

# First Nations Policy

---

**This document includes examples of First Nations’ developed consultation policies, agreements and protocols.**

**First Nation Consultation Policy**: A Consultation Policy developed by X First Nation.

**Cultural Heritage Policy**: This policy applies to all activities that may impact the cultural heritage resources of the X First Nation.

**Consultation Process and Cultural Heritage Policy**: A Consultation Process and Cultural Heritage Policy developed by X First Nation

**Cultural Heritage Investigation Permit**: A useful template regarding stewardship of archaeological resources, includes a heritage policy.

**Cultural Heritage Investigation Permit Application**: An application form to be used with the above Permit.

**Service Agreement**: Between a First Nation and a Forestry Company outlining the costs paid to First Nations for participation in the referrals process.

**Memorandum of Understanding regarding land use and management planning**: LRMP agreement between a First Nation and the Provincial Government that recognizes a government to government relationship.

**Memorandum of Understanding regarding oil and gas development**: A MOU developed by a Treaty 8 First Nation regarding consultation on oil and gas development.

**Interim Measures Agreement (Forestry)**: An interim measures agreement negotiated through the treaty process regarding forestry and capacity building funding.

*If you have any questions, comments or other materials you think we should include, please contact :*

	<b>The Sliammon First Nation:</b> Phone: (604) 483-9646		<b>The Aboriginal Mapping Network (c/o Ecotrust Canada):</b> <ul style="list-style-type: none"><li>• Phone: (604) 682-4141, extension 240</li><li>• E-mail: <a href="mailto:info@nativemaps.org">info@nativemaps.org</a></li></ul>
---	--	---	--

*This should NOT be considered legal advice. Readers should not act on information in the website without first seeking specific legal advice on the particular matters which are of concern to them.*



This work is licenced under a [Creative Commons Licence](https://creativecommons.org/licenses/by-nc-nd/4.0/)  
Copyright © 2002 - 2012 - Sliammon First Nation & Ecotrust Canada

# First Nation Consultation Policy Example

## **CONSULTATION POLICY**

from *The End of False Consultation: a guide to First Nations empowerment through meaningful participation in resource development.*

By Jack Woodward, Woodward & Co, Barristers and Solicitors. November 29, 1999.

### **A. INTRODUCTION**

#### Adoption

I. This Consultation Policy was adopted by the X Indian Band at a community meeting on October 28, 1998

#### Application

2. This Consultation Policy shall apply to any consultation undertaken by either the Provincial or Federal Crown arising out of either:

- i) The Crown's duty to consult with First Nations attendant upon the Crown's fiduciary duty in respect of First Nations; or
- ii) any statutory duty of the Crown to consult with X First Nation (XFN).

This policy shall apply when the duty applies to the Crown, its Ministers, employees or agents.

### **B. WHEN SHALL CONSULTATION BE UNDERTAKEN?**

#### General

3. XFN expects both the Provincial and Federal Crown to undertake consultation whenever it is proposed that an activity be undertaken with either Crown's approval or acquiescence which may affect XFN traditional territory, including the Y Area, or which may affect XFN exercises of its aboriginal rights. A map of the relevant area (the XFN Traditional Territory") is attached as Schedule 'A'.

#### Specific:

4. Without limiting the generality of the foregoing XFN expects the Provincial and/or Federal Crown to undertake consultation when:

- i) resource extraction in XFN Traditional Territory is being considered;
- ii) exploration activities in the XFN Traditional Territories are being considered;

iii) whenever any alteration (as defined in the Heritage Conservation Act) to Heritage objects or Heritage Sites in the XFN Traditional Territory are being considered; and

iv) whenever grants of patents or other significant alienation's of lands are being considered.

#### Timing

5. XFN expects to be consulted at an early stage of any such consideration and, in any event, before any licenses, permits or other authorization which affect rights in the XFN Traditional Territory are issued.

6. XFN is very concerned that consultation not be limited to the later stages of any approval process, when significant time pressures are applied to XFN which undermine effective consultation.

### **C. HOW SHALL CONSULTATION BE COMMENCED?**

#### In Writing

7. XFN expects that the Crown will notify XFN in writing when a situation arises which requires consultation.

#### To Solicitors

8. This notice shall be sent to our solicitors, who shall be Woodward and Company until XFN indicates any change.

#### Particularity

9. This notice shall contain sufficient information to allow XFN to:

i) understand the nature and scope of the proposed activity;

ii) understand the timing of the proposed activity;

iii) understand the location of the proposed activity;

iv) understand how the proposed activity may affect XFN Traditional Territory, including particular;

v) understand who will be undertaking the activity;

vi) understand who will be making the final decision for the Crown and who will be assisting that person in making that decision;

vii) understand what documents, including applications, studies, assessments, policies are available to be reviewed which are pertinent to the proposed activity;

- viii) understand what collateral or related processes or approvals are being undertaken by the Crown's in relation to the proposed activity;
- ix) understand any relevant deadlines or filing dates;
- x) understand the Crown's proposed form of consultation;
- xi) understand such further other relevant information the Crown may possess relating to the proposed activity; and
- xii) to be advised of all pertinent addresses and phone numbers for contacting the relevant decision makers and those assisting him or her.

#### Generality

10. The above particulars should not be taken to derogate from the Crown's obligation to give adequate notice to the XFN permit them to:

- i) understand how their rights and interests are proposed to be affected; and
- ii) understand how they can meaningfully respond to the proposed action.

### **D. FORM AND CONDUCT OF CONSULTATION**

#### Form of Consultation

11. Consultation shall take place in five forms:

- i) oral consultation with the Hereditary Chief, traditional Chiefs, Chief and Council and Elders of the XFN either with or without their counsel; or
- ii) written consultation with the Hereditary Chief, traditional Chiefs, Chief and Council and Elders of which shall be conducted through the offices of their counsel (Woodward and Company)

No other form of contact between the Crown and XFN will be understood to be consultation. In particular, telephone calls to Band officials and employees, faxes, and material sent to the Band office, shall not even be considered consultation.

#### Crown Representatives

12. XFN will only engage in consultation with;

- i) the relevant decision maker; and
- ii) such representative so the relevant decision makers or will have been agreed in advance in writing by the XFN and the decision maker

### Third Party Representatives

13. XFN will not engage or agree to engage in consultation on behalf of the Crown with third parties who are:

- i) directly or indirectly interested in the proposed activity, this includes the proposed beneficial recipient of the authorization; or
- ii) parties acting on behalf of the parties described in (i).

### Availability for Oral Consultation

14. The Chief, Council and Elders of the XFN will be available one day per month to engage in oral consultation. This allocation of time is based upon the Chief's, Council's and Elders' assessment of their available resources.

15. Oral consultation should be scheduled well in advance and, in any event, no less than thirty days before the date of the proposed oral consultation.

16. All communications regarding the scheduling or oral consultation sessions and matters relating to the agenda of such sessions, shall be directed to XFN counsel.

### Availability of Band Members

17. XFN will make reasonable efforts to make arrangements, subject to adequate resources being made available by the Crown or interested parties, to have Band Members participate in activities such as studies, assessments, conferences, workshops and the like. However, such investment will not constitute consultation by the Crown XFN.

### Substance of Consultation

18. The XFN expect that consultation by the Crown shall take place in the light of the Crown's fiduciary duty to safeguard and to take into account the aboriginal rights of the XFN.

19. The XFN also expect to be consulted in light of any statutory requirements to consult and with due attention paid to principles of fairness and natural justice.

20. The XFN expect that any consultation will be undertaken in good faith and that the Crown is open to hearing those concerns which the XFN may express. In general, the XFN understand that the Crown has:

- i) a duty to inform; and
- ii) a duty to listen.

21. The XFN particularly expect, without in anyway limiting the generality of the foregoing, that:

- i) the Crown will provide adequate information, both in advance and in response to questions by the XFN or its counsel, to permit the XFN to understand the process and the substance of the proposed activity;
- ii) the Crown will provide information in a form which is comprehensible to the XFN and not excessively technical. The Crown will provide assistance, where necessary or requested, in understanding such technical documents as are provided;
- iii) the Crown will engage in a meaningful dialogue with the XFN with a view to understanding the XFN rights and interests and the importance and significance of those rights and interests;
- iv) the Crown will listen to and fairly consider XFN views as to the effect the proposed activity will have on XFN rights and interests; and
- v) The Crown will listen to and fairly consider any proposed alternatives to the proposed activity, including:
  - a) not engaging in the activity;
  - b) delaying the activity;
  - c) engaging in a more detailed assessment of the effects of the activity;
  - d) imposing limitations or conditions on the activity; and
  - e) providing resources to XFN to allow it to meaningfully participate in the consultation process.

# First Nations: Example Cultural Heritage Policy

## 1) Background

### *Ownership and Title*

The X First Nation have inhabited their territory, which encompasses what is now known as the \_\_\_\_\_ and beyond, since time immemorial. Thus, X First Nation have title within their territory.

The X First Nation have never extinguished title to their territory, in any manner, and will not do so in a modern day treaty.

In order to have given up title, the X First Nation would have had to have done so in one of the following ways:

1. Ceded their territory: a treaty or other legal agreement has never been signed by the X First Nation;
2. By conquest: neither the Canadian government nor any First Nation has ever conquered the X First Nation in war;
3. By discovery: since the X First Nation have been here since time immemorial, they have never been discovered by any governments. The concept of terra nullus was discredited by the International Court of Justice in the Western Sahara case. In this case, the government tried to say they gained title because the indigenous inhabitants that were there were uncivilized and therefore could not be considered to inhabit the land.

Therefore, through law, the X First Nation have never ceded, surrendered, or released any part of their territory to any government. Despite this, Federal and Provincial government policy has alienated the X First Nation from the management of their territory. As a result, the X First Nation have considerable concern regarding the nature and extent of development within the territory and the effect such development has on cultural heritage resources and the exercising of the X First Nation's aboriginal rights. Survey in the last number of years have shown that many cultural heritage resources - ranging from CMT's to village sites - have been destroyed by development. As a first step to prevent further damage, the consultation process and the procedures/prescriptions outlined in this policy are intended to ensure that cultural heritage resources are protected, managed and interpreted in a way that is respectful of the X First Nation's stewardship role over the territory.

### ***Objectives:***

1. Identify, to the greatest extent possible, cultural heritage site/areas within the X First Nation territory utilizing both oral history and field reconnaissance.
2. Map and record cultural heritage sites/areas to preserve the record of X First Nation's use of the territory.
3. Promote and facilitate the protection of all cultural heritage resources in a way that is respectful of the X First Nation's standards and values.
4. Negotiate the restoration of cultural heritage resources that have been damaged.

5. Repatriate selected items, as well as completed collections of archival, ethnographic and archaeological collections and materials that may be stored and curated elsewhere.
6. Facilitated X First Nation's goals for cultural heritage through policies developed by X First Nation and consultation protocols negotiated between X First Nation and relevant government agencies.
7. Ensure that X First Nation's policies are recognized as a priority over other government laws or policies and that other governments acknowledge and comply with X First Nation's policy.
8. Encourage and facilitate training of X First Nation community members in various aspects of cultural heritage resource management.

***General Principles:***

1. X First Nation's title to the territory includes ownership over all cultural heritage resources.
2. Ownership over cultural heritage resources includes X First Nation's right to manage such resources.
3. Management of cultural heritage resources includes X First Nation's right to interpret the significance of such resources and contribute to the interpretive process of any cultural heritage resource investigation.
4. X First Nation have ownership over the results of any cultural heritage investigation (e.g. Artifacts, samples, field notes, photos, maps, reports, tapes, etc.).
5. Oral traditions and traditional ecological knowledge are recognized as a valid part of archaeological/scientific investigation.
6. CMTs may only be sampled, moved cut or logged with the consent of the X First Nation.
7. Forest management must consider non-timber values equally with timber values.

***Scope of Policy:***

This policy will apply to all projects, works, land developments and resource management projects (including those proposed for rivers, lakes and waterways) that may impact the cultural heritage resources of the X First Nation.

This policy will also apply to any and all research that may be proposed by anthropologists, archaeologists, ethnographers, historians or any other disciplinary research where the X First Nation's cultural heritage resources are the subjects of study.

**2) Cultural Heritage Investigation Permitting Process:**

Recognizing that X First Nation are the stewards over their territory and that work within the territory must meet acceptable standards, X First Nation's consent is needed for any proposing cultural heritage investigation with the territory (e.g. archaeology, anthropology, ethno-biology, ethno-botany, ethnography). For example, archaeologists will be required to obtain a Cultural Heritage Investigation Permit prior to their proposal being sent to the Archaeology Branch. This permit will include X First



Nation's comments and consent and will be submitted with the archaeologist's proposal to regulatory bodies such as the Archaeology Branch.

### **3) Post-1846 Culturally Modified Tree Management Process:**

#### ***A) Analysis of Existing Provincial Policy:***

There are two common working definitions of a CMT:

- 1) A tree or remnant of a tree associated with old growth forests which bears evidence of traditional aboriginal forest use; and
- 2) A tree that has been intentionally altered by Native people participation in the tradition utilization of the forest. (Quoted from the Ministry of Forests, South Island Forest District CMT Workshop. Heather Moon and Rich Howard, 1997)

In relation to CMTs, two important distinctions are made:

- 1) Pre-1846 CMTs are considered to be archaeological sites and are automatically protected under the Heritage Conservation Act (HCA); and
- 2) Post-1846 CMTs are considered to be an indication of an aboriginal right but are not protected by the HCA.

These basic parameters are used by the Province to determine the management prescriptions that will be applied to CMTs. However, if CMTs are to be properly managed and/or protected, then they must be considered within the larger context of aboriginal rights and title.

#### ***B) Aboriginal Rights:***

The ability to exercise an aboriginal right, in this case the use of particular forest resources, is protected by the Constitution, cases such as Sparrow and Delgamuuk'w, and policies such as the MoF's Protection of Aboriginal Rights. The intention is to ensure that any infringement of the aboriginal right to utilize trees for traditional use purposes is avoided. Gathering cedar then, for example, is an aboriginal right that is protected but the remaining physical evidence is not. However, oral history and samples confirm that many places where cedar is gathered are returned to over time due to that area's attributes such as access, quality or relationship to its surrounding. Therefore, the lack of protection given to post-1846 CMTs is in fact an infringement of aboriginal rights since the harvesting of CMTs prevents X First Nation members from ever gathering cedar from those trees again.

#### ***C) Aboriginal Title:***

X First Nation have title over their territory. One key to proving title in the courts is physical evidence. While pre-1846 CMTs represent extremely important proof that X First Nation occupied the territory prior to contact, post-1846 CMTs are equally important in demonstrating X First Nation's continuous use of the territory. In order that such evidence is not lost, all CMTs regardless of their dates must be properly recorded and protected.

#### ***D) Management Procedures:***

##### 1) Determine the potential of an area to contain post-1846 CMTs

- a) Consult any traditional use information that may be compiled for the area. X First Nation's TUS is in its early stages so this information source may not be available;
- b) Access to the area: Easier access may be an indicate a greater chance of CMTs being present;
- c) Species of trees within and/or around the area;
- d) Proximity to past and/or present X First Nation settlement;
- e) Proximity to water (e.g. creeks, lakes and rivers);
- f) Consultation with X First Nation community to identify known CMT sites; and
- g) Recommend appropriate assessments.

##### 2) Conduct assessments

- a) Field studies are only to be conducted with the permission of X First Nation (as per permitting process);
- b) Where possible, surveys will be conducted by X First Nation crews;
- c) When necessary, professional archaeologists will partner with X First Nation to conduct any studies. This entails X First Nation's input into the field methods, participation in the field study and comments attached to the final report;
- d) All CMTs will include the following photographic record:
  - i) whole tree (or as much as possible) showing location of cultural modification relative to the rest of the tree;
  - ii) close up of cultural modification;
  - iii) location shot: CMT in context of immediate surroundings;
  - iv) context of surroundings (show broader locale);
- e) All CMTs will be recorded according to Provincial standards on Level 1 or 2 recording forms; and
- f) Assessments will be evaluated both on a block by block basis as well as based on their interrelationship to surrounding territory.

##### 3) Significance Rating

X First Nation will utilize the following questions as a guide in determining the cultural significance of a CMT:

- a) Are the CMTs associated with ongoing traditional harvesting in the area?
- b) Does the particular site have cultural significance?
- c) Does the site belong to a particular family?
- d) Are alternative sites available to carry on the traditional activity?
- e) Do the CMTs have association with oral traditions about use in the area?
- f) Are the CMTs considered evidence useful for treaty negotiations?
- g) Do the CMTs represent a potential economic opportunity for guided tours?
- h) In addition, it must be understood that the ritual of prayer and offerings is done to each tree before and after the modification is made, thus making each CMT a spiritual site. CMT sites have the European equivalency to the places of worship. Therefore, destruction of a CMT site is similar to the destruction of a church.

#### 4) Implementation of recommendations

a) Where X First Nation determine that a CMT warrants protection, the following management prescriptions will be considered:

- i) Avoidance is always the first option;
- ii) Buffers of 20 meters surrounding the tree;
- iii) In the case of the CMT being a Danger tree, then a buffer zone of one tree length should be implemented (WCB regulations);
- iv) Adjusting block boundaries;
- v) Moving road placements;
- vi) Include CMTs in wildlife patches, variable retention, leave trees, riparian zones and/or other special management reserve areas.

b) Where X First Nation agree that a CMT cannot be protected, possible means of mitigation include:

- i) Forwarding the CMT to the X First Nation community for cultural purposes;
- ii) Collection of a stem round sample for further study;
- iii) Provision of further survey work in the associated area;
- iv) Financial compensation.

#### 5. Finding of Previously Unknown/Unidentified CMTs

"In the event that the location of cultural heritage resources are not known, the Forest Practices Code provides for the protection of previously unidentified resource features which may be located during actual operations..."

The Code defines cultural heritage resources as "an object, a site or a location of a traditional societal practice that is of historical, cultural or archaeological significance to the Province, a community or an aboriginal people."

Note: the Code does not prohibit the damaging of cultural heritage resources. It only requires statements of intended mitigation.

- a) Stop work immediately and avoid damaging any CMTs. In the event that CMTs are accidentally cut, leave the tree;
- b) Notify the X First Nation, District Manager and Archaeology branch (if uncertain the CMT is post-1846; and
- c) Proceed with Steps 2-4 of management procedure.

# First Nations: Example Consultation Process and Cultural Heritage Policy

## 1) Background

### *Ownership and Title*

The X First Nation have inhabited their territory, which encompasses what is now known as the \_\_\_\_\_ and beyond, since time immemorial. Thus, X First Nation have title within their territory.

The X First Nation have never extinguished title to their territory, in any manner, and will not do so in a modern day treaty.

In order to have given up title, the X First Nation would have had to have done so in one of the following ways:

1. Ceded their territory: a treaty or other legal agreement has never been signed by the X First Nation;
2. By conquest: neither the Canadian government nor any First Nation has ever conquered the X First Nation in war;
3. By discovery: since the X First Nation have been here since time immemorial, they have never been discovered by any governments. The concept of terra nullus was discredited by the International Court of Justice in the Western Sahara case. In this case, the government tried to say they gained title because the indigenous inhabitants that were there were uncivilized and therefore could not be considered to inhabit the land.

Therefore, through law, the X First Nation have never ceded, surrendered, or released any part of their territory to any government. Despite this, Federal and Provincial government policy has alienated the X First Nation from the management of their territory. As a result, the X First Nation have considerable concern regarding the nature and extent of development within the territory and the effect such development has on cultural heritage resources and the exercising of the X First Nation's aboriginal rights. Survey in the last number of years have shown that many cultural heritage resources - ranging from CMT's to village sites - have been destroyed by development. As a first step to prevent further damage, the consultation process and the procedures/prescriptions outlined in this policy are intended to ensure that cultural heritage resources are protected, managed and interpreted in a way that is respectful of the X First Nation's stewardship role over the territory.

## **CONSULTATION PROCESS**

### *Guiding Principles:*

The duty to consult includes:

1. The X First Nation must be provided with full information and involvement in the decision making of any activity or development, and Canada or BC must fully inform themselves of the practices of the X First Nation and their views on the activity or development. These measures must take place in the early stages of planning.

2. Full information must be provided on a continuing basis. As information and knowledge changes, this must be communicated to the X First Nation on an ongoing basis.
3. Consultation must be in good faith.
4. The intention of consultation is to substantially address the concerns of the X First Nation. This means that there should be a generous interpretation in favor of the X First Nation where such advice or consideration of any advice or recommendations must be given. Where such advice or recommendations are not adopted, reasons must be provided and an appeal process must be available.
5. Technical and/or financial resources shall be provided to the X First Nation so they can adequately review the issue being consulted on.

***Interests:***

1. BC and Canada will consult with the X First Nation:
  - a) Before either government enacts or amends a law if such enactment or amendment will affect the X First Nation territory or rights; or
  - b) When there is a proposed activity or development in the X First Nation territory that could affect or impact on the X First Nation territory or rights.
2. Consult and consultation means a process that:
  - a) Is based on the above guiding principles;
  - b) Includes X First Nation having majority representation in the relevant decision making body;
  - c) Begins at the early stages of planning; and
  - d) Adequately supported both financially and technically.
3. X First Nation's consent will be required where:
  - a) Hunting or fishing regulations are affected;
  - b) Cultural heritage resources require management;
  - c) Aboriginal rights are infringed upon, substantially reduced or areas where rights are exercised are eliminated; or
  - d) X First Nation's quality of life is affected in a way that members cannot carry out their life in the same manner as before.

# Cultural Heritage Investigation Permit

## X FIRST NATION Cultural Heritage Investigation Permit

PERMIT NUMBER \_\_\_\_\_

PERIOD \_\_\_\_\_ TO \_\_\_\_\_

(day/month/year)

(day/month/year)

ISSUED BY \_\_\_\_\_ (signature of authorized X First Nation official)

DATE \_\_\_\_\_ (day/month/year)

\_\_\_\_\_ is hereby authorized to conduct an Investigation as described in the  
(Name of Permit Holder)

Application by the permit holder dated \_\_\_\_\_ subject to the terms and conditions attached to this permit as well as the additional terms and conditions described below.

### **Additional Terms and Conditions:**

Check or complete as applicable

1. Field assistants / research assistants from the X First Nation are to be employed in the investigation by the permit holder at the rate of \$300.00 per day.

2. The permit holder is to deposit artifacts, samples and other archaeological materials generated by this investigation in trust for the X First Nation with:

\_\_\_\_\_ (name of institution or other trustee)

3. The permit holder is authorized to interview the following X First Nation Community members, with an honorarium of \$150.00 per day paid to each person interviewed:

\_\_\_\_\_

4. Research assistants from the X First Nation are to be employed by the permit holder to conduct all related interviews at a rate of \$250.00 per day. Additional research costs will also apply as outlined:

\_\_\_\_\_

5. 1/2 day pre-field work meeting to review internal information (e.g. TUS);

6. Exit meeting after field work to review findings;

7. Submit interim reports to X First Nation. Comments will be attached separately to the report.

### **NATURE OF INVESTIGATION:**

#### **Development Related**

Property Development

Mining

- Forestry
- Transportation
- Recreational development
- Other \_\_\_\_\_ (please provide description on separate paper)

**Education Related** \_\_\_\_\_ (please provide description on separate paper)

**Archaeology**

- Overview
- Preliminary Field Review
- Minor Archaeological testing
- Survey
- Archaeological excavation
- Other \_\_\_\_\_ (please provide description on separate paper)

**Anthropology**

- Overview
- Ethnography
- Survey
- Ethnobotany
- Other \_\_\_\_\_ (please provide description on separate paper)

**TERMS AND CONDITIONS**

The following form part of the terms and conditions under which Permits are issued. The X First Nation in the Permit may impose additional terms and conditions.

1. The Permit is valid only for the activities described in the application and for the period indicated on the Permit. The permit period may be extended by the X First Nation upon receipt from the permit holder of a written application for an extended permit period.
2. The permit holder must advise the X First Nation of any changes in the investigation as described in the Application prior to implementing the changes. The X First Nation prior to the permit holder implementing the changes must approve such changes in writing. If the X First Nation is not advised of such changes the X First Nation may terminate the Permit.
3. X First Nation reserve the right to terminate the Permit if the Permit is breached or if X First Nation form the opinion that a continuation of the investigation is contrary to the interests of the X First Nation..
4. If the investigation is terminated for any reason before completion, the permit holder will submit a detailed report to the X First Nation of conclusions up to that point.



5. All persons engaged by the permit holder to assist in the investigation are bound by the terms and conditions of the Permit and shall be fully qualified to perform the work.
6. A person designated by the X First Nation may at any time inspect any investigation being conducted under Permit, including any records or materials recovered under the authority of the Permit.
7. Upon completion of any archaeological investigation involving excavations, the permit holder shall ensure all sites are restored as nearly as possible to their former condition, to the satisfaction of the X First Nation.
8. The permit holder must provide the X First Nation with a copy of all reports, thesis, dissertations, papers and any other statements of findings or records related to the investigation within 60 days of completion. If no reports or findings are generated, the permit holder must inform the X First Nation in writing of the objectives, methods and results of the investigation within 60 days of completion of the investigation.
9. The permit holder must provide the X First Nation with copies of all field notes, forms, photographs and other original documents resulting from the investigation within 60 days of completion of the investigation.
10. The permit holder must be present "on site" for at least 80% of all field work undertaken under this Permit.
11. If human remains or artifacts are found, the permit holder must contact the X First Nation immediately and must not disturb the remains or artifacts until authorized by the X First Nation.
12. The permit holder must contact the X First Nation regarding the "cultural significance" of any archaeological remains found.
13. The issuance of a Permit by the X First Nation is solely to gather information about cultural heritage resources. In no way will such investigation replace the need for consultation to take place with the X First Nation, nor does it indicate approval of any project planned in relation to the investigation.
14. All archaeological investigations must be accompanied by an assessment of related traditional use information.
15. All information collected will be in a format transferable to the X First Nation Geographical Information System (GIS) for the eventual development of a GIS based referral system capable of addressing all types of natural resource issues.
16. All information and records created, produced, received, obtained or acquired by the permit holders as a result of this permit shall be the joint property of the X First Nation and the permit holder and cannot be disclosed without the written consent of X First Nation via an Information Sharing Protocol.
17. The copyright of all information and records belongs to the X First Nation.
18. The X First Nation has ownership over all artifacts /samples recovered from X First Nation territory.
19. The X First Nation has ownership over all pictographs, petroglyphs and other cultural rock features found within X First Nation territory.

## Cultural Heritage Investigation Permit Application

### Application

All anthropological, ethnographic, ethno-biological, ethno-botanical, archaeological work in X First Nation territory, or other disciplinary research where cultural heritage resources are the subject of study, as well as all studies involving collections from X First Nation territory, must be carried out under an Investigation Permit issued by the X First Nation.

I \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_,  
(given name) (surname) (address) (phone number)

representing \_\_\_\_\_,  
(agency/company/institution) (address) (phone number)

hereby apply for a X First Nation Cultural Heritage Investigation Permit and agree to abide by the terms and conditions listed on this Application, and any additional conditions attached to the Permit.

\_\_\_\_\_ Date \_\_\_\_\_  
(signature) (date)

The Applicant must provide the following information at the time of submitting this Application:

1. A copy of all permit applications for this investigation and all permits issued for this investigation;
2. If not included in (1) above, please provide on a separate paper the following information in relation to the cultural heritage investigation:
  - 2.1 Project location (physical description, latitude and longitude, Borden number);
  - 2.2 Project name;
  - 2.3 Investigation objectives;
  - 2.4 Investigation methods;
  - 2.5 Schedule of field work analysis and reporting;
  - 2.6 List of all investigation personnel;
  - 2.7 Other permits including X First Nation Permits applied for or held by Applicant;
  - 2.8 The name of the agency, company or other entity for which the investigation is being undertaken;
  - 2.9 Proposed repository for archaeological materials, original records, and other original documents generated by the investigation; and
  - 2.10 Any planned interviews with X First Nation elders or other informed community members and support rationale for interviews.
3. Current Curriculum Vitae for all senior investigation personnel if not already provided.

### Submit Application to:

X First Nation  
<Department>

<Contact Person>

<Address>

<Telephone>

<E-mail>

## **TERMS AND CONDITIONS**

The following form part of the terms and conditions under which Permits are issued. Additional terms and conditions may be imposed by the X First Nation in the Permit.

The Permit is valid only for the activities described in the application and for the period indicated on the Permit. The permit period may be extended by the X First Nation upon receipt from the permit holder of a written application for an extended permit period.

The permit holder must advise the X First Nation of any changes in the investigation as described in the Application prior to implementing the changes. Such changes must be approved in writing by the X First Nation prior to the permit holder implementing the changes. If the X First Nation is not advised of such changes the X First Nation may terminate the Permit.

X First Nation reserves the right to terminate the Permit if the Permit is breached or if X First Nation form the opinion that a continuation of the investigation is contrary to the interests of the X First Nation. If the investigation is terminated for any reason before completion, the permit holder will submit a detailed report to the X First Nation of conclusions up to that point.

All persons engaged by the permit holder to assist in the investigation are bound by the terms and conditions of the Permit and shall be fully qualified to perform the work.

A person designated by the X First Nation may at any time inspect any investigation being conducted under Permit, including any records or materials recovered under the authority of the Permit.

Upon completion of any archaeological investigation involving excavations, the permit holder shall ensure all sites are restored as nearly as possible to their former condition, to the satisfaction of the X First Nation.

The permit holder must provide the X First Nation with a copy of all reports, thesis, dissertations, papers and any other statements of findings or records related to the investigation within 60 days of completion. If no reports or findings are generated, the permit holder must inform the X First Nation in writing of the objectives, methods and results of the investigation within 60 days of completion of the investigation.

The permit holder must provide the X First Nation with copies of all field notes, forms, photographs and other original documents resulting from the investigation within 60 days of completion of the investigation.

The permit holder must be present "on site" for at least 80% of all field work undertaken under this Permit.

If human remains or artifacts are found, the permit holder must contact the X First Nation immediately and must not disturb the remains or artifacts until authorized by the X First Nation.

The permit holder must contact the <insert nation name> First Nation regarding the "cultural significance" of any archeological remains found.

The issuance of a Permit by the X First Nation is solely to gather information about cultural heritage resources. In no way will such investigation replace the need for consultation to take place with the X First Nation, nor does it indicate approval of any project planned in relation to the investigation.

All archaeological investigations must be accompanied by an assessment of related traditional use information.

All information collected will be in a format transferable to the X First Nation Geographical Information System (GIS) for the eventual development of a GIS based referral system capable of addressing all types of natural resource issues.

All information and records created, produced, received, obtained or acquired by the permit holders as a result of this permit shall be the joint property of the X First Nation and the permit holder and cannot be disclosed without the written consent of X First Nation via an Information Sharing Protocol.

The copyright of all information and records belongs to the X First Nation.

The X First Nation has ownership over all artifacts /samples recovered from X First Nation territory.  
The X First Nation has ownership over all pictographs, petroglyphs and other cultural rock features found within X First Nation territory

## Example Service Agreement - forestry

### **A Service Agreement between the Sliammon First Nation and a forestry company outlining costs of fee for service work**

**DATE: DECEMBER 3, 2000**

**BETWEEN: SLIAMMON FIRST NATION (SFN)**

**AND: ----- (THIRD PARTY INTEREST)**

**PROJECT: TRADITIONAL USE STUDY FIELD RECONNAISSANCE (TUS RECCE'S) OF CUT BLOCKS WL20, FH27A, FH27B, LL53, LL56 and BT636**

The purpose of this service agreement is to outline the terms of agreement between the Sliammon First Nation (SFN) Crown Land Referrals Department (SCLRD) and ----- for work to be performed during a Traditional Use Study Reconnaissance (TUS Recce) of proposed harvest and road construction areas within the following six ----- cut blocks; WL20, FH27A, FH27B, LL53, LL56 and BT636. The purpose of these TUS Recce's will be to identify potential impacts on SFN cultural heritage resources and aboriginal rights.

It is the understanding the SCLRD will complete the following:

1. TUS Recce's of the following ----- cut blocks; WL20, FH27A, FH27B, LL53, LL56 and BT636. SFN will use one Senior Field-worker and one Assistant Field-worker). It is estimated that to adequately cover the 152.1 hectares, it will require at least three days of field work (and no more than 4 days) beginning at a time convenient to ----- . If time requirements to complete these TUS Recce's go beyond the estimate time allotment, SCLRD and ----- will discuss the situation and agree upon an additional allocation of time and costs;
2. a TUS Recce Written Summary (TUSRWS) of comments and concerns for submission to the Ministry of Forests (MoF) and ----- after the completion of the TUS Recce's. It is anticipated the preparation of this TUS Recce Written Summary will require at least one day of work; and
3. participate in work leading up to this project (participation in meetings, telephone calls, drafting of service agreement, scheduling of TUS Recce's) and participate in follow-up work at the completion of this project (drafting of follow-up correspondence, participation in follow-up meetings and telephone calls with MoF and -----). It is anticipated that the work leading up to this project and the follow-up work required will at least one day of work; and

**The SCLRD will make available the following resources to undertake the terms of this agreement:**

- **Manager (SCLRD) - at a rate of \$650.00 per day**
- **Senior Field-worker - at a rate of \$375.00 per day**
- **Assistant Field-worker - at a rate of \$150.00 per day**
- **Mileage - at a rate of .35 / km**

It is the responsibility of the Manager to schedule the TUS Recce's, preparation of the TUS Recce Written Summary and participate in follow-up meetings with MoF and ----- to discuss all issues and concerns raised by the SFN. The SCLRD shall invoice --- for the fees associated with this TUS Recce project. This shall be payable upon receipt. We look forward to a continued working relationship.

---

L. Maynard Harry, Manager  
SFN Crown Lands Referrals Department

---

Authorized signatory  
Company Name

# Memorandum of Understanding regarding land use & management planning

## Land and Resource Management Planning Memorandum of Understanding

BETWEEN:

**KWAKUITL DISTRICT COUNCIL SOCIETY, A DULY INCORPORATED BODY PURSUANT TO THE LAWS OF THE PROVINCE OF BRITISH COLUMBIA**

(HEREINAFTER REFERRED TO AS THE "KDC") OF THE FIRST PART,

AND:

**MUSGAMAGW TSAWATAINEUK TRIBAL COUNCIL SOCIETY, A DULY INCORPORATED BODY PURSUANT TO THE LAWS OF THE PROVINCE OF BRITISH COLUMBIA**

(HEREINAFTER REFERRED TO AS THE "MTTC") OF THE SECOND PART,

AND:

**TLOWITIS MUMTAGILA NATION, AN UNINCORPORATED BODY IN THE PROVINCE OF BRITISH COLUMBIA**

(HEREINAFTER REFERRED TO AS "TM") OF THE THIRD PART,

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE LAND USE COORDINATION OFFICE OF THE GOVERNMENT OF BRITISH COLUMBIA**

(HEREINAFTER REFERRED TO AS THE "PROVINCE") OF THE FOURTH PART

WHEREAS each of the parties to this agreement desire to enter into an arrangement for member Nations the KDC and the KDC the MTTC as well as TM to participate in a land and resource planning process known as the Land and Resource Management Planning (LRMP) process for the area identified as the Central Coast Plan Area;

AND WHEREAS the traditional territories is the ancestral home of the TM and member Nations or the KDC and MTTC and as such is of central importance to the cultural, spiritual and economic well-being of the peoples of each of these Nations.

AND WHEREAS the member Nations of the KDC and MTTC who desire to participate in the Central Coast LRMP process did authorize the KDC and MTTC to enter into this Agreement;

AND WHEREAS the TM is an aboriginal Nation with traditional territories and rights within the Central Coast Planning Area and the TM desire to participate in the Central Coast LRMP process;

AND WHEREAS the Province desires TM and the Aboriginal Nations who are members of the KDC and MTTC to participate in the Province's LRMP process for the Central Coast Plan Area.

AND WHEREAS the Province did enter into a Letter of Agreement with each the KDC and the MTTC for the purpose of developing a structure and process for their member Nations and TM to participate in the Central Coast LRMP process;

AND WHEREAS each the Th1, the member Nations of the KDC and MTTC assert they have aboriginal title, rights and interests to all resources in the traditional territories and further that the aboriginal title, rights and interests were never were surrendered, ceded or sold to the Crown in Right of Canada or to the Crown in Right to the Province;

AND WHEREAS the citizens of the TM and each of the member Nations of the KDC and MTTC constitutes the majority of the population within the Central Coast South planning area:

AND WHEREAS the TM and each of the member Nations of the KDC and MTTC assert that the aboriginal cultural and heritage resource information relates to the traditional property rights of the member Nation's people of the KDC, MTTC and TM and that these Nations assert that they are the rightful owners of these sites

AND WHEREAS the Parties did agree to the structure and process that will allow the TM along with the member Nations of the KDC and the MTTC to participate in the Central Coast LRMP process;

THEREFORE IT IS AGREED that the Parties will work together on a government to government basis in a spirit of mutual respect to establish a clear and certain process for communication, participation and information sharing in relation to the Central Coast Land and Resource Management Plan in the following ways:

## **1. DEFINITIONS**

1.1 "traditional territories" means that geographic area which has been identified by the member Aboriginal Nations of the KDC and MTTC and TM as their inherited traditional territory as outlined on the map attached hereto as Appendix "I" ;

1.2 "member Nations of the KDC" means the Kwakiutl Nation, Mamalelequla-Qwe-Qwa Sot-Enox nation, Tanakteuk Nation Gwa Sala'nakwaxda'xw Nation, Quatsino Nation, Tlatlasikwala Nation, We Wai Kai Nation, We Wai Kum Nation Kwiakah Nation and Comox Nation;

1.3 "member Nations of the MTTC" means the Tsawataneuk Nation, Kwicksutaneuk Nation, Kwa-wa-aineuk Nation and the Nam'gis Nation;

1.4 "Tlowitsis Mumtagila Nation" means the descendants of the aboriginal peoples known as the Tlowitsis and Mumtagila peoples;



1.5 "The Province" means the duly elected government of British Columbia, as represented by the Land Use Coordination Office (LUCO);

1.6 "Land Use Coordination Office" ("LUCO") means the office of the provincial government responsible for the provincial land use strategy, and specifically the land and resource management planning program;

1.7 "The Parties" means the KDC, MTTC, TM and the Province collectively;

1.8 "Memorandum of Understanding" ("MOU") means this Agreement;

1.9 "Land and Resource Management Plan" ("LRMP") means a strategic level plan for Crown land developed through a public process, that provides broad land use zoning and resource management strategies and objectives to meet social, economic and environmental aspirations of residents, governments and stakeholders in the Central Coast Plan Area;

1.10 "Central Coast Plan Area" means, for LRMP planning purposes, the area subject to zoning and management recommendations of the LRMP for the Central Coast as shown in Appendix 2, the Central Coast being subdivided into the Central Coast North Portion and the Central Coast South Portion;

1.11. "LRMP Terms of Reference and Work plan" means the document, approved by all LRMP participants, which outlines issues, scope, intended products, structure, roles and responsibilities, rules of operation, and sequence and timing of activities related to the central coast LRMP;

1.12 "Contribution Agreements" means written agreements mutually acceptable to the Parties for the purpose of supporting the participation of the member Nations, of the KDC, MTTC and TM in the LRMP progress;

1.13 "Cultural and Heritage Resources" means for the purposes of this agreement any geographically defined area that has been customarily used by one or more contemporary groups of aboriginal people for some type of culturally significant activity. These sites may not reveal physical evidence of use. Traditional sites are usually documented through oral, historical, and archival sources.

## **2.0 PURPOSE**

2.1 The Parties hereby enter into this MOU for the following purposes:

2.1.1 To implement the identified manner that the member Nations of the KDC, MTTC and TM will participate in the Central Coast LRMP process as expressed herein;

2.1.2 To establish the principles upon which each Party will conduct themselves throughout the LRMP process and after completion of the LRMP process;

2-1.3 To establish a clear and certain process for communication, participation and information sharing between the Parties with respect to the Central Coast LRMP process and its products;

2.1.4 To enable the Parties to work together (as part of the LRMP development) to consider present and future economic and social impacts to and opportunities for the member Nations of the KDC, MTTC and TM related to the Central Coast Land and Resource Management Plan area.

2.2 The Central Coast LRMP process and its products will not unlawfully infringe or restrict any aboriginal rights nor prejudice present or future treaty negotiations.

### **3.0 PRINCIPLES**

3.1 The parties recognize their" commitment to each other to abide by the following principles:

3.1.1 In all matters referred to in this MOU, the Parties address issues of mutual interest on a government to government relationship between the Province and all Nations represented by the KDC, MTTC and the TM who desire to participate in the Central Coast LRMP process;

3.1.2 This agreement will recognize and respect aboriginal and treaty rights in a manner consistent with section 35 of the Constitution Act 1982 and the findings of the courts. Nothing in this agreement shall be construed to limit, diminish or restrict the positions that either party may wish to take with respect to treaty negotiations or in any legal positions.

3.1.3 This agreement is without prejudice to any aboriginal rights, title or interests of the Nations participating in the Central Coast LRMP process or any position the Province, TM or any member Nation of either the KDC or MTTC may take in the present or future treaty negotiations and/or any legal proceedings.

3.1.4 This agreement shall not bind other aboriginal Nations with traditional territories within the Central Coast LRMP area;

3.1.5 The Courts of Canada have found that aboriginal Nations have continuing, unextinguished aboriginal rights to use certain Crown held lands and resources for traditional pursuits which are integral to the distinctive cultural heritage of an aboriginal society;

3.1.6 The Parties agree that any Nation involvement in the Central Coast LRMP as outlined in this MOU is not intended and shall not be used to fulfill other subsequent requirements of government agencies for developing an appropriate relationship for land use planning or management within the traditional territories nor is it intended and shall not be used to fulfill the legal obligation of the Province arising from Court decisions;

3.1.7 No Nation's involvement in the Central Coast LRMP shall imply or convey the consent of that Nation to any specific land development or resource management proposal that may be subsequent to the development of any LRMP document;

3.1.8 The Parties have common information needs for land and resource use, planning and management and wish to work for their mutual use and benefit;

3.1.9 Cultural and heritage resource information sharing and utilization will occur in accordance with any agreements between the parties and will be consistent with the Provincial Freedom of Information and Privacy Act.

#### **4.0 PARTICIPATION**

4.1 The Parties agree that those member Nations of the KDC and the MTTC and the TM who desire to participate in the Central Coast LRMP will do so in accordance to the Work plan and budget mutually, agreed to by the Parties;

4.2 The Parties will negotiate funding through specific contribution agreements to enable the member Nations of the KDC, MTTC and the TM to participate in the Central Coast LCRMP process a meaningful way. The provision of funding is subject to an annual appropriation being approved by the Province.

4.3 To allow for meaningful participation of the member Nations of the KDC, MTTC and the TM in the Central Coast LRMP process, the Province agrees to provide the necessary technical orientation and training, community LRMP coordinating funding, and additional funding as mutually agreed to by the parties, needed to complete or continue local information gathering and analysis. The training and funding will be provided through specific contribution agreements.

4.4 The Parties agree that the participating member Nations of the KDC, MTTC and the TM shall develop and deliver various mutually agreed upon products during the process, as established in specific contribution agreements including LRMP products identified in and limited to the Central Coast LRMP Terms of Reference and Work plan.

4.5 The participating Nations of the KDC, MTTC and the TM will have the opportunity to participate in all forums and meetings in which information or discussions may be addressed that relate to the land and resources within the traditional territory including but not limited to:

(a) the South Community Forum;

(b) the Plan Area Forum;

(c) the Inter-Agency Planning Team (IPT);

(d) any First Nations Forums addressing land and resources within the traditional territory;

(e) the opportunity to meet with the Inter-Agency Management Committee Caucus (IAMCC) on issues relating to the LRMP process that are of a government to government nature (as outlined in the Central Coast LRMP Terms of Reference). This will be arranged through the Process Coordinator at the request of the organization.

4.6 Sufficient time will be provided for the member Nations of the KDC, MTTC and the TM to fully consult with their citizens prior to the submission of any LRMP related information or products, with consideration for the overall Central Coast LRMP work plan schedule.

## **5.0 DECISION MAKING & IMPLEMENTATION**

5.1 The Parties agree that the Province may accept or reject any of the products resulting from the Central Coast LRMP process;

5.2 The Parties agree that the member Nations of the KDC, MTTC and TM will have the opportunity to express their opinion and position with respect to any product of the Central Coast LRMP process which will be acknowledged by the Province in accordance to the principles expressed within this agreement;

5.3 The Parties agree that the Province will provide the opportunity for the member Nations of the KDC, MTTC and the TM to be involved in the implementation process for the land use plan that may result from the Central Coast LRMP process. The IAMCC agencies will work with First Nations to ensure the objectives and strategies in the approved plan are reflected in local level plans and activities.

5.4 The legal obligation of the Province to ensure that the LCRMP process and/or its products do not unlawfully infringe or restrict aboriginal rights, and its implications, will be explained to LRMP participants and technical committee members as a part of the preliminary orientation process by the Parties.

## **6.0 INFORMATION GATHERING**

6.1 To allow for meaningful participation of the member Nations of the KDC, MTTC and the TM in the Central Coast LRMP, the Province agrees to provide copies of all technical, background or other information and correspondence produced for, or provided to the Central Coast LRMP process that may impact land and resources within the traditional territories. Sharing of this information will be done in accordance with the province's Freedom of Information and Privacy Act.

6.2 The Province agrees to take into consideration all available cultural and heritage resource information relating to the traditional territories including information provided by the member Nations of the KDC, MTTC and the TM, in developing land and resource use planning scenarios, recommendations and decisions relating to the traditional territories.

6.3 In certain cases, cultural and heritage resource information provided by the member Nations of the KDC, MTTC and the TM may contain sensitive and confidential information. Accordingly, the Province agrees that cultural or heritage resource information provided by the member Nations of the KDC, MTTC and the TM shall be managed in a manner consistent with established information sharing agreements between the parties and the provinces Freedom information and Privacy Act..

## **7.0 DISPUTE RESOLUTION**

7.1 Every attempt will be made to resolve disputes arising from this agreement through discussion and consultation between senior staff of the participating member First Nations of the KDC, MTTC and the TM and the Central Coast LRMP Process Coordinator for the Province.

7.2 In the event that there is a conflict between the Central Coast LRMP process and this MOU the terms of this MOU shall prevail.

## **8.0 AMENDMENT**

8.1 This agreement may be amended by written agreement of the Parties.

## **9.0 TERM**

9.1 This agreement may be terminated by a Party at any time with written notice by any of the Parties.

## **10. NOTICE**

10.1 Any notice given pursuant to this Agreement shall be made in writing to:

Kwakiutl District Council  
PO Box 2490, Port Hardy BC  
VOP 2PO

Musgamagw Tsawataineuk Tribal Council  
PO Box 90, Alert Bay BC  
YON 1A0

Tlowitsis Mumtagila  
1398 Carmel Crescent , Campbell River BC

The Province of British Columbia  
Assistant Deputy Minister, Land Use Coordination Office  
2- 836 Yates Centre , Victoria BC  
V8V 1X4

## Memorandum of Understanding regarding oil and gas development

<http://www.ogc.gov.bc.ca/documents/firstnations/mou/halfmou.htm>

### Memorandum of Understanding between Halfway River First Nation and the Province of British Columbia

WHEREAS

I. WITHOUT PREJUDICE

II. DEFINITIONS

III. PURPOSE

IV. OPENNESS

V. SCOPE

VI. INFORMATION SHARING

VII. CONSULTATION PROCESS

VIII. CAPACITY AND DEVELOPMENT FINANCIAL CONTRIBUTIONS

IX. FIRST NATION-INDUSTRY ECONOMIC DEVELOPMENT AGREEMENTS

X. DISPUTE RESOLUTION

XI. TERM

XII. TERMINATION

XIII. OTHER CONDITIONS

SIGNATORIES

APPENDICES

### Memorandum of Understanding between Halfway River First Nation and the Province of British Columbia

The following Memorandum of Understanding (this Memorandum) is between the Government of the Province of British Columbia (the Province) and Halfway River First Nation (HRFN), a signatory to Treaty Number 8, reached and signed by the Parties on October 26, 1998.

WHEREAS the Parties are committed to establishing a mutually acceptable process for consultation which will, within the geographic boundaries of British Columbia, create greater certainty for HRFN, government, and the oil and gas industry, while assisting in the avoidance of unjustifiable infringement of HRFN's treaty rights;

AND WHEREAS the Parties wish to use this Memorandum as a vehicle to support the development of a long-term relationship between the Parties that will improve communications, facilitate ongoing discussion, and establish a mutual commitment to cooperation;

AND WHEREAS the Parties share a desire to cooperate in good faith in the review of oil and gas sector activity, including forestry activity related to oil and gas referrals, in a timely manner as per the agreed upon processes in this Memorandum;

AND WHEREAS the Parties acknowledge that the oil and gas industry seeks operational certainty, including access procedures, predictable costs, and defined timelines and processes, and has agreed to provide financial contributions to assist First Nations to more fully participate in the consultation process;

AND WHEREAS the Parties wish to establish fairness and accountability and transparent procedures for processing of referrals related to oil and gas sector activity.

THEREFORE THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

#### I. WITHOUT PREJUDICE

This Memorandum of Understanding is without prejudice to:

- potential negotiations for Treaty Land Entitlement or self-government agreements;
- the Parties' rights, titles or interests except as specifically defined in this Memorandum;
- any future discussions, negotiations or settlements.

#### II. DEFINITIONS

Capacity:

For the purposes of this Memorandum only, the ability and resources reasonably required by HRFN to fulfill the prescribed terms of this Memorandum.

Consultation:

For the purposes of this Memorandum only, a process, undertaken in good faith by both Parties, to identify potential infringements of any existing rights of HRFN.

HRFN Critical Community Use Area:

For certainty, any existing rights of the HRFN and its membership are not confined to the boundaries of the Critical Community Use Area and are provided by HRFN for administrative purposes only. See attached map (*Appendix 4*).

Existing Facilities:

For the purposes of the fee schedule attached to this Memorandum (*Appendix 3*), "existing facilities" will only refer to those wells, pipelines, gas plants, and compressor plants which are subject to charges to be collected by the Oil and Gas Commission for First Nations development. It does not refer to facilities existing at the time of the signing of this Memorandum.

Oil and Gas Commission (OGC):

A corporation, known as the Oil and Gas Commission, established by the Lieutenant Governor in Council as an agent of the Government of the Province of British Columbia.

Oil and Gas Activity:

All functions related to oil and gas development which may include, but is not limited to, pre-tenure, seismic, well sites, pipelines, and processing facilities.

Working Days:

For the purposes of calculating timelines for this Memorandum, those days that the Oil and Gas Commission is open for business will be considered working days.

### III. PURPOSE

A. This Memorandum establishes a framework:

1. To further develop and encourage the relationship between the Parties.
2. For consultation between the Province and HRFN regarding oil and gas sector related activity licensed by the Province within the Critical Community Use Area.
3. To create greater clarity as to how the Province will consult with HRFN.
4. To formalize and make transparent all transfers and exchanges between the Parties.
5. To assist HRFN to identify potential infringements of oil and gas sector related activity on its treaty rights, and review and process Provincial oil and gas referrals in a timely manner.
6. To assist the Province to avoid unjustifiable infringement of any existing rights of HRFN.

B. The intent of this Memorandum is to assist the Parties to achieve the following:

1. Establish a consultation process with time-lines, structures, authorities, and a method for resolution of disputes;
2. Define the roles and responsibilities of HRFN, the Province and the oil and gas industry, with respect to consultation processes related to oil and gas sector related activity in the Critical Community Use Area in British Columbia;
3. Establish a formula, mechanism and process for the oil and gas industry to contribute to HRFN's capacity related to consultations for oil and gas activity;
4. Establish a formula, mechanism and process for the oil and gas industry to contribute to development initiatives undertaken by HRFN;



5. Ensure that companies, or their representatives, engaged in oil and gas sector activity in the Treaty Number 8 area within B.C. pay only those financial contributions to First Nations provided for under this Memorandum;
6. Engage in periodic evaluation to ensure an effective and efficient consultation process is in place, and to incorporate any legal or policy changes as may be required from time to time; and
7. Provide a means to inform industry of the consultation process agreed to by the Parties.

C. The Parties agree to:

1. Encourage the participation of other government agencies and/or resource industry sectors, and allow amendment of this Memorandum so as to facilitate formal participation in those instances which are acceptable to the Parties;
2. Jointly develop and implement a communications plan for informing the public about the authorities, timelines, and structures established through this Memorandum, and progress achieved through consultation.
3. Encourage the participation of the Government of Canada in the consultation process for the purpose of reaching an agreement between the Federal Government and the Parties that is supportive of this Memorandum.

D. The Parties agree that this Memorandum will be a "living" document that can be amended over time to reflect changes mutually agreed upon in writing by the Parties, as set out in *Section XI: Term*.

#### IV. OPENNESS

Both Parties agree that all consultations, processes and actions resulting from this document will be transparent, honest and fair, and in the spirit and intent in which this Memorandum was reached.

The Parties agree that this Memorandum of Understanding will become a public document upon execution.

#### V. SCOPE

A. Nothing in this Memorandum is intended to define, create, or extinguish any rights of HRFN.

B. Nothing in this Memorandum is intended to define, create, derogate from, or extinguish any rights of the Province.

C. This Memorandum, and any schedules or appendices attached to it, is not a treaty or land claims agreement under sections 25 or 35 of the *Constitution Act, 1982*.

D. This Memorandum will apply within the Treaty Number 8 area in British Columbia.

E. Provided that the Government of Canada is willing to engage in discussions, the Parties reserve the right to enter into future discussions on oil and gas related issues not addressed in this Memorandum.

F. This Memorandum is effective retroactive to August 6, 1998.

## VI. INFORMATION SHARING

The Parties agree to share information as required to facilitate the implementation of the Memorandum of Understanding, subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. Privileged, confidential or sensitive information may only be released by prior written consent of the Parties.

## VII. CONSULTATION PROCESS

The Parties agree that the uniqueness and special characteristics of the oil and gas industry and its activities within British Columbia make it necessary to process oil and gas related referrals in a timely manner. Further, the Parties agree that consultation shall proceed through HRFN's Chief and Council, or their official designates, only. To this end,

1. The Province shall initiate timely referrals, and undertake consultations with HRFN in regard to oil and gas sector related activity;
2. The HRFN will undertake consultations and the review of oil and gas related referrals within the Critical Community Use Area in a timely manner; and
3. The Province shall inform the oil and gas industry when consultation has been completed regarding a particular oil and gas activity referral.

The Parties agree that the process described and attached in *Appendix 1* applies to their consultations.

## VIII. CAPACITY AND DEVELOPMENT FINANCIAL CONTRIBUTIONS

The Parties agree that two types of financial contribution will flow to HRFN as set out in *Appendix 2* and *Appendix 3* of this Memorandum:

1. contribution to capacity costs, and
2. contribution to development initiatives.

Further, the Parties agree that these financial contributions will be directed to the Chief and Council of HRFN.

HRFN will not request or accept any fees, levies, compensation or other charges from companies, or their representatives, engaged in oil and gas sector related activity during the term of this Memorandum, other than: those provided for under this Memorandum; charitable donations and gifts unconditionally and voluntarily made by a company to HRFN that are permitted under the *Income Tax Act* (examples could include educational scholarships and events sponsorships); those costs that may be

incurred due to meeting legislative requirements; and costs of studies that are deemed appropriate under the terms of the consultation provisions of this Memorandum, and justified and agreed upon by HRFN and the Oil and Gas Commission.

The level of financial contributions defined in *Appendix 2* and *Appendix 3* will be fixed for the term of this Memorandum.

The specific terms and conditions of disbursement and accountability of these financial contributions will be set out in a Contribution Agreement that shall maintain the spirit and intent of this Memorandum.

### 1.0 Capacity Financial Contribution

The purpose of the capacity financial contribution is to assist HRFN in acquiring resources in order to identify potential infringements of treaty rights by proposed oil and gas sector activity, to consult with the Province, and to review and process oil and gas related activity referrals in the time-frame established in this Memorandum.

This financial contribution will be disbursed quarterly to Halfway River First Nation by the B.C. Oil and Gas Commission based on a fee the Commission collects from oil and gas companies upon application for approval to undertake activities on Provincial Crown land. This financial contribution will be administered in the manner described in *Appendix 2* and as set out in the Contribution Agreement.

The Parties agree that the financial contribution provided in this Memorandum for HRFN's capacity will replace all fees relating to capacity, including random liaison fees and fees for all monitors, and that the fee schedule will not provide for, nor allow, any payments for oil and gas related facilities or activities undertaken prior to the effective date of this Memorandum.

### 2.0 Development Financial Contribution

The purpose of the development financial contribution is to support community development initiatives as defined by the Chief and Council of HRFN.

This financial contribution will be disbursed at the end of each quarter to HRFN by the B.C. Oil and Gas Commission based on a fee collected from oil and gas companies for authorized activities on Crown land. This financial contribution will be administered in the manner described in *Appendix 3* and as set out in the Contribution Agreement.

The Parties agree that the formula to be used for disbursing the development financial contribution will be 7.25 -- i.e., total development financial contributions received by the Oil and Gas Commission from the oil and gas industry will be divided equally (amounting to four-twenty-ninths of the total) and disbursed to each of the seven B.C.-based Treaty 8 First Nations, subject to their signing a Memorandum of Understanding with the Province, and a smaller portion (amounting to one-twenty-

ninth of the total) will be provided to the Dene Tha' First Nation with claimed territory based on traplines in B.C., also subject to Dene Tha' signing a Memorandum of Understanding with the Province.

The Parties agree that the development financial contribution provided in this Memorandum will replace all post-approval fees, compensation or other charges that may be requested of industry by HRFN, and that the fee schedule will not provide for, nor allow, any payments for oil and gas related facilities or activities undertaken prior to the effective date of this Memorandum.

#### IX. FIRST NATION-INDUSTRY ECONOMIC DEVELOPMENT AGREEMENTS

For the purposes of any existing agreements that may exist between HRFN and companies engaged in oil and gas sector related activities, the Parties agree that the payments under this Memorandum supersede and replace the financial arrangements made in those agreements.

The Parties agree that in addition to this Memorandum separate bilateral agreements between HRFN and oil and gas companies are a valuable tool to define protocols for working relationships, to encourage the employment of First Nation contractors, to foster training and employment opportunities, and to facilitate long-term mutually beneficial business relationships, provided that there are no mandatory costs or fees associated with those agreements.

#### X. DISPUTE RESOLUTION

The Parties agree to reach, within ninety (90) calendar days of the signing of this Memorandum, a dispute resolution process that will address disputes over the interpretation of this Memorandum, and disputes associated with the implementation of this Memorandum.

The Parties commit to making best efforts to resolve disputes that may arise between them related to oil and gas companies' certainty of costs and ability to operate on Crown land.

The Parties agree to make best efforts to enable oil and gas companies to operate without interruption once oil and gas activities are approved. Should unreasonable interruption occur, the Parties agree that the dispute resolution process is immediately triggered.

#### XI. TERM

This Memorandum comes into effect immediately upon signing by the principals of both Parties and shall remain effective for a term of five (5) years, or until terminated by one of the Parties under section *XII: Termination*.

The Parties agree that during the first year of this Memorandum, they will hold quarterly meetings to review and facilitate smooth implementation of the terms of the Memorandum. In subsequent years,

such meetings will be conducted on an annual basis. Any amendments or revisions to this Memorandum may only be considered at the time of these reviews and made in accordance with the following:

-- sixty (60) calendar days prior to the review, a proposed amendment must be submitted in writing to the Oil and Gas Commission, for consideration and approval by the Parties to this Memorandum.

## XII. TERMINATION

### Voluntary Termination

The Parties agree that this Memorandum of Understanding can be voluntarily terminated by one of the Parties subject to the following:

1. The Party wishing to voluntarily terminate this Memorandum informs, by written notice, the other Party of the circumstances and reasons leading to the decision to terminate. Best efforts must be made by both Parties to address and resolve the matter, with the goal of avoiding termination, within thirty (30) calendar days.
2. If, at the end of the thirty-day period, the Parties have not resolved the matter, the Party wishing to terminate this Memorandum provides sixty (60) calendar days written notice to the other Party. Further efforts by both Parties to avoid termination will be undertaken throughout that 60-day period.

### Abrupt Termination

Non-compliance with the consultation process, financial contribution provisions or the fee schedules of this Memorandum, by either Party, will be deemed to constitute thirty (30) days' notice of termination of this Memorandum, provided that such notice is given in writing and best efforts are made by both Parties to address and resolve the circumstances which led to the decision to terminate.

For the purposes of both voluntary and abrupt termination, all elements of this Memorandum end at the date of termination, including all financial contribution commitments, and any unexpended advances of funds will be returned by HRFN to the Province.

## XIII. OTHER CONDITIONS

The Parties agree that the terms of this Memorandum of Understanding apply to all representatives of the Parties.

The Parties agree that additional agencies, organizations, enterprises or governments may become Parties to this Memorandum if all existing Parties agree in writing.

Agreed to this 26<sup>th</sup> day of October, 1998.

By: \_\_\_\_\_

Bernie Metecheah, Chief  
Halfway River First Nation

By: \_\_\_\_\_

Honourable Dan Miller, Minister of Energy and Mines  
Province of British Columbia

By: \_\_\_\_\_

Doug Callbeck  
Acting Commissioner, Oil and Gas Commission

**APPENDIX 1**

Consultation process/timelines

**APPENDIX 2**

Fee Schedule: Capacity Financial Contribution

**APPENDIX 3**

Fee Schedule: Development Financial Contribution

**APPENDIX 4**

Critical Community Use Area

## Interim Measures Agreement (Forestry)

### LETTER OF UNDERSTANDING

*Among*

*GOVERNMENT OF BRITISH COLUMBIA ("British Columbia")*

*GOVERNMENT OF CANADA ("Canada")*

*WESTBANK FIRST NATION ("Westbank")*

*("the Parties")*

The purpose of this Letter of Understanding is to acknowledge the wish of the Parties to conduct honourable and respectful negotiations, seeking to reconcile the interests of Westbank, Canada and British Columbia regarding the contentious issues involved with forestry matters in the asserted traditional territory of Westbank, as a member of the Okanagan Nation. Although the Parties recognize that more time will be needed to conclude all the matters that must be addressed, a number of issues have now been mutually agreed to and can be settled as follows:

1) Funding will be made available to Westbank on the following basis:

- a) Canada has provided \$100,000 to Westbank to enhance its capacity and expertise to sustain economic benefits from the forestry industry, to conduct negotiations with British Columbia and other necessary parties and to identify opportunities for partnership in the forestry sector;
- b) British Columbia will provide Westbank with \$100,000 upon execution of this Letter of Understanding to enhance its capacity and expertise to undertake negotiations of an Interim Measures Agreement on forestry ("IMA") and to prepare a forestry capacity building business plan;
- c) British Columbia will provide an additional \$50,000 to Westbank upon approval of a forestry capacity building business plan from Westbank for the purpose of carrying out the activities set forth in that plan;
- d) Canada will provide an additional \$50,000 to assist Westbank to negotiate an IMA, payable no later than the payment payable by British Columbia under paragraph 1 (c).
- e) Canada and British Columbia acknowledge that Westbank may require additional funding for capacity building. Any such additional funding will be subject to an appropriation of funds from the Legislature of British Columbia or the Parliament of Canada as the case may be.

2) Timber will be made available to Westbank on the following basis:

- a) British Columbia will provide 2,000 m<sup>3</sup> upon execution of this Letter of Understanding;
- b) British Columbia will obtain agreement from the companies listed in Schedule "A" (the "Companies") for their provision to Westbank of an additional:10,000 m<sup>3</sup>, to be made available at 2,000 m<sup>3</sup> per month commencing within 30 days of execution hereof and subject to the provisions of paragraph 4(b)(i);
- c) British Columbia will provide an area or areas capable of sustaining 55,000 m<sup>3</sup> per annum subject to the provisions of paragraphs 4(a) and 4(b)(ii).

3) Westbank and British Columbia will enter into a Litigation Abeyance Agreement in the form attached hereto, and in the event either party gives notice under section 2 of the Abeyance Agreement, or the Abeyance Agreement is otherwise terminated, this Letter of Understanding and the obligations hereunder will terminate on the effective date of such notice or termination.

4) Westbank and British Columbia agree to negotiate in good faith for a period of 90 days from execution hereof to develop an IMA which will include the following features;

a) British Columbia will;

- i) invite a proposal from Westbank for a Community Forest Pilot Agreement ("CFPA");
- ii) negotiate with Westbank the term and conditions for the CFPA including the provision of 55000 m3 per annum referred to in paragraph 2(c).

b) Westbank will:

- i) enter into a mutually satisfactory fiber supply agreement or agreements with the Companies for the 10,000 m3 referred to in paragraph 2(b);
- ii) enter into a mutually satisfactory fiber supply agreement or agreements with the Companies for the volume of timber that each of the Companies will be contributing to British Columbia under a: Cooperative Forest Agreement;
- iii) work cooperatively with the Companies to identify additional opportunities in the Okanagan Timber Supply Area, including joint ventures and forest certification plans;
- iv) make all reasonable efforts to obtain approval from the Okanagan Nation Alliance on the location of the CFPA.

c) British Columbia and Westbank will:

- i) identify ways to work cooperatively on forest issues;
- ii) negotiate the terms for respectful, cooperative and peaceful relations in the forests which accommodate the interests of Westbank as a member of the Okanagan Nation, British Columbia and industry;
- iii) jointly review and approve all public communications prior to release.

5) The Parties commit to resume productive treaty negotiations in accordance with the Tripartite Political Accord on Treaty Negotiations.

6) Westbank and British Columbia will work co-operatively in respect to operational planning processes and provide each other detailed and appropriate information regarding aboriginal interests.

7) Canada is a party to this Letter of Understanding for the purpose of affirming its intention to participate in negotiations leading to an IMA and its willingness to consider additional contributions to Westbank for capacity building in forestry initiatives.

8) This Letter of Understanding is not intended to define, create, recognize, deny or amend any aboriginal or treaty rights or interests or to be a treaty or a land claims agreement, within the meaning



of sections 25 and 35 of the *Constitution Act, 1982*, or otherwise, or to alter or affect the legal status of lands and resources or the existing authorities of the Parties.

9) Except in proceedings directly related to the enforcement of this Letter of Understanding, the negotiations leading to its creation, its terms and Its implementation are not admissions of fact or liability and are without prejudice to any legal positions by any of the Parties in any court proceeding or process or the negotiation of a treaty among the Parties.

\_\_\_\_\_ Date \_\_\_\_\_  
Chief, Westbank First Nation

\_\_\_\_\_ Date \_\_\_\_\_  
Minister of Forests  
Province of British Columbia

\_\_\_\_\_ Date \_\_\_\_\_  
Minister of Aboriginal Affairs  
Province of British Columbia

\_\_\_\_\_ Date \_\_\_\_\_  
Indian Affairs and Northern Development  
Government of Canada