FNWL management areas selection is required in order to not create conflicts of management objectives in a license that was developed to work towards meeting unique First Nations' needs. A Crown commitment to adaptive management would work towards supporting the success of the FNWL tenures.

CHR/NTVs POLICY FRAMEWORK

The "blank page" of FNWL policy is an extreme advantage to First Nations and the Crown. This is an advantage that should be utilized to the fullest extent to "share the pen" in designing these licenses for a trajectory of success.

As stated, the FNWL is not able to address the issues of Crown obligations for the entire Traditional Territories of First Nations in BC. The FNWL, if approached with a success orientated mindset, could potentially be used to develop broader policy matters that have previously not been able to move forward in shared-decision making, co-management and recognition of First Nations title and rights interests.

The recognition of TK as an equitable knowledge and values systems would also help clarify the roles and limitations of the application of existing western science body of knowledge that exists in forestry to meeting the needs of First Nations.

The page is blank and with a shared pen success can be written.

RECOMMENDATIONS

1. First Nations Regional and Provincial Level Workgroups

First Nations have collaboratively worked together in addressing issues of common concern and interests regarding CHR/NTVs in numerous regions in BC. This work has largely been unfunded by government and as such the government is not aware of or able to benefit from the mass amount of knowledge that exists within First Nations communities.

Additionally, this lack of funding has also deprived other First Nations from benefiting from the knowledge, lessons learned, and successes of many First Nations entities in these specialized forest sector communities of knowledge.

This Regional model, with provincial wide collaboration and information sharing, are essential to moving forward on the issues that continue to exist in policy and business development of First Nations in non-timber sectors of management and products. Funding support should be provided to build upon this success of First Nations engaged in this sector.

2. Establishing Pilots in FNWLs

Establishing pilots in FNWLs that would inform policy development and create operationally tested extension materials and guidelines are essential for supporting the success of the FNWLs. These pilots would also be able to better explore practical and efficient methods of meeting CHR/NTVs in other forest tenures that exist in BC.



APPENDIX SECTION

Briefing Document First Nations Forestry Council

BC Forestry Roundtable

Non-Timber Forest Resources for First Nations in BC

November 6, 2008

First Nations Direct Award Forest Tenure Opportunities Guidelines

Updated December 16, 2011

FNWL –Version 1.03.doc

July 4, 2012



**Briefing Document
First Nations Forestry Council**

BC Forestry Roundtable

**Non-timber Forest Resources
For First Nations in BC**

November 6, 2008

Non-timber Forest Resources Briefing Note

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Introduction

As First Nations, we believe there exists inseparable and eternal relationships between the cultural, social, spiritual, ceremonial, language and economical trade rights of our peoples, communities and families to the forests and lands. These relationships of place and forest resource utilization are distinctly unique among the culturally diverse mosaic of the First Nations in British Columbia.

A vibrant and healthy bio-diverse abundance of non-timber forest resources is necessary for the current and future vitality of First Nations. Aboriginal rights and title jurisdiction, shared decision making, and co-management of these resources must be extended into forest practices for the continued existence of First Nations unique historical and contemporary relationships and needs in forest management and utilization.

The Issue

First Nations have utilized forests for a variety of purposes that in contemporary times have been defined as non-timber forest resources (NTFR), non-timber forest products (NTFP) and/or cultural heritage resources (CHR) by forest resource managers, researchers and forest practitioners^{1, 2}.

The absence of legislative and policy direction that incorporates First Nations values and priorities and reflects our continuing rights regarding NTFR has resulted in a situation in which the cumulative impacts of timber management practices, industrial land use development, climate change, and promotion of NTFP as an economic diversification tool threatens resources within First Nation's traditional territories.

The neglect in conducting the due diligence required in recognizing aboriginal rights and title for the development of appropriate resource management instruments as it relates to NTFRs is exacerbated by the BC Provincial and Canadian Federal Government's investment into developing NTFPs as economic development drivers to meet increasing domestic and global marketplaces of natural health products, bio-chemicals, bio-fuels, carbon sequestration, pharmaceuticals, floral products, and wild foods.

By making investments into developing a forest industry sector economy that engages in a global market economies of scale, without working with First Nations in developing adequate management controls that incorporate Aboriginal interests and being mindful of cultural and governmental relationship protocols, the result has been the deliberate expansion of an unmanaged commercial industry sector in which the irreversible adverse impacts escalate and affects First Nations well-being and reliance upon these traditional foods, medicines and economic resources while also threatening the vibrant bio-diversity of the forest landscape.

More pointedly, it is our opinion that the Provincial and Federal Governments are failing in their duty to consult, accommodate and obtain our consent in the development of its policies. In the end, this circumstance will create a legal and regulatory uncertainty for flawed policies.

¹ BC *Forest Act* define these broad categories as "special forest products" and/or "botanical".

² Duchesne, L. and Wetzel, S. 2002. Managing timber and non-timber forest product resources in Canada's forests: Needs for integration and research. *Forestry Chronicle* 78(6):837-842; Turner, N and Cocksedge, W. 2001. Aboriginal Use of Non-Timber Forest Products in Northwestern North America: Applications and Issues. *Journal of Sustainable Forestry* 13(3/4): 31-57.

Non-timber Forest Resources and Products

Challenges of Definition

Non-timber Forest Resources and Products have been defined by various researchers, resource managers, and by domestic and global economic development initiatives. Originally intended to distinguish fibre or wood based products, from “non wood”, “non-fibre” or “non-timber” products, these definitions do not embody the context of First Nations’ communities nor the evolving industry and forest community economies. First Nations have had little to no involvement in defining these terms and, as a result, they do not reflect the integrity of our cultures, practices and traditions.

The distinction, for the purposes of this Briefing Note, between non-timber forest resources (NTFRs) and non-timber forest products (NTFPs) is that the “resources” are perceived to exist in the forest and the “products” are the derived benefits from forest resource management practices.

Further complicating the definition of what is a non-timber resource or product is that under current Ministry of Forests and Range interpretations such resources are considered cultural heritage resources if there is not a commercial utilization of the resource and that are of continuing importance to a First Nation. The management of these cultural resources are required in Forest Stewardship Plan (FSP) submissions for referral yet do not require a long term management objective beyond the FSP management strategies and outcomes.

Community Forest Tenures provide a cursory nod at non-timber resource management objectives but provide no specific long-term management outcomes to meet the generational needs of First Nations. Nor does this tenure option account for the management of the abundance of species (biodiversity) deemed to be of a potentially higher management concern to affected First Nations. This tenure is also inadequate for the protection of Aboriginal rights and title interests in non-timber resources as not every First Nation has access to this option. Those that do must work in partnership with stakeholders with varying interests and capacities and the license does not cover the entire traditional territory in which First Nations members continue their cultural practices, including economic development. Further to this, traditional land-use systems are not addressed in any existing legislation.

Neither the forest planning processes nor Community Forest License provides a mechanism to prohibit commercial exploitation of these resources should such development conflict with aboriginal rights and title. As decision-making models, the existing forest development practice does not accommodate for an appropriate range of management options such as culturally appropriate development strategies and landscape distribution sensitivities (e.g. local scarcity).

Cultural competency related to the definition of non-timber forest resources and products outside of a First Nations context can be seen when applying the existing definitions to the example of a First Nations carved cedar mask. On one hand the mask can be viewed as a forest product and on the other as a non-timber forest product and/or cultural heritage resource. A cedar block when used to make the mask, is defined in the *BC Forest Act* as a “special forest product.” This example illustrates that the existing definitional challenge exacerbates complexities when trying to manage forest resource options for multiple generations of First Nations individuals and communities, whether for cultural use or engagement in historical and/or contemporary trade economies.

Emerging interests in bio-energy and/or bio-chemical processes utilizing wood derivatives further expand the scope of non-timber resource utilization. A case in point is the distillation of wood chips and/or conifer needles for making essential oils. This product is viewed as non-timber, although the relationship between timber management (in situ resource) and fibre utilization is clearly linked. The non wood or non-timber construct makes it difficult to distinguish between other uses of aboriginal traditional territories such as wilderness retreats, campgrounds, hiking, hunting, fishing, bird watching or other forest utilizations captured under the broader term of eco-tourism.

The cultural context of non-timber resources may include values such as spiritual sites, medicinal and traditional foods gathering areas or social health aspects of recreation or physical fitness. Traditional foods and medicines subjugated to a cultural resource management objective may also be subject to a NTFP development initiative that creates a market for raw products therefore increasing the likelihood of exploitation of certain species for the natural health foods or health products markets.

A conceptual framework must be developed that adequately addresses the unique values and cultural relationships for each First Nation. This framework must incorporate First Nations' self-determined definitions of non-timber forest resources that are understood and acknowledged in the management practices in the context of the First Nations meaning and relationship. Science based methodologies and standards, although useful to the extent these sciences are compatible with community values, goals, decision making and traditional ecological knowledge, have limited impact on informing policy and practice that incorporates multiple resource values with societal relationships and functions that enable communities to co-exist and depend upon forested lands.

The continued assertion that the complexity of defining non-timber forest resources, and thus management, create institutional bias and reluctance to work with First Nations to develop an appropriate policy framework that provides for resource shared decision making and co-management planning that includes resources that have both a cultural and/or economic basis.

Non-timber Forest Resource Management

The absence of a shared decision-making framework that incorporates a wide range of forest resources has resulted in the development of industry sectors that have the benefit of commercial use of traditional territories without adequate consultation and accommodation. First Nations are therefore not fully informed of the extent of the non-timber commercial development. This not only deprives the First Nations of the ability to meaningfully and knowledgeably manage resources to meet continuing and future cultural resource needs, but also deprives the First Nations of being able to make informed decisions regarding potential adverse impacts in their lands or to be able to make informed decisions as to the economic viability of developing socio-economic benefits for First Nations communities.

By refusing to recognize and acknowledge through legislation and regulatory regimes that aboriginal rights and title intersect with non-timber resource extraction and management the Crown has enabled the non-timber industry to escape the referral processes required of all other resource sectors.. It is in this way that provincial forestry legislation fails to prevent infringement on Aboriginal rights and in some cases deny the exercise of those rights in relation to the use of non-timber forest resources, Concomitantly, the lack of reconciliation on this important issue limits the ability of First Nations' businesses to benefit from market opportunities and to potentially co-manage resources for the higher values derived from long-term strategic forest resource management.

Case Study: Damage to timber from evergreen bough harvesting

In 2005 the Compliance and Enforcement Branch of the Ministry of Forests and Range's South Island Forest District (SIFD) on Vancouver Island documented damage to young standing trees from the harvesting of Christmas season evergreen boughs for the floral industry. This problem had been identified in other forest districts and was unsuccessfully addressed at various times in the past ten years via trial permit systems.

Although pruning of young trees is considered a best practice standard for stand tending, the pruning techniques utilized by the NTFP industry documented by the SIFD damaged the value of future timber in that stand. In this particular case, the pruning techniques employed killed some of trees that had been harvested for the Christmas greenery bough market.

When viewed through the lens of integrative management, the intentional management for non-timber resources works in conjunction with forest management best practices, i.e. the pruning of trees (and eventual spacing of these free growth stands) provides outcomes not only for economic opportunity but also works towards a longer term goal of managing stands that are more productive while increasing the abundance of additional non-timber resources such as berries, mushrooms, medicinals, and other traditional foods.

By recognizing non timber management as a forest management practice the benefits beyond timber value enhancement would also include the potentials for meeting future cultural resource needs, such as providing better cedar trees for cultural uses such as cedar bark and a clear wood cedar supply for canoes and carvings.

The policy and legislative frameworks for integrating such management regimes to meet long term objectives that would directly benefit current and future First Nations needs are lacking.

The SIFD, in collaboration with a Tseshaht tribal member owned business First Nations Wildcrafters, BC, is moving forward with a pilot project that attempts to integrate multiple-use management practices. This project also works towards developing best practice standards for training NTFP harvesters in proper pruning techniques.

This pilot, although moving a step towards integrating non-timber management, does not address the underlying issues associated with the shared decision making and/or co-management of lands and resources at the scale of traditional territories and begs the larger question to be answered as to whether or not First Nations have an affirmative right to pro-actively manage non-timber forest resources to meet current and future community needs.

Forest Practices

Integrating NTFR objectives into forest practices would increase the economic yield per hectare of forest lands in sites suitable for intensive non-timber resource management. This integrated management outcome would have ancillary benefits for not only economic diversification of First Nations forest communities but also provide for local food and medicinal security, a continuum for language and cultural practices, and enhancing forest health and biodiversity. This type of management is extremely compatible with Ecosystem Based Management models and would provide for the application of aboriginal rights and title interests to land as relates to co-management of forests for future generations needs.

NTFR and NTFP Research

There has, and continues to be, strong support of NTFR and NTFP research in BC. A case in point is the support of the BC Forest Investment Account (FIA) Forest Sciences Program (FSP) for research on NTFRs. However, the majority of the research funding on the topic of NTFR and NTFPs under this program has been allocated to one institution through a competitive proposal process. As First Nation and First Nation organizations work towards collaborative policy development frameworks on topics of mutual interest, there is a need to strive for a balanced view approach to research informing these processes.

In order to achieve balance, space must be created for Aboriginal researchers to develop and implement methodologies that 1) recognize and are respectful of the relationship First Nations have with NTFRs and 2) meet the needs of First Nation businesses and organizations working with government and industry to resolve the existing policy/regulatory gap that exists in BC legislation.

The Non-timber Forest Product Economy

First Nations have always engaged in a NTFP economy. The harvesting of forest resources for edibles, medicinals, structural, transportation, and cultural integrity uses has existed as part of the trade economy prior to contact and continued to be exercised and utilized to the current day. What has changed, and is termed as the “emerging” non-timber economic development tool, is the awareness of the non First Nations communities of the wealth of resources in the First Nations traditional territories that have found a domestic and global market.

The result of Crown investment into research directed towards creating economic diversification has to a large degree contributed to expansion of competition for forest resources to meet these market demands. Research focused on sustainable yields and/or market development of NTFPs has not taken into account the cumulative impacts of the bio-system as a whole nor the potentials for adverse socio-economic impacts upon First Nations communities whom depend upon these same resources for sustaining their livelihoods and traditional protocols.

By creating a “cart before the horse” approach our nations interests have not been addressed nor protected when research and feasibility studies have fuelled the fire for market demands upon our resources without a clear consent and demonstrable benefit to the First Nations themselves or acknowledgement of the aboriginal rights and title, shared decision making, and co-management interests.

Economic benefit and market opportunities exist and may be particularly well suited for First Nations communities who choose to engage in such economic diversification and/or choose to integrate such considerations into land use plans and/or economic development strategies. First Nations, in the current policy and practice scenario, are excluded from the ability to be represent their own rights, interests, hopes, aspirations and concerns at the planning and regulatory level where higher level policy development and/or land use planning takes place.

Being left out of the loop on the higher level planning also creates a situation where funding for studies, pilot programs and/or industry development initiatives flows directly to entities not connected to BC First Nations. As a result, capacity building is accomplished outside of First Nation communities which are themselves the most impacted by and the least likely to derive the greatest benefit from industry sector development and research. This fuels the “genie out of the bottle” dynamics of exploitation of resources outpacing First Nations aboriginal rights and title and enjoyment of these resources and development opportunities.

The Concern

1. Provincial forestry legislation fails to prevent infringement on Aboriginal rights and title in relation to the use of non-timber forest resources,

British Columbia's timber orientated legislative regime is inadequate for ensuring that Aboriginal rights are not infringed upon or denied during the development of non-timber forest resources (*Tsilhqot'in Nation vs British Columbia*). A regulatory regime to address the procedural requirements associated with the management of NTFRs and NTFPs does not exist. This severely limits the ability of government and First Nations to negotiate appropriate accommodation measures and reconciliation processes. As long as these policy gaps exist questions remain about how the province intends to ensure that First Nations are meaningfully engaged in and benefiting from the emerging market of non-timber forest products while protecting the access to and abundance of cultural resources.

2. First Nations must be a part of Non-timber Forest Resource Management Discussions, Decision Making and Management Roles

As First Nations, we have been largely left out of the development of NTFR and NTFP discussions, decision-making and resource management roles. This is unacceptable and actionable. As First Nations, we have rights and entitlements to a significant portion of the land base in BC, as has been shown in precedent setting court cases such as *Tsilhqot'in Nation vs. British Columbia*. The BC Supreme Court affirmed that the Xeni Gwet'in have aboriginal rights, titles and interests to over half of their territory. We believe that this compels the province as it moves forward with its forest resource strategies to ensure that our nations are significant players in emerging non-timber forest product markets and active as partners in decision making of non-timber forest resource management.

3. Uncertainty from lack of and conflicting regulatory framework

To develop any resource based economy forest management tools must be in place to assess and monitor harvested yields of raw material as well as being able to manage for future yields. The absence of decision tools denies First Nations the ability to manage for commercial economies of scale on a long term basis. This prevents the due diligence of business management to be done that is required for determining investments, human and forest resources development, processing and manufacturing equipment investment needs, and marketing analysis and strategies that are needed for a successful economic and socially sustainable non-timber enterprise.

Crown policies that mandate the management of cultural heritage resources while making no provisions for the actual management of those same resources that are often also used for commercial purposes, creates conflict amongst interest parties. The management goals of one cannot be met without developing shared decision making and co-management mechanisms that encompass all commercial impacts upon these resources.

4. NTFR and NTFP monitoring and must be developed in a timely manner

As First Nations forest community economies are displaced by a variety of forces (e.g. the climate change seen in the Mountain Pine Beetle epidemic, the decline in fisheries, mills and logging), the need to assess and manage non-timber resources to and develop protective measures as well as marketable products is paramount for First Nations who may choose to engage in this economic forest diversification sector.

The continued structure of commercial utilization of non-timber resources in First Nations traditional lands and territories with no regulatory or policy framework to protect and affirmatively acknowledge aboriginal rights and title interests or that provides meaningful economic participation and demonstrable benefits for First Nations must be addressed.

The Solution

In the short-term (12 months):

- Recognition that First Nations retain rights, title and interests to one hundred percent of non timber resource values within our respective Traditional Territories.
- Provide funding for First Nations to lead the development of cross-cultural competencies regarding the use of NTFRs by First Nations people.
- Facilitate the inclusion of First Nations representatives in all provincially focused NTFR and NTFP research and regulatory discussions.
- Set aside research funding for the exclusive use of First Nations to self-determine research needs as they relate to the development of NTFRs.
- Expand the scope of resource based accommodation agreements to include the management of NTFRs and provide mechanisms for the inclusion of NTFR management in existing resource-based accommodation agreements.
- Assist First Nations with a provision of funds for the development of regional NTFR discussion forums that would facilitate extension and learning opportunities.
- Make long term, area-based forest tenures available to First Nations to create greater investment certainty in the non-timber forest product sector.

In the long-term (13-24 months):

- Facilitate the co-development of a regulatory regime between government and First Nations that recognizes, reconciles and prioritizes Aboriginal rights with respect to access and use of NTFRs within First Nation traditional territories.
- Create access and benefit sharing agreements based on shared decision making authority.
- Funds ought to be made available to First Nations to explore NTFR harvesting certification options and means of monitoring harvest impacts appropriate to First Nations management concerns.

First Nations Direct Award Forest Tenure Opportunities Guidelines

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First Nations Direct Award Forest Tenure Opportunities Guidelines

I. Introduction:

In March 2009, The Working Roundtable on Forestry report recommended First Nations should become full partners in the forest sector. A key ministry action in meeting this recommendation is by providing access to forest tenure opportunities through interim measures agreements.

II. Forest Tenures

Tenure is the mechanism by which the government authorizes harvesting rights to use Crown, or public, forest and range land and resources. First Nations, private forest companies, communities and individuals gain the right to harvest timber in public forests through tenure agreements with the provincial government. A forest tenure can take the form of an agreement, licence or permit. Each is a legally binding contract that provides the contract holder with specific rights to use public forests over a specific period of time, in exchange for meeting government objectives, including forest management obligations and the payment of fees including stumpage.

New opportunities for forest tenures are usually available through a competitive bidding process. In some cases, forest tenures may be awarded without advertising or inviting applications (direct awards) from First Nations for interim measures purposes.

For more information on forest tenures please refer to the publication titled “Forest Tenures in British Columbia” located at <http://www.for.gov.bc.ca/ftp/hth/external!/publish/web/timber-tenures/timber-tenures-2006.pdf>

III. Forest Tenure Opportunity Agreements (FTOA)

In accordance with the *Forest Act*, First Nations may be awarded forest tenures without competition, as part of an interim measures agreement, treaty related measures agreement or economic measures agreement. In the past, this was accomplished through Forest and Range Agreements and Forest and Range Opportunity Agreements (FRA and FRO) and through stand-alone agreements such as Mountain Pine Beetle Agreements, and other direct award agreements.

The FRO and FRA are being replaced with a Forest Consultation and Revenue Sharing Agreement (FCRSA) and this new agreement will no longer include direct award of forest tenure opportunities. Forest tenures will now be awarded in Forest Tenure Opportunity Agreements (FTOA), satisfying the requirement for interim measures agreements within the *Forest Act*. Two versions of FTOAs are available depending on the type of forest tenure:

- FTOA “A&B” – non-replaceable and replaceable volume based forest tenures (i.e. forest licence, forestry licences to cut)
- FTOA “C” – replaceable area based forest tenures (i.e. First Nations Woodland Licence)

The FTOAs include language acknowledging that the direct award of the tenure supports the reconciliation of aboriginal rights and title and assists to help First Nations meet the goals and objectives of the Transformative Change Accord. The FTOAs also describe important features

of the tenure, such as its location (if applicable), partnerships, specific licences that may need to be surrendered prior to the award of the new tenure, and other terms and conditions.

Forest tenures that have been issued as part of FRAs or FROs, whether the FRA or FRO has expired or not, continue to be in force in accordance with the licence agreement.

IV. FTOA Mandates and Approvals

In the following circumstances, FTOAs will require prior mandate approval prior to negotiations with First Nations:

- First Nation Woodland Licences;
- Community Forest Agreements and Woodlot Licences;
- Replaceable Forest Licences;
- Non-replaceable licenses using allocations of Mountain Pine Beetle uplift volumes available during a given time within a particular management unit (Timber Supply Area or Tree Farm Licence);
- Non-replaceable licenses using major licensee unused volumes (undercut and uncommitted volumes); and
- Any licenses associated with Treaties, Reconciliation Agreements, or Interim Treaty Agreements.

During the implementation of the Forest Revitalization Plan, over 2.4 million m³/yr of replaceable allowable cut was obtained from forest companies and allocated to certain First Nations. These allocations can continue to be offered, subject to apportionment decisions within respective management units.

The Minister will approve mandates for First Nation Woodland Licences (FNWLs) and Community Forest Agreements (CFAs). The Deputy Minister will approve all other mandate requests.

Following the approval of a mandate and a successful conclusion of a negotiation, the FTOA will be signed by the First Nation and forwarded to the by the Minister of Forests, Lands and Natural Resource Operations for approval.

V. Tenure - Revenue Sharing Linkages

The FCRSA is an agreement with First Nations that provides for a share of forest revenue from forestry operations within a First Nation's territory. A component of this new revenue sharing approach includes a share of stumpage paid from certain direct award licences issued to First Nations subject to a number of conditions:

- The First Nation must be eligible to sign a FCRSA;
- The portion of the licence stumpage will be shared proportional to the Bill 28 Allowable Annual Cut (AAC) allocation for each First Nation from Forest Revitalization unless mandates have been approved by Ministry of Aboriginal Relations and Reconciliation (MARR) to share stumpage in excess of these allocations.

- Eligible forest tenures must be appraised through the Market Pricing System (MPS). Thus, licences appraised with tabular rates (Community Forest Agreements and Woodlot Licences) are not eligible for revenue sharing.

VI. First Nations Woodland Licence

On June 8, 2011 the First Nations Woodland Licence (FNWL), became an area based, long term forest tenure unique to First Nations' interests in the land and resources. It includes the opportunity for the protection of traditional use practices, the harvest and management of non-timber forest products, and other potential future benefits if approved through future regulation. Unless otherwise approved, FNWLs will now replace CFAs and Woodlot Licences (WLs) as the preferred area based forest tenures available for First Nations.

However, the FNWL may not be the best fit in all situations. The FNWL will require both a strategic plan (e.g. management plan) and an operational plan (e.g. forest stewardship plan or a woodlot licence plan) and some First Nations may not be interested in undertaking this level of planning. Also, locating areas for these tenures will take a number of years to implement. In some situations, a replaceable forest licence might be more appropriate than a FNWL.

While the ministry and First Nations begin to move forward on the new FNWL, ministry staff have the ability to use current forms of volume based forest tenures. To improve these opportunities, licence terms may be longer than five years so long as the ministry is satisfied that there is sufficient allowable annual cut, and adequate timber supply in available operating areas.

VII. First Nation Woodland Licence Considerations

A. FNWL Eligibility

All First Nations are eligible for a FNWL, if they sign a FTOA, and if there is a source of replaceable AAC, and available operating area. However, unless otherwise approved by MARR, only First Nations who have a source of Bill 28 AAC from Forest Revitalization and can sign an FCRSA, can participate in the revenue sharing feature of this licence.

B. FNWL Term

Unless otherwise approved by the Minister, the FNWL term will be 25 years.

C. Expansion Plan Pre-Assessment

It is recommended that ministry staff undertake a scoping exercise to determine which First Nations could be considered for a FNWL. Doing so will help prioritize efforts where government objectives would be achieved, improve chances of success, ensure opportunities make sense on the 'landbase', and result in fair and equitable assessment of opportunities. Refer to Appendix 1 for potential FNWL criteria.

D. Sources of Replaceable AAC to Support the FNWL

Forest tenures that have been issued as part of a previous FRA and FRO, that include replaceable AAC may be converted to a FNWL. Competitive forest tenures that have been acquired by First

Nations are not usually eligible for conversion but there may be some circumstances where a conversion could meet government objectives. A case by case review will be required as part of the mandate approval process.

E. Joint Ventures

In order to improve the viability of potential FNWL opportunities, current legislation allows for First Nations to partner with other First Nations and with other parties including BC Timber Sales, communities and forest industry clients. Further policy work on partnership details will be undertaken in the future to provide guidance on revenue sharing and other details.

F. FNWL Annual Rent and Annual Rent Rebate

FNWL holders will be required to pay annual rent equal to \$.12/m³/yr of AAC. In addition, when the FTOA is signed, a commitment will be made to rebate the ‘general rent’ portion paid by a First Nation, associated with the replaceable allowable annual cut within direct award licences since 2008. The rebate will be paid when the FNWL is issued, subject to their accounts being in good standing.

G. Compensation and Infrastructure Costs

Compensation may be triggered when landing a FNWL if it impacts an existing licensee’s harvest operations (i.e. unamortized improvements). Compensation questions and issues need to be addressed at the start of the planning process

In order to minimize the potential for triggering compensation, FNWLs should generally be located in areas where compensation is not likely payable. Review the “*Principles for Locating New Forest Tenures*” for guidance on potential compensation mitigation strategies.

H. Determining the Area of FNWLs

FNWL should be calculated based on the replaceable AAC and ‘sized’ using the same assumptions that were determined in the most recent timber supply review (TSR) for the management unit. Additional details on locating tenure areas and developing corresponding timber supply analysis are detailed within the document, “*Principles for Locating New Forest Tenures*”.

VIII. Replaceable Forest Licence Considerations

In some situations, replaceable forest licences might be more appropriate than FNWLs:

- where a replaceable forest tenure may mitigate the need for infrastructure investment and/or third party compensation to existing forest tenure holders;
- land suitability (i.e. catastrophic losses over the land base);
- where allocations of replaceable AACs are not adequate;
- where forest health requires the salvage of small areas of diseased, damaged or threatened timber over a large area;
- where First Nations are not interested in the increased obligations associated with FNWLs;

- where First Nations may prefer less participation in the forest sector (i.e. benefit of appointing a third party to manage and harvest the tenure); and
- where the time required to establish FNWLs would lead to ‘gaps’ in revenue sharing.

IX. Appendix 1 - FNWL Expansion Criteria

- a. Government Objectives: The award of FNWL is a significant step in the process of reconciling aboriginal rights and title with crown sovereignty. In general, FNWLs should be considered for those First Nations who commit to, or are at an advanced stage of reconciling rights and title (i.e. agreement in principle treaty negotiations or negotiating reconciliation agreements). FNWLs should also be considered for those First Nations that have signed FROs/FRAs and have performed well on those tenures.
- b. Forest Consultation and Revenue Sharing Agreement Linkages: To avoid a potential gap in revenue sharing payments, FNWLs should be considered for those First Nations whose FRA/FRO have expired or about to expire and, the associated forest tenures have been harvested or will soon be harvested.
- c. Adequate Source of Replaceable AAC: Sufficient replaceable AAC must be available in addition to other local factors (location, quality and operational considerations).
- d. Area Suitability: Where an existing direct award CFA or WL is being converted to a FNWL, the tenure area will remain the same. Where this isn't the case, direction on finding FNWL areas can be found in the document titled "*Principles for Locating New Forest Tenures*". Some of the key principles as they apply to FNWLs include:
 - i. Locate in core (not shared) territory where possible or as directed by the interim measures agreement.
 - ii. The FNWL should be located, as a first priority, in operating areas occupied by *Forestry Revitalization Act* licensees who did not have appropriate operating areas reduced. If this option is not possible, refer to the "*Principles for Locating New Forest Tenures*" for further details.
 - iii. Avoid areas with significant unamortized investments by existing licensees.
 - iv. Avoid areas where a First Nation's ability to manage for botanical forest products may conflict with crown range tenure holders. However, if there are no or minimal anticipated range conflicts, sufficient available range, and the First Nation has interests in managing range resources, a consideration to award a FNWL could allow for increased access to grazing licences and hay cutting licences through recent amendments to the *Range Act*.
 - v. Areas with viable access should be considered. "Viable" means that the current forest logging road and associated access structures provide safe and sound access for the desired configuration of loaded logging trucks and other harvesting related equipment.
 - vi. Ideally, the land base should be contiguous with or adjacent to Indian Reserves or proposed Treaty Settlement Lands.
 - vii. Consider as a priority, areas that contain traditional use and cultural values that will offer the First Nation the ability to manage these values (e.g. on existing log around areas or sacred areas).
 - viii. Consider if a proposed FNWL will improve access to other licensee's operating areas (e.g. is adjacent or close to reserve and the First Nation effectively controls access).

- ix. Consider, as an objective, if a proposed FNWL will provide for wildfire hazard abatement issues around communities that have been impacted by mountain pine beetle.
 - x. FNWLs should not generally be located in areas experiencing huge catastrophic losses due to mountain pine beetle attack – unless the First Nation is agreeable to managing the tenure (and associated ongoing obligations) during the period prior to reforested stands meeting minimum harvest age (i.e. 80-120 years).
 - xi. FNWLs should be located within a representative management unit profile within a First Nations' traditional territory. This ensures that the FNWL area is not comprised of the best or worse timber profile.
- e. First Nation Interest: Has the First Nation been pursuing an area-based tenure in the past? Does the First Nation have the support of the entire community for the tenure?
- f. First Nation Capacity: FNWLs will require the development of a management plan and operational plans (Forest Stewardship Plans or Woodlot Licence Plans). First Nations who understand the requirements and responsibilities, and have the capacity to undertake long-term forest management obligations should be considered over First Nations who do not.

First Nations who have internal harvesting, technical, training, and manufacturing capacity should be considered over First Nations who do not. FNWLs should be considered for those First Nations who have demonstrated experience in the forest sector through successfully harvesting direct award and competitive tenures.

- g. Jointly held FNWLs: First Nations who would hold a FNWL jointly with other First Nations should be preferred over FNWLs held by individual First Nations. Staff should encourage First Nations to join together where possible as it streamlines administration, reduces costs, and may be easier to find a suitable area.
- h. Nature of the existing agreements and tenures: Preference should be given to First Nations who have a signed FRO/FRA/FCRSA and who have completed or are in the advanced stages of the associated forest tenure.
- i. Compensation: Areas should be located so as to not require asset compensation.
- j. Research: FNWLs should be considered for First Nations who commit to conducting research with institutions (e.g. universities or research institutions) regarding traditional use, cultural practices, and/ or the management of non timber forest products.



**FIRST NATIONS WOODLAND
LICENCE (LICENCE #)**



THIS LICENCE, dated for reference **(Date with 4 digit year)**.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the REGIONAL EXECUTIVE DIRECTOR,
MINISTRY OF FORESTS, LANDS, AND NATURAL RESOURCE
OPERATIONS

ADDRESS LINE 1

ADDRESS LINE 2, BRITISH COLUMBIA

ADDRESS LINE 3

Phone: # Fax: #

(the “Regional Executive Director”)

AND:

LICENCE HOLDER’S LEGAL NAME

ADDRESS LINE 1

ADDRESS LINE 2, BRITISH COLUMBIA

ADDRESS LINE 3

Phone: # Fax: #

(the “Licence Holder”)

WHEREAS:

- A. **(Details)**
- A. The **(legal name of the First Nation)** and the Government have entered into an Agreement dated for reference **(put in reference date of the Interim Measure Agreement)** respecting treaty-related measures, interim measures or economic measures (the “Interim Agreement”).
- B. The Regional Executive Director approved a management plan for this Licence under section 43.54(4)(a) of the *Forest Act*

- C. Pursuant to section 43.54 of the *Forest Act*, this agreement is being entered between (licensee name above OR licensee name above as a representative of XXX First Nation) and the Government.

“The Table of Contents and headings in this Agreement are included for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.”

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THE PARTIES agree as follows:

1.00 GRANT OF RIGHTS AND TERM

- 1.01 The term of this Licence is **25 years**, beginning on **(Date with 4 digit year)**.
- 1.02 Subject to this Licence, the Minister grants the Licence Holder during the term of this Licence:
- (a) the exclusive right to harvest Crown timber from Schedule “B” Land **(other than areas mutually agreed to between the Licence Holder and the Timber Sales Manager (in the case of BCTS areas) or the District Manager (in the case of Free Use Permits) as described in Schedule “D”(modify as necessary))**;
 - (b) the right to manage Schedule “B” Land according to:
 - (i) this Licence;
 - (ii) the management plan in effect under this Licence; and
 - (iii) operational plans approved in respect of this Licence;
 - (c) the right to harvest, manage and charge fees for botanical forest products and other prescribed products as listed in Schedule “C”, from Schedule “B” Land.
- 1.03 The Licence Holder must not harvest timber:
- (a) from Schedule “B” Land except under a cutting permit or road permit.
- 1.04 Subject to paragraph 1.05, the Licence Holder will not enter, use or occupy Schedule “B” Land:
- (a) except under and in accordance with a cutting permit, road permit associated with the Licence, special use permit, as well as an activity described in an approved management plan; or
 - (b) as otherwise authorized under the forestry legislation.
- 1.05 Paragraph 1.04 does not apply to temporary use or occupation for the purpose of:

- (a) carrying out silviculture treatments;
 - (b) collecting inventory information;
 - (c) doing engineering layouts and surveys;
 - (d) carrying out protection activities under the forestry legislation; or
 - (e) fulfilling other obligations or conducting other activities incidental to the operations of the Licence Holder under or associated with this Licence.
- 1.06 The Licence Holder and the Government have entered into an agreement dated for reference (put in reference date of the Interim Measure Agreement) respecting treaty-related measures, interim measures or economic measures (the “Interim Agreement”). This Licence is entered into with the (legal name of the First Nation) to implement or further the Interim Agreement, between the (legal name of the First Nation) and the Government, and it is a condition of this Licence that the (legal name of the First Nation) comply with the Interim Agreement.
- 1.07 In accordance with the Interim Agreement and without limiting the actions that may be taken by the Minister or the Government, the Minister, or person authorized by the Minister may suspend or cancel this Licence if the Minister, or person authorized by the Minister determines that the Licence Holder is not in compliance with the Interim Agreement.

OR

- 1.06 The (legal name of the First Nation) and the Government have entered into an agreement dated for reference (Date of the Interim Agreement entered into by First Nation and Government e.g. Interim Measure Agreement) respecting treaty-related measures, interim measures or economic measures (the “Interim Agreement”). This Licence is entered into with the (legal name of the First Nation’s representative) to implement or further the Interim Agreement, between the (legal name of the First Nation) and the Government, and it is a condition of this Licence that the (legal name of the First Nation) comply with the Interim Agreement.
- 1.07 In accordance with the Interim Agreement and without limiting the actions that may be taken by the Minister or the Government, the Minister, or person authorized by the Minister, may suspend or cancel this Licence if the Minister, or person authorized by the Minister determines that the (legal name of the First Nation) is not in compliance with the Interim Agreement.

1.08 The Licence Holder is a corporation that has been appointed by (legal name of the First Nation) as its representative.

OR

1.06 The (legal name of the First Nation) and the Government have entered into an agreement dated for reference (Date of the Interim Agreement entered into by First Nation and Government e.g. Interim Measure Agreement) respecting treaty-related measures, interim measures or economic measures (the “Interim Agreement”). This Licence is entered into with the (legal name of the society) to implement or further the Interim Agreement, between the (legal name of the First Nation) and the Government, and it is a condition of this Licence that the (legal name of the First Nation) comply with the Interim Agreement.

1.07 In accordance with the Interim Agreement and without limiting the actions that may be taken by the Minister or the Government, the Minister, or person authorized by the Minister, may suspend or cancel this Licence if the Minister, or person authorized by the Minister determines that the (legal name of the First Nation) is not in compliance with the Interim Agreement.

1.08 The Licence Holder is a society that has as one of its stated objectives, the holding of this licence.

2.00 OTHER CONDITIONS AND REQUIREMENTS

2.01 The Licence Holder must not fell standing timber, or must not buck or remove felled or dead and down timber, as the case may be, if the timber is specified as reserved timber in a cutting permit.

2.02 The Licence Holder must comply with the other conditions and requirements specified in Schedule “D” in addition to any special conditions set out in a cutting permit or a road permit associated with the Licence.

2.03 As per Section 2.1 of the *Forest and Range Practices Act (FRPA)* the provisions of *FRPA* and the *FRPA* regulations as they apply to a (Community Forest Agreement OR Woodlot Licence) apply to this First Nations Woodland Licence.

NOTE: If the FNWL is greater than 800 hectares on the coast or 1200 hectares in the Interior then Community Forest Agreement must be chosen above. If the FNWL is less than 800 hectares on the coast or 1200 hectares in the interior then the FNWL holder can choose between Community Forest Agreement or Woodlot Licence above.

If Community Forest Agreement is chosen then Forest Stewardship plan must be selected in the rest of the document. If Woodlot Licence is chosen then Woodlot Licence Plan must be selected in the rest of the document.

- 2.04 If the FNWL holder has chosen Woodlot Licence in paragraph 2.03 and this FNWL area is increased in size to an area greater than the maximum size allowed for Woodlot Licences then the provisions of *FRPA* including all regulations as they apply to a Community Forest Agreement will apply to this FNWL commencing on the date that FNWL area increase is approved.

3.00 TIMBER VOLUME CHARGED TO THE LICENCE

- 3.01 The definition of the volume of timber harvested in part 4, division 3.1 of the *Forest Act* applies to this Licence.
- 3.02 The determination of the volume of timber harvested will incorporate the volume of waste determined under part 5.00.
- 3.03 The (**Interior standard timber merchantability specifications... or ...Coast timber merchantability specifications**) in the Provincial Logging Residue and Waste Measurement Procedures Manual that was in effect on the date of issuance of the cutting permit or road permit, shall govern.
- 3.04 The volume of timber harvested under the pre-existing licence during the calendar year in which the pre-existing licence is surrendered must be charged to the first cut control period of this Licence.
- 3.05 The volume of timber harvested during the final cut control period of a pre-existing licence that exceeds the sum of the allowable annual cuts for that period must be treated as being timber harvested under the first cut control period of this Licence.

4.00 CUT CONTROL

- 4.01 The provisions of cut control that apply to "Forest Licences that specify an allowable annual cut greater than 10 000 m³ and have a term of more than 5 years" under Part 4, Division 3.1 of the *Forest Act*, apply to this First Nations Woodland Licence.
- 4.02 If the volume of timber harvested during a cut control period for this Licence is less than the sum of the allowable annual cuts for that period that are authorized under this Licence, the Licence Holder must not harvest that unharvested volume of timber in a subsequent cut control period.

- 4.03 The unharvested volume of timber, referred to in paragraph 4.02, may be disposed of, by the Regional Executive Director or District Manager to a person other than the Licence Holder.
- 4.04 For a licence that is a replacement:
- (a) the first cut control period is the same as the cut control period for the replaced licence, immediately before its replacement, and
 - (b) the volume of timber harvested that, before the replacement, was charged to the replaced licence must be charged to the replacement licence.

5.00 WASTE ASSESSMENT

- 5.01 The Licence Holder must conduct a waste assessment of the volume of merchantable timber, whether standing or felled, that was authorized to be cut and removed under the Licence but, at the Licence Holder's discretion, was not cut and removed.
- 5.02 A waste assessment conducted under paragraph 5.01 must be in accordance with the Provincial Logging Residue and Waste Measurement Procedures Manual, as amended or replaced from time to time.
- 5.03 A waste assessment made under paragraph 5.01 must be:
- (a) done within 60 days of the Licence Holder declaring that primary logging on the area has been completed for each cutblock, allowing for ground to be sufficiently free of snow to permit an adequate assessment to be carried out; or
 - (b) if primary logging on the area is not completed before the expiry of the cutting permit, within 60 days after the expiry of the cutting permit, allowing the ground to be sufficiently free of snow to permit for an adequate assessment to be carried out.
- 5.04 If the Licence Holder fails to comply with paragraph 5.01 the District Manager may, after the expiry of the term of a cutting permit or Licence, conduct a waste assessment of the volume of merchantable timber that could have been cut and removed under the Licence but, at the Licence Holder's discretion, is not cut and removed.
- 5.05 A waste assessment conducted under paragraph 5.04 must be in accordance with the Provincial Logging Residue and Waste Measurement Procedures Manual, as amended from time to time.

- 5.06 If the District Manager carries out a waste assessment under paragraph 5.04, the District Manager, in a notice given to the Licence Holder, may require the Licence Holder to pay the costs incurred by the District Manager in carrying out the assessment.

6.00 MANAGEMENT PLAN

- 6.01 The Licence Holder must submit a proposed management plan to the Regional Executive Director on a date specified by the Regional Executive Director in a notice given to the Licence Holder.

- 6.02 A proposed management plan submitted under paragraph 6.01 or subparagraph 6.04(b) must:

- (a) be prepared in accordance with any directions of the Regional Executive Director;
- (b) be consistent with:
 - (i) this Licence;
 - (ii) the forestry legislation;
 - (iii) higher level plans under the *Forest and Range Practices Act*; and
 - (iv) any commitments made in the any licences or agreements surrendered under section 43.54(4)(b) of the *Forest Act* or as agreed to by both parties to this agreement.
- (c) include existing inventories:
 - (i) for the timber in the First Nations Woodland Licence area; and
 - (ii) for botanical forest products and other prescribed products listed in Schedule “C”;
- (d) include any other inventories and information regarding the development, management and use of the First Nations Woodland Licence area that the Regional Executive Director requires to determine the allowable annual cut for the First Nations Woodland Licence area and rate of harvest of botanical forest products and other prescribed products listed in Schedule “C”;
- (e) propose a allowable annual cut for the First Nations Woodland Licence area which considers the following:

- (i) inventories and other information referred to in subparagraph 6.02 (c) and (d);
 - (ii) timber specifications proposed for the timber resources in the First Nations Woodland Licence area;
 - (iii) reductions that are necessary to facilitate the management and conservation of non-timber resource values in the First Nations Woodland Licence area, including visual quality, biological diversity, soils, recreation resources, cultural heritage resources, range land, wildlife, water and fish habitats;
 - (iv) silviculture practices and forest health factors that may impact on timber production;
 - (v) the anticipated impact of the reductions to the productive portion of the First Nations Woodland Licence area due to permanent roads, landings, pits and trails; and
 - (vi) any other factors that may impact on the allowable annual cut during each year;
- (f) contain a rationale for the allowable annual cut referred to in subparagraph 6.02 (e) prepared in accordance with any directions of the Regional Executive Director;
 - (g) propose management objectives for the First Nations Woodland Licence area regarding the harvesting, management of, and the charging fees for prescribed products listed in Schedule “C”,
 - (h) specify measures to be taken by the Licence Holder to identify and consult with persons using the First Nations Woodland Licence area for purposes other than timber production and harvesting of prescribed products listed in Schedule “C”, including:
 - (i) trappers, guide outfitters, range tenure holders, and other Agreement resource users;
 - (ii) an aboriginal group who may be exercising or claiming to hold aboriginal interest or treaty rights; and
 - (iii) community members, local governments, and government agencies.

- 6.03 The Regional Executive Director within 90 days of receiving a proposed management plan submitted under paragraph 6.01 or subparagraph 6.04 (b), will, in a notice given to the Licence Holder, approve the proposed management plan, subject to such conditions as the Regional Executive Director considers necessary or appropriate, if the Regional Executive Director is satisfied the proposed management plan meets the requirements of paragraph 6.02.
- 6.04 If the Regional Executive Director does not approve a proposed management plan under paragraph 6.03:
- (a) the Regional Executive Director, within 90 days after the date on which the Regional Executive Director receives the proposed management plan, will specify in a notice given to the Licence Holder the reason why the proposed management plan was not approved; and
 - (b) the Licence Holder, within 30 days, or an alternative period of time specified by the Regional Executive Director in a notice to the Licence Holder, after the date on which the Licence Holder is given the notice referred to in subparagraph 6.04 (a), must submit a new or revised proposed management plan to the Regional Executive Director.
- 6.05 Subject to paragraph 6.06, the management plan in effect under this Licence expires three months after the date upon which the Licence Holder is required to submit a proposed management plan pursuant to a notice given to the Licence Holder under paragraph 6.01.
- 6.06 If:
- (a) the Regional Executive Director, within three months after the date on which the Regional Executive Director receives a proposed management plan submitted under paragraph 6.01, has neither:
 - (i) approved the proposed management plan under paragraph 6.03; nor
 - (ii) given the Licence Holder a notice referred to in subparagraph 6.04 (a); and
 - (b) there is a management plan in effect under this Licence;
- then the term of the management plan referred to in subparagraph (b) is deemed to be extended until such time as the Regional Manger approves the proposed management plan under paragraph 6.03, or gives the Licence Holder a notice referred to in subparagraph 6.04 (a), as the case may be.
- 6.07 The Licence Holder must manage Schedule “A” Land and Schedule “B” Land in accordance with the management plan in effect under this Licence.

- 6.08 A management plan approved by the Regional Executive Director under paragraph 6.03 is deemed to be part of this Licence during the period the management plan remains in effect.
- 6.09 The Regional Executive Director, in a notice given to the Licence Holder, may require the Licence Holder to submit an amendment to the management plan.

7.00 CUTTING PERMITS

- 7.01 Subject to paragraphs 7.02 through 7.04 inclusive, the Licence Holder may submit an application to the District Manager for a cutting permit or for an amendment to a cutting permit to authorize the Licence Holder to harvest timber from one or more proximate areas of land within the First Nations Woodland Licence area, meeting the requirements referred to in parts 1.00 and 2.00 and the Appraisal Manual in effect on the date of submission of the application for a cutting permit, an application to amend a cutting permit, or a road permit that are:
- (a) exempted under the *Forest and Range Practices Act* from the requirement for a (forest stewardship plan OR woodlot licence plan); or
 - (b) located within a (forest development unit of an approved forest stewardship plan OR woodlot licence plan).
- 7.02 For those areas to be included in the application under paragraph 7.01, the Licence Holder must ensure that data submitted is gathered and compiled according to that Appraisal Manual.
- 7.03 An application under paragraph 7.01 must:
- (a) be in a form established by the District Manager;
 - (b) state a proposed term that does not exceed four years;
 - (c) include:
 - (i) a map to a scale acceptable to the District Manager showing the areas referred to in the application; and
 - (ii) the information referred to in paragraph 7.02; and
 - (iii) a description acceptable to the District Manager of any timber that is reserved from cutting.

- 7.04 The areas of land shown on the map referred to in clause 7.03 (c) (i) must be:
- (a) the areas referred to in subparagraph 7.01 (a); or
 - (b) located within a (forest development unit *OR* woodlot licence plan) referred to in subparagraph 7.01 (b) allowing for any difference in scale between maps used in the (forest stewardship plan *OR* woodlot licence plan), or exemption and the map referred to in clause 7.03 (c) (i).
- 7.05 Subject to paragraphs 7.06 through 7.09 inclusive, 7.04 and 9.01, upon receipt of an application under paragraph 7.01, the District Manager will issue a cutting permit to the Licence Holder if the District Manager is satisfied that:
- (a) there is a management plan in effect under this Licence;
 - (b) the requirements of paragraphs 7.01, 7.02, 7.03, and 7.04 have been met, and
 - (c) the District Manager is satisfied that activities and operations under or associated with the cutting permit will be consistent with this Licence, higher level plans, the management plan referred to in subparagraph 7.05 (a), and any operational plans approved in respect of the areas of land referred to in the cutting permit.
- 7.06 The District Manager may consult aboriginal group(s) who may be exercising or claiming to hold an aboriginal interest(s) or proven aboriginal right(s), including aboriginal title, or treaty right(s) if in the opinion of the District Manager, issuance of the cutting permit or an amendment to a cutting permit as submitted and/or operations under the cutting permit may result in:
- (a) an impact to an aboriginal interest(s) that may require consideration of accommodation; or
 - (b) an infringement of a proven aboriginal right(s), including aboriginal title, or treaty right(s) that may require justification.
- 7.07 The District Manager may impose conditions in a cutting permit to address an aboriginal interest(s), or proven aboriginal right, including aboriginal title, or a treaty right(s) if in the opinion of the District Manager, issuance of the cutting permit as submitted would result in:
- (a) an impact to an aboriginal interest(s) that would require consideration of accommodation; or

- (b) an infringement of a proven aboriginal right(s), including aboriginal title, or treaty right(s) that would require justification.

7.08 The District Manager may refuse to issue a cutting permit or to amend a cutting permit if in the opinion of the District Manager issuance of the cutting permit or an amendment to a cutting permit would result in:

- (a) an impact to an aboriginal interest(s) or treaty right(s) that could not be reasonably accommodated; or
- (b) an impact to a proven aboriginal right(s), including aboriginal title, or a treaty right(s) that could not be justified.

7.09 If the District Manager:

- (a) determines that a cutting permit may not be issued because the requirements of paragraph 7.05 have not been met;
- (b) is carrying out consultations under paragraph 7.06; or
- (c) refuses to issue a cutting permit under paragraph 7.08;

the District Manager will notify the Licence Holder within 45 days of the date on which the application for the cutting permit, or an amendment to the cutting permit was received.

7.10 A cutting permit must:

- (a) identify the boundaries within the First Nations Woodland Licence area upon which, subject to this Licence and the forestry legislation, the Licence Holder is authorized to conduct operations;
- (b) specify the term stated in the application;
- (c) specify a timber mark to be used in conjunction with the timber removal carried on under the cutting permit;
- (d) specify whether, for the purpose of determining the amount of stumpage payable in respect of timber removed under the cutting permit, the volume and quantity of timber is to be determined using information provided by:
 - (i) a scale of the timber; or
 - (ii) a cruise of the timber conducted before the timber is cut;
- (e) specify any timber that is reserved from cutting; and

- (f) include such other provisions, consistent with this Licence, as determined by the District Manager.

7.11 The District Manager may amend a cutting permit only with the consent of the Licence Holder.

7.12 The Licence Holder may only make application to the District Manager for a cutting permit extension at least 45 days before the expiry of the cutting permit and in a form acceptable to the District Manager.

7.13 A cutting permit is deemed to be part of this Licence.

8.00 ACCESS

8.01 Nothing in this Licence authorizes the Licence Holder to in any way restrict the Crown's right of access to Crown lands.

8.02 Any Ministry employee may:

- (a) enter onto Schedule "A" Land; and
- (b) use roads owned or deemed to be owned by the Licence Holder;

for the purpose of inspecting the Licence Holder's activities under or associated with this Licence, and for the purpose of fulfilling an obligation or exercising a right under this Licence.

8.03 The Licence Holder will allow any person who has been granted rights to timber referred to in paragraph 4.03 or under the *Forest Act*, to use any road referred to in subparagraph 8.02 (b) for the purpose of exercising rights or fulfilling obligations within the First Nations Woodland Licence area.

9.00 COURT DETERMINED ABORIGINAL RIGHTS AND/OR TITLE

9.01 Notwithstanding any other provision of this Licence, if a court of competent jurisdiction:

- (a) determines that activities or operations under or pursuant to this Licence will unjustifiably infringe an aboriginal right and/or title or treaty right;
- (b) grants an injunction further to a determination referred to in subparagraph 9.01 (a); or

- (c) grants an injunction pending a determination of whether activities or operations under or pursuant to this Licence will unjustifiably infringe an aboriginal right and/or title or treaty right;

the Regional Executive Director or District Manager, in a notice given to the Licence Holder, may vary or suspend, in whole or in part, or refuse to issue a cutting permit, road permit or other permit issued to the Licence Holder, so as to be consistent with the court determination.

9.02 Subject to this Licence and the forestry legislation, if:

- (a) under paragraph 9.01, the Regional Executive Director or District Manager has varied a cutting permit, road permit or other permits issued to the Licence Holder;
- (b) a court of competent jurisdiction subsequently overturns, sets aside or dissolves the determination or injunction referred to in that paragraph; and
- (c) it is practical to do so;

the Regional Executive Director or District Manager, at the request of the Licence Holder, will vary the permit to reflect as closely as possible, for the remainder of its term, the terms and conditions of the permit prior to the variation under paragraph 9.01.

9.03 Subject to this Licence and the forestry legislation, if:

- (a) under paragraph 9.01, the Regional Executive Director or District Manager has suspended a cutting permit, road permit or other permits issued to the Licence Holder;
- (b) a court of competent jurisdiction subsequently overturns, sets aside or dissolves the determination or injunction referred to in that paragraph; and
- (c) it is practical to do so;

the Regional Executive Director or District Manager, at the request of the Licence Holder, will reinstate the permit for the remainder of its term.

9.04 Subject to this Licence and the forestry legislation, if:

- (a) under paragraph 9.01, the Regional Executive Director or District Manager has refused to issue a cutting permit, road permit or other permits issued to the Licence Holder;

- (b) a court of competent jurisdiction subsequently overturns, sets aside or dissolves the determination or injunction referred to in that paragraph; and
- (c) it is practical to do so;

the Regional Executive Director or District Manager, at the request of the Licence Holder, will issue the permit.

10.00 REPORTING

10.01 The Regional Executive Director, in a notice given to the Licence Holder, may at any time, require the Licence Holder to carry out audits and submit reports containing such information as the Government requires concerning:

- (a) the Licence Holder's performance of its obligations under or in respect of this Licence, the approved management plan and conditions from the Regional Executive Director management plan approval letter;
- (b) the processing, use or disposition of timber and the products listed in Schedule "C" which are harvested under this Licence;
- (c) the levies or fees collected by the Licence Holder for any types of activities conducted or occurring on Schedule "B" Land;

in the previous calendar year if the information is not included in any other reports which the Licence Holder must submit under the forestry legislation.

10.02 Upon receipt of a notice referred to in paragraph 10.01 the Licence Holder, on or before the date specified in the notice, must submit a report to the Regional Executive Director containing the required information.

10.03 Subject to the *Freedom of Information and Protection of Privacy Act*, the Regional Executive Director will not disclose information provided in confidence by the Licence Holder in any reports submitted under paragraph 10.02.

10.04 Subject to paragraph 10.03, the Regional Executive Director may include the information contained in a report submitted under paragraph 10.01 in any reports prepared by the Ministry for public review.

- 10.05 Subject to paragraph 10.03, the Regional Executive Director may require the Licence Holder to make available to the public information required under paragraph 10.01 and carry out consultation activities with the public concerning matters relating to this Licence.

11.00 FINANCIAL AND DEPOSITS

- 11.01 In addition to any money payable in respect of this Licence or a road permit, the Licensee must pay to the Government, upon receipt of a notice, statement or invoice issued on behalf of the Government; stumpage under part 7 of the *Forest Act* at rates determined, redetermined and varied under section 105 of that Act in respect of timber removed under the Licence.
- 11.02 In addition to any money payable in respect of this agreement or a road permit, the Licensee must pay to the Government, upon receipt of a notice, statement or invoice issued on behalf of the Government, waste assessments under part 5 of this Licence calculated in accordance with the Provincial Logging Residue and Waste Measurement Procedures Manual.
- 11.03 During the term of this Licence, the Licensee must maintain with the Government a deposit in the amount prescribed under the *Forest Act* and the regulations made under that Act, in a form acceptable to the Minister, as security for the Licensee's performance of its obligations under or in respect of this Licence or a road permit.
- 11.04 If the Regional Executive Director or District Manager gives the Licensee a notice that an amount has been taken under this part from the deposit, the Licensee, within four weeks of the date on which the notice is given, must pay to the Government, in a form acceptable to the Minister, an amount sufficient to replenish the deposit.
- 11.05 If the Licensee fails:
- (a) to pay money that the Licensee is required to pay to the Government under:
 - (i) this Licence or a road permit; or
 - (ii) the forestry legislation in respect of this Licence or a road permit; or
 - (b) to otherwise perform its obligations under:
 - (i) this Licence or a road permit; or
 - (ii) the forestry legislation in respect of this Licence or a road permit;

the Regional Executive Director or District Manager, after at least four weeks notice to the Licensee, may instruct the Ministry of Finance to take from the deposit:

- (c) an amount equal to the money which the Licensee failed to pay;
 - (d) an amount sufficient to cover all costs incurred by the Regional Executive Director or District Manager in remedying the Licensee's failure to perform its obligations; or
 - (e) an amount equal to the Regional Executive Director's or District Manager's estimate of the costs which the Regional Executive Director or District Manager could reasonably expect to incur in remedying the Licensee's failure to perform its obligations;
- and for that purpose a security included in the deposit may be realized.

11.06 A notice referred to in paragraph 11.05 must specify:

- (a) the money which the Licensee has failed to pay or the obligation which the Licensee has failed to perform; and
- (b) the amount the Regional Executive Director or District Manager instructs be taken from the deposit.

11.07 Subject to paragraphs 11.09, 11.10 and 11.11, if:

- (a) the Ministry of Finance, under paragraph 11.05, takes from the deposit an amount equal to the Regional Executive Director's or District Manager's estimate of the costs which the Regional Executive Director or District Manager could reasonably expect to incur in remedying the Licensee's failure to perform its obligations; and
- (b) the costs incurred by the Regional Executive Director or District Manager in remedying the Licensee's failure to perform its obligations are less than the amount taken from the deposit;

the Government will as soon as feasible return to the Licensee an amount equal to the difference between the amount taken from the deposit and the costs incurred by the Regional Executive Director or District Manager.

11.08 If:

- (a) the Ministry of Finance, under paragraph 11.05, takes from the deposit an amount equal to the Regional Executive Director's or District Manager's estimate of the costs which the Regional Executive Director or District Manager could reasonably expect to incur in remedying the Licensee's failure to perform its obligations; and
- (b) the costs incurred by the Regional Executive Director or District Manager in remedying the Licensee's failure to perform its obligations are greater than the amount taken from the deposit;

the Ministry of Finance may take from the deposit an additional amount equal to the difference between the costs incurred by the Regional Executive Director or District Manager and the amount originally taken from the deposit, and for that purpose a security included in the deposit may be realized.

11.09 If the Ministry of Finance, under paragraph 11.05, takes from the deposit an amount equal to the Regional Executive Director's or District Manager's estimate of the costs which the Regional Executive Director or District Manager could reasonably expect to incur in remedying the Licensee's failure to perform its obligations, the Regional Executive Director or District Manager is under no obligation to remedy the Licensee's failure.

11.10 If:

- (a) the Ministry of Finance, under paragraph 11.05, takes from the deposit an amount equal to the Regional Executive Director's or District Manager's estimate of the costs which the Regional Executive Director or District Manager could reasonably expect to incur in remedying the Licensee's failure to perform its obligations;
- (b) the Regional Executive Director or District Manager does not remedy the Licensee's failure to perform its obligations; and
- (c) the Regional Executive Director or District Manager gives a notice to the Licensee indicating that the Government will not be remedying the Licensee's failure to perform its obligations;

subject to paragraph 11.11, the Government may retain the amount taken from the deposit under paragraph 11.05.

11.11 If, after receiving a notice referred to in paragraph 11.10, the Licensee:

- (a) remedies the failure to perform its obligations; and
- (b) gives a notice to that effect to the Regional Executive Director or District Manager within three months of the date on which the notice referred to in paragraph 11.10 is given to the Licensee, or within such longer period as the Regional Executive Director may approve;

the Government will return to the Licensee an amount equal to the difference between the amount taken from the deposit and any costs incurred by the Regional Executive Director or District Manager in respect of the Licensee's failure to perform its obligations.

11.12 Subject to the *Forest Act* and the regulations made under that Act, the Government will return to the Licensee the deposit, less deductions made under paragraphs 11.05 and 11.08, when:

- (a) this Licence expires, or is surrendered; and
- (b) the Regional Executive Director is satisfied that the Licensee has fulfilled its obligations under this Licence.

12.00 REPRESENTATIONS

12.01 The Licence Holder represents and warrants that the Licence Holder:

- (a) is a First Nation
- (a) is a company or an extraprovincial company as defined in the *Business Corporations Act* and (legal name of the First Nation) owns sufficient voting shares to elect more than 50% of the effective directors of that company or extraprovincial company, or otherwise effectively controls the operations and direction of the company or extraprovincial company.
- (a) is a society where one of its purposes is the holding of a first nations woodland licence and must not be prohibited under section 2(2) of the *Society Act* from holding a first nations woodland licence.

13.00 LIABILITY AND INDEMNITY

13.01 Subject to paragraph 13.03, the Licence Holder must indemnify the Crown against and save it harmless from all claims, demands, suits, actions, causes of action, costs, expenses and losses faced, incurred or suffered by the Crown as a result, directly or indirectly, of any act or omission of:

- (a) the Licence Holder;
- (b) an employee of the Licence Holder;
- (c) an agent of the Licence Holder;
- (d) a contractor of the Licence Holder who engages in any activity or carries out any operation, including but not restricted to the Licence Holder's operations, under or associated with this Licence or a cutting permit or a road permit; or
- (e) any other person who on behalf of or with the consent of the Licence Holder engages in any activity or carries out any operation, including but not restricted to the Licence Holder's operations, under or associated with this Licence or a cutting permit or a road permit.

- 13.02 For greater certainty, the Licence Holder has no obligation to indemnify the Crown under paragraph 13.01 in respect of any act or omission of:
- (a) an employee, agent or contractor of the Crown, in the course of carrying out his or her duties as employee, agent or contractor of the Crown; or
 - (b) a person, other than the Licence Holder, to whom the Crown has granted the right to occupy Crown land, in the course of exercising those rights.
- 13.03 The Crown is not liable to the Licence Holder for injuries, losses, expenses, or costs incurred or suffered by the Licence Holder as a result, directly or indirectly, of an act or omission of a person who is not a party to this Licence, including but not restricted to an act or omission of a person disrupting, stopping or otherwise interfering with the Licence Holder's operations under this Licence by road blocks or other means.
- 13.04 Any payments required under part 5.00, and payments required further to the indemnity referred to in paragraph 13.01 are in addition to and not in substitution for any other remedies available to the Crown in respect of a default of the Licence Holder.

14.00 TERMINATION

- 14.01 If this Licence expires or is not replaced under section 43.56 of the *Forest Act*, or is surrendered, cancelled or otherwise terminated:
- (a) all cutting permits will immediately terminate; and
 - (b) timber, including logs, special forest products or prescribed products listed in Schedule "C", cut under the authority of this Agreement and which are still located on Crown land, vest in the Crown, without right of compensation to the Licence Holder; and
 - (c) unless otherwise agreed to between the District Manager and the Licence Holder prior to the surrender, cancellation or termination of this Licence, title to all improvements, including roads and bridges, constructed by the Licence Holder on Crown land under the authority of this Licence vest in the Crown, without right of compensation to the Licence Holder; and
 - (d) subject to subparagraphs 14.01 (b) and (c) the Licence Holder may continue to enter and use Crown Land for a period of one month after the expiry or termination of this Licence for the purpose of removing the Licence Holder's property.

- 14.02 The Licence Holder will not take away any improvements or remove any timber referred to in subparagraph 14.01 (b), unless authorized to do so by the Regional Executive Director.
- 14.03 If the Licence Holder commits an act of bankruptcy, makes a general assignment of its creditors or otherwise acknowledges its insolvency the Licence Holder is deemed to have failed to perform an obligation under this Licence.

15.00 WAIVER

- 15.01 No waiver by the Government of any default non-compliance by the Licence Holder in the strict and literal performance of or compliance with any provision of the Licence will be deemed to be a waiver of the strict and literal performance of or compliance with any other provision, condition or requirement of the Licence or to be a waiver of, or in any manner release the Licence Holder from compliance with any provision, condition or requirement in the future, nor will any delay or omission by the Government in the exercising of any right hereunder in any manner with respect to non-compliance impair the exercise of any such rights in the future.

16.00 NOTICE

- 16.01 A notice given under this Licence must be in writing.

- 16.02 A notice given under this Licence may be:

- (a) delivered by hand;
- (b) sent by mail; or
- (c) subject to paragraph 16.05, sent by facsimile transmission;

to the address or facsimile number, as applicable, specified on the first page of this Licence, or to such other address or facsimile number as is specified in a notice given in accordance with this part.

- 16.03 A notice given under this Licence, is deemed to have been given:

- (a) if it is given in accordance with subparagraph 16.02 (a), on the date it is delivered by hand;
- (b) if it is given in accordance with subparagraph 16.02 (b), subject to paragraph 16.04, on the eighth day after its deposit in a Canada Post Office at any place in Canada; and

(c) if it is given in accordance with subparagraph 16.02 (c), subject to paragraph 16.05, on the date it is sent by facsimile transmission.

16.04 If, between the times a notice is mailed in accordance with subparagraph 16.02 (b) and the time it is actually received, there occurs a postal strike, lockout or slowdown that might reasonably affect delivery of the notice, the notice is not deemed to be given until the party actually receives it.

16.05 If a notice is sent by facsimile transmission, the party sending the notice must take reasonable steps to ensure that the transmission has been successfully completed.

17.00 MISCELLANEOUS

17.01 This Licence will enure to the benefit of, and be binding on, the parties and their respective heirs, executors, successors and permitted assigns.

17.02 The laws of British Columbia will govern the interpretation of this Licence and the performance of the Licence Holder's obligations under this Licence.

17.03 Any power conferred or duty imposed on the Regional Executive Director or District Manager under this Licence may be exercised or fulfilled by any person authorized to do so by the Regional Executive Director or District Manager.

17.04 The schedules attached to this Licence are deemed to be part of this Licence.

17.05 Nothing in this Licence or a cutting permit issued under this Licence is to be construed as authorizing the Licence Holder to engage in any activities or carry out any operations otherwise than in compliance with the requirements of the forestry legislation.

17.06 The Licence Holder must:

(a) comply with the forestry legislation; and

(b) ensure that its employees, agents and contractors comply with the forestry legislation when engaging in or carrying out activities or operations under or associated with the Licence.

17.07 Nothing in this Licence entitles the Licence Holder to have an area of Schedule "B" Land replaced with another area, or to have rights awarded under another Licence under the *Forest Act*, in the event:

- (a) timber is damaged or destroyed by pests, fire, wind or other natural causes;
- (b) an area of land is deleted from the First Nations Woodland Licence area under the forestry legislation, or under any other Act or regulation; or
- (c) this Licence expires, is surrendered, is cancelled or otherwise terminated.

17.08 At the request of the Regional Executive Director or District Manager, the Licence Holder will survey and define on the ground any or all boundaries of the First Nations Woodland Licence area.

17.09 Where harvesting of timber has been authorized under this Licence, the District Manager in a notice to the Licence Holder, may require the Licence Holder to carry out a legal survey on the portions of the area to be operated upon that are adjacent to any First Nations Woodland Licence area boundaries.

18.00 INTERPRETATION & DEFINITIONS

18.01 This Licence is divided into parts, paragraphs, subparagraphs, clauses and subclauses, illustrated as follows:

- 1.00 part;
 - 1.01 paragraph;
 - (a) subparagraph;
 - (i) clause;
 - (a) subclause;

and a reference to a subparagraph, clause or subclause is to be construed as a reference to a subparagraph, clause or subclause of the paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

18.02 In this Licence, unless the context otherwise requires:

“aboriginal interest” means a potential aboriginal right and/or aboriginal title that has not been proven through a court process;

“allowable annual cut” means the allowable annual cut set under the management plan for the Agreement;

“botanical forest product” means any or all flora and fungi of the forest other than conventional timber products that occurs naturally on Crown forest land

“cut control period” means the cut control period determined for this Agreement under part 4.00;

“cutting permit” means a cutting permit issued under this Agreement or an amendment for a cutting permit as the context requires;

“District Manager” means:

- (a) a District Manager appointed under the *Ministry of Forests and Range Act*, for a forest district in which all or part of the Licence is situated; and
- (b) any person authorized by the District Manager to exercise a power or fulfill a duty under this Licence;

“First Nations Woodland Licence area” means the area of lands identified in Schedules “A” and “B”;

“*Forest Act*” means the *Forest Act*, R.S.B.C. 1996, c. 157, as amended from time to time, or the successor to that Act, if it is repealed;

“*Forest and Range Practices Act*” means the *Forest and Range Practices Act*, S.B.C. 2002, c. 69 as amended from time to time, or the successor to this Act, if it is repealed;

“forest stewardship plan” means a forest stewardship plan referred to in the *Forest and Range Practices Act*, that is prepared or approved by the Minister in respect of the Licence;

“forestry legislation” means the statutes and regulations, to which the Agreement is subject including:

- (a) the *Forest Act*;
- (b) the *Forest and Range Practices Act*; and
- (c) the *Wildlife Act*.

“Government” means the Government of the Province of British Columbia;

“harvest” means:

- (a) cut;
- (b) remove;

(c) cut and remove;

“management plan” means the management plan prepared and approved for this Licence in accordance with part 6.00 of this Agreement;

“merchantable timber” means timber that meets or exceeds the timber merchantability specifications described in the Provincial Logging Residue and Waste Measurements Procedures Manual, as amended or replaced from time to time;

“Minister” means the Minister responsible for administering the *Forest Act*;

“Ministry” means the Ministry of Forests, Lands and Natural Resource Operations;

“*Ministry of Forests and Range Act*” means the *Ministry of Forests and Range Act* R.S.B.C. 1996, c. 300;

“Ministry officer” means an employee of the Ministry;

“non-Crown land” means land that is private land or in a reserve as defined in the *Indian Act (Canada)* as described in the Schedule “A” to this Licence;

“person” includes a corporation and a partnership, unless the context requires otherwise;

“pest” means any animal, insect, fungus, bacteria, virus, nematode, or other organism which is detrimental to effective forest management;

“pre-existing licence” means a forest licence, tree farm licence, community forest agreement, community salvage licence, woodlot licence, or forestry licence to cut that is surrendered under section 43.54(4)(b) of the Act;

“primary logging” includes felling timber and yarding or forwarding the timber to central landings or road-sides, but not including the removal of the timber from these landings or road-sides;

“remove” means the removal of timber from the First Nations Woodland Licence area and “removed”, “removal” and “removing” have the corresponding meanings;

“resource agencies” means any governmental agency, Ministry or department having jurisdiction over a resource which may be affected by any activity or operation, including but not restricted to activities or operations, engaged in or carried out under or associated with this Licence or a road permit;

“road permit” means a road permit entered into under the *Forest Act* which provides access to timber removed or to be removed, under this Licence;

“Schedule “A” Land” means the non-Crown lands managed as part of the First Nations Woodland Licence area described in the Schedule “A” to this Licence;

“Schedule “B” Land” means the Crown land described in Schedule “B” to this Licence;

“special use permit” means a special use permit issued under the applicable forestry legislation, to authorize the Licence Holder to use or occupy Crown land within the First Nations Woodland Licence area;

“timber merchantability specifications” means those found in the most current Provincial Logging Residue and Waste Procedures Manual, as amended or replaced from time to time;

“Timber Sales Manager” means:

- (a) a Timber Sales Manager appointed under the *Ministry of Forests and Range Act* for a BC timber sales business area in which all or part of the Licence is situated; and
- (b) any person authorized by the Timber Sales Manager to exercise a power or fulfill a duty under this Licence;

“waste” means merchantable Crown timber that could have been cut and removed under this Licence but that the Licence Holder is not cut and removed as defined in the Provincial Logging Residue and Waste Measurements Procedures Manual, as amended or replaced from time to time;

“woodlot licence plan” means a woodlot licence plan referred to in the *Forest and Range Practices Act*, that is prepared or approved by the Minister in respect of the Licence.

- 18.03 Unless otherwise provided in paragraph 18.02, if a word or phrase used in this Licence is defined in the *Forest Act*, or the *Forest and Range Practices Act* the definition in the Act applies to this Licence, and where the word or phrase in the Act is replaced by a new word or phrase, this Licence is deemed to have been amended accordingly.
- 18.04 If a provision of the *Forest Act*, or the *Forest and Range Practices Act* referred to in this Licence is renumbered, the reference in this Licence is to be construed as a reference to the provision as renumbered.
- 18.05 In this Licence, unless the context otherwise requires:
- (a) the singular includes the plural and the plural includes the singular;
and
 - (b) the masculine, the feminine and the neuter are interchangeable.

IN WITNESS WHEREOF this Licence has been executed by the Regional Executive Director and the Licence Holder on the date first written above.

SIGNED by the)
Regional Executive Director)
on behalf of Her Majesty)
the Queen in Right of)
the Province of)
British Columbia)
in the presence of:)
)
)

Signature)
)
)
)

Printed Name)

Regional Executive Director
(name of Region) Forest Region

Dated

THE COMMON SEAL of)
the Licence Holder was)
affixed in the presence of:)
)
)

Signature)
)
)

Printed Name)

c/s

(or)

SIGNED, by the)
Licence Holder)
in the presence of:)
)
)
)

Signature)
)
)

Printed Name)

Licence Holder

Printed Name and Title

Dated

SCHEDULE “A”

1.00 DESCRIPTION OF NON-CROWN LANDS

1.01

SCHEDULE “B”

1.00 DESCRIPTION OF CROWN LANDS

1.01

SCHEDULE “C”

1.00 BOTANICAL FOREST PRODUCTS AND OTHER PRESCRIBED PRODUCTS

1.01

SCHEDULE “D”

1.00 OTHER CONDITIONS AND REQUIREMENTS

2.00 TIMBER DISPOSITION

- 2.01 Each year during the term of this Licence, [enter # AAC] m³ of the allowable annual cut, from the types of timber specified under subparagraph 1.02 (a) of the Agreement, may be disposed of by the Timber Sales Manager within areas agreed to under paragraph 3.01 or specified under paragraph 3.02;
- 2.02 Each year during the term of this Licence, the District Manager may dispose of timber under free use permits from areas agreed under paragraph 3.01 or specified under paragraph 3.02 to a first nations person whose traditional territory overlaps this Licence for the purposes of section 48(1)(g&h) of the *Forest Act*.

3.00 AREA SELECTION PROCESS

- 3.01 Subject to paragraph 3.02 the District Manager or Timber Sales Manager and the Licensee will agree upon areas for the purposes of part 2.00 having regard to:
- (a) the type and quality of timber and the type of terrain on the area of Schedule “B” Land under consideration compared to the Schedule “B” Land as a whole;
 - (b) the management plan in effect under this Licence and the forest stewardship plan or woodlot licence plan approved in respect of this Licence;
 - (c) any potential interference with the operations of the Licensee under this Licence;
 - (d) rights being exercised on the licence area by persons other than that licence holder including trappers, guide outfitters, range tenure holders, and other licenced resource users; and
 - (e) an aboriginal group claiming an aboriginal interest in, or having a proven aboriginal right, including aboriginal title, or a treaty right in the area.
- 3.02 If under paragraph 3.01 the District Manager or the Timber Sales Manager and the Licensee are unable to agree upon areas for the purposes of part 2.00 the District Manager or the Timber Sales Manager or the

Licensee may refer the matter to the Regional Executive Director, in which case the Regional Executive Director, subject to paragraph 3.03, and having regard to:

- (a) the factors referred to in paragraph 3.01; and
- (b) the recommendations of the District Manager or the Timber Sales Manager and the Licensee;

will specify areas for these purposes.

3.03 The Regional Executive Director will only specify an area under paragraph 3.02, when satisfied it will not:

- (a) compromise the management plan in effect under this Licence or a forest stewardship plan or woodlot licence plan approved in respect of this Licence; or
- (b) unreasonably interfere with the Licensee's operations under this Licence.

4.00 ACCESS

4.01 The Agreement Holder will allow any person who has been granted rights to timber referred to in part 2.00 of this Schedule to use any road referred to in subparagraph 8.02(b) of the Agreement for the purpose of exercising rights or fulfilling obligations within the First Nations Woodland Licence Area subject to conditions in a road use agreement between the parties.

4.02 The Agreement Holder will not require any payment from a person referred to in paragraph 4.01 other than a reasonable payment in respect of the actual maintenance costs of the road.