

Amending Agreement, 2010

BETWEEN

WUIKINUXV NATION
METLAKATLA FIRST NATION
KITASOO INDIAN BAND
HEILTSUK NATION
GITGA'AT FIRST NATION
NUXALK NATION

(Each a "Nation" or "First Nation" and collectively, the "Coastal First Nations")

AND

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

as represented by the Minister of Aboriginal Relations and Reconciliation

(collectively, the "Province")

WHEREAS The Nuxalk Nation supports the United Nations Declaration on the Rights of the Indigenous Peoples as the most comprehensive, universal international human rights instrument explicitly addressing the economic, social, cultural, political, spiritual and environmental rights of Indigenous Peoples

WHEREAS Section 13 of the Reconciliation Protocol ("the Protocol") contemplates that additional First Nations may join the Protocol and section 13.2 sets out a process to complete the addition;

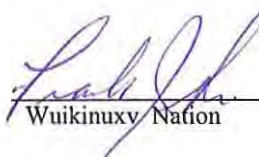
WHEREAS The Province and the five Coastal First Nations wish to include the Nuxalk Nation in their Protocol, signed in December, 2009, and attached to this Agreement as Schedule One;

THEREFORE the Province, the five Coastal First Nations and the Nuxalk Nation, hereby agree as follows.

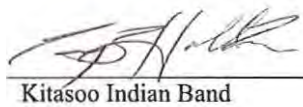
- 1) This Amending Agreement, 2010, will take effect on the date that it is signed by the Province, the five Coastal First Nations and the Nuxalk Nation (the "Effective Date").
- 2) On and after the Effective Date, the word "Parties" in the Protocol is amended, to include the Nuxalk Nation.
- 3) On and after the Effective Date, the Nuxalk Nation is a Party to the Protocol.


- 4) This Amending Agreement, 2010, may be signed in counterparts and exchanged by electronic means of transmission. Together, all counterparts constitute one Amending Agreement, 2010.
- 5) A map that includes the ancestral territory over which the Nuxalk asserts aboriginal rights, including title is attached as Schedule Two, to this Amending Agreement, 2010.
- 6) On and after the Effective Date, Appendix A of the Protocol is amended to include the asserted traditional territory of the Nuxalk Nation set out in Schedule Two.
- 7) On or after the Effective Date, the Province will, subject to appropriations by the Legislature and in accordance with the *Financial Administration Act* and any workplans and budgets agreed to by the Parties, provide Coastal First Nations with \$50,000.
- 8) The Province will, subject to appropriations by the Legislature and in accordance with the *Financial Administration Act* and any workplans and budgets agreed to by the Parties provide Coastal First Nations with \$50,000, annually, for a period of 4 years commencing on April 1st, 2011.

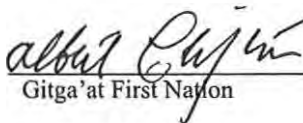
**SIGNED ON BEHALF OF THE
NATIONS AND FIRST NATIONS,
as represented by:**


Wui kinuxy Nation Date Dec 7 2010


Metlakatla First Nation Date Dec 07 2010



Kitsoo Indian Band Date Dec 7, 2010


Heiltsuk Nation Date Dec. 7, 2010


Gitga'at First Nation Date Dec. 7/2010


Nuxalk Nation Date Dec 7/10

**SIGNED ON BEHALF OF HER
MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH
COLUMBIA, as represented by:**


Minister of Aboriginal Relations and Reconciliation Date Dec. 7, 2010

Schedule One

Reconciliation Protocol

RECONCILIATION PROTOCOL
("Protocol")

Dated for reference December 10, 2009

BETWEEN:

**WUIKINUXV NATION
METLAKATLA FIRST NATION
KITASOO INDIAN BAND
HEILTSUK NATION
HAISLA NATION
GITGA'AT FIRST NATION**
(Each a "Nation" or "First Nation" and collectively the "Coastal First Nations")

AND

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA** as represented by the Minister of Aboriginal Relations and Reconciliation
(The "Province")

WHEREAS

1. In 2001, the Nations and First Nations and the Province entered into the *General Protocol Agreement on Land Use Planning and Interim Measures* whereby they committed to work together in a spirit of mutual recognition, respect and reconciliation to resolve land use conflicts and implement interim measures initiatives.
2. In 2006, each of the Nations, First Nations and the Province entered into a *Strategic Land Use Planning Agreement* ("SLUPA"), and collectively as the Coastal First Nations entered into the *Land and Resource Protocol* ("LRPA") with the Province, whereby they committed to work on a Government to Government basis to implement their land use decisions and Ecosystem-Based Management.
3. The Province acknowledges that the Nations and First Nations have aboriginal title, rights and interests within their traditional territories and this Reconciliation Protocol is a bridging step to a future reconciliation of those aboriginal title, rights, and interests with provincial title, rights, and interests.

4. The Parties recognize that the successful implementation of this Protocol, and the building of cooperative working relations, will depend upon their ability and willingness to recognize, explore and resolve differences which arise between them.
5. In the spirit of the New Relationship and the Transformative Change Accord, the Parties now wish to establish further understandings and commitments that focus on:
 - a) creating a more collaborative, coordinated and efficient approach to land and resource Engagement and decision making; and
 - b) developing and implementing resource revenue sharing and other economic policies and initiatives that enable the Nations and First Nations to make progress toward socioeconomic objectives.
6. The Parties recognize that the Council of the Haida Nation is a member of the Coastal First Nations and that it will enter into the Haida Reconciliation Protocol with the Province.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1. Definitions

In this Protocol, Appendix A and Schedules A to E, the following definitions apply:

“Coastal First Nations” is all of the Nations and First Nations that are signatory to this Protocol and the Council of the Haida Nation, as well as, Old Massett Village Council and Skidegate Band Council who are all working collectively.

“Engagement” means the process in Schedule B, designed by the Parties to assist them in satisfying the legal obligations of the Parties to consult and where appropriate accommodate, as described by the Supreme Court of Canada in *Haida Nation v. British Columbia (Ministry of Forests)*, 2004 SCC73 and *Taku River Tlingit v British Columbia (Project Assessment Director)*, SCC 74 , which includes formal information sharing and discussions between Provincial Agencies and Applicable Nations and First Nations in relation to Land and Resource Decisions, and includes provision to the Nations and First Nations of all relevant, available information about potential significance of impacts;

“Government to Government” means formal bilateral discussions between the Parties or their designated Representatives;

“Parties” means each Nation or First Nation and the Province; and

“Representatives” means the representatives appointed by each Nation or First Nation, by the Coastal First Nations, or by the Province for the purposes of engaging in discussions and work activities under this Protocol;

2. Geographic Area and Parts of this Protocol

- 2.1. This Protocol applies within the traditional territories of the Nations and First Nations identified on the map in Appendix A.
- 2.2. This Protocol consists of the preamble, sections 1 to 15, Schedules A, B, C, D, E and Appendix A.

3. Purpose

- 3.1. This Protocol, in the spirit of the principles of the New Relationship and Transformative Change Accord, is intended to:
 - a) confirm and renew government to government arrangements through which the Parties can work collaboratively on the shared decision making and transformative change agenda;
 - b) provide a framework for land and resource decision making that is more efficient, effective and responsive to the interests of each Nation or First Nation and the Province;
 - c) establish agreement on carbon offset, revenue sharing and other economic measures and strategies that will assist the Nations and First Nations to achieve progress toward socioeconomic objectives; and
 - d) confirm the activities to be undertaken by the Coastal First Nations and their legal institutions on behalf of the Nations and First Nations.
- 3.2. Specific understandings related to the topics set out in 3.1 are defined in schedules attached to this Protocol, including the following:
 - a) Provincial Legislation Associated with Provincial Land and Resource Decisions (Schedule A);
 - b) Engagement Framework (Schedule B);
 - c) Resource Revenue and Carbon Offsets Sharing (Schedule C);
 - d) Economic Opportunities (Schedule D);
 - e) Regional Economic Strategies (Schedule E)

4. Responsibilities and Authorities

Nations and First Nations

- 4.1. Each Nation and First Nation will implement this Protocol in accordance with its provisions.

Coastal First Nations

- 4.2. The Coastal First Nations has been mandated by the Nations and First Nations to:
- a) undertake regional strategic planning related to land and resources, including shared decision-making, revenue sharing and economic initiatives;
 - b) liaise with the Province on policies and issues related to land and resources;
 - c) establish the Great Bear Business Corporation and develop regional economic strategies related to shellfish aquaculture, tourism, carbon credit, etc;
 - d) support capacity-building initiatives with the Nations and First Nations, including revenue-sharing initiatives, as well as institutional and human resource development;
 - e) support and provide coordination for the implementation of this Protocol on behalf of the Nations and First Nations;
 - f) provide support for resolution of issues arising between the individual Nations or First Nations;
 - g) pursue Government to Government discussions related to the implementation of this Protocol; and
 - h) other matters as agreed to by the Nations and First Nations.

The Province

- 4.3. The Province will implement this Protocol in accordance with its provisions.

5. Governance Framework

- 5.1. The Parties will establish a governance forum with a mandate to support the implementation of this Protocol.
- 5.2. The forum will have three levels to be defined further in a terms of reference mutually agreed to by the Parties:
- a) Executive Level: the board of directors or the executive committee of the Coastal First Nations and the Ministers of the Province, or their designated representatives, will meet on an as needed basis to monitor progress on

implementation of this Protocol and if necessary perform high level problem solving.

- b) Working Group: senior representatives of the Coastal First Nations and the Province will meet quarterly or as needed to oversee and manage implementation of this Protocol, including disputes that may arise at the technical level; and
- c) Technical Team(s): technical representatives of the Coastal First Nations and the Province will meet on an as needed basis to address technical aspects of the implementation of this Protocol and to deal with specific projects at the discretion of the Working Group.

5.3. Through the governance forum, the Parties will have Government to Government discussions and undertake work activities that support effective and efficient implementation of this Protocol, including:

- a) sharing information;
- b) discussing legislative, policy, strategic or regional issues that are of interest to the Parties;
- c) coordinating activities intended to improve land and resource management decisions and related Engagement processes;
- d) having discussions on sustainable economic development and the sustainable use and development of land and resources;
- e) working toward further implementation of the principles outlined in the New Relationship and Transformative Change Accord;
- f) supporting implementation of this Protocol; and
- g) discussing other matters which are agreed to by the Parties.

5.4. The Parties agree that commitments in the LRPA and the SLUPAs, and not presently included in this Protocol, will be reviewed by the Parties, and work activities to support their continued implementation will be identified in a separate schedule within 90 days of the signing of this Protocol.

5.5. The Parties agree that this Protocol provides for an Engagement Framework which fulfills the requirements identified in the SLUPAs sections 7.6 and 7.7 and establishes a mechanism for shared decision-making with respect to land and resource use and management.

6. Shared Decision Making

- 6.1. The Nations and First Nations and the Province will follow the Engagement Framework for land and resource decision-making set out in Schedule B, which is intended to establish a more collaborative, coordinated and efficient approach to land and resource Engagement and decision making.
- 6.2. The Parties agree that implementation of the Engagement Framework is a step toward shared decision making and is intended to reduce or avoid the number of land and resource disputes and minimize the need for the Parties to engage in litigation or other types of formal dispute resolution.
- 6.3. This Protocol does not change or affect the positions any of the Parties have, or may have, regarding its jurisdiction, responsibilities and/or decision-making authority, nor is it to be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority.
- 6.4. Section 6.3 is not intended to prevent the Parties from considering this Protocol and its Schedules in the exercise of their decision making authority.
- 6.5. The Parties agree that they will rely on the Engagement Framework process in Schedule B to endeavour to meet their legal Engagement obligations.

7. Revenue Sharing

- 7.1. The Parties agree to implement the Carbon Offset measures identified in Schedule C.
- 7.2. The Parties agree to discuss opportunities related to revenue sharing on new major resource development projects that may be proposed within the traditional territories of the Nations and First Nations.

8. Economic Opportunities

- 8.1. The Parties agree to implement the measures in Schedule D – Economic Opportunities.
- 8.2. The Parties agree to pursue discussions regarding other economic opportunities that would enable progress toward the Transformative Change Accord.

9. Economic Strategies

- 9.1. The Parties agree to implement the measures identified in Schedule E – Economic Strategies.
- 9.2. The Parties agree to pursue discussions regarding other economic strategies that would enable progress toward the Transformative Change Accord.

10. Stakeholders

10.1. The Parties share the objective of pursuing productive ways in which stakeholder interests can be addressed by decisions and engagements related to this Protocol.

11. Resourcing

11.1. The Parties acknowledge that this Protocol is of mutual benefit and the cost of implementation should be jointly funded.

11.2. The Province will, subject to appropriations by the Legislature, and in accordance with the *Financial Administration Act* and any workplans and budgets agreed to by the Parties provide Coastal First Nations with \$600,000 per year to support the Nations', First Nations' and the Coastal First Nations' implementation of this Protocol for a period of 5 years commencing April 1st 2010.

11.3. Upon signing of this Protocol by the Parties the Province will provide \$200,000 to the Coastal First Nations, to commence implementation of this Protocol.

11.4. The Nations and First Nations, subject to successful implementation of the revenue sharing measures identified in Schedule D, will use portions of those revenues to support the implementation of this Protocol.

12. Representation and Warranties

12.1. The Province represents and warrants that it has the authority to enter into this Protocol and to make the commitments and representations in this Protocol.

12.2. The Nations and First Nations represent and warrant that they have the authority to enter into this Protocol and to make the commitments and representations in this Protocol.

13. Amendment

13.1. This Protocol may be amended in writing from time to time, upon the written agreement of the Parties.

13.2. The Parties may jointly agree in writing to recognize other First Nations or Provincial parties to this Protocol.

14. Effective Date and Termination

14.1. This Protocol will take effect once the Parties have obtained their necessary authorizations and have signed the Protocol.

14.2. Notwithstanding 14.1, the schedules set out specific implementation dates.

- 14.3. Either the Province or all participating Nations and First Nations, (collectively the Coastal First Nations), may terminate this Protocol by providing the other Parties forty-five (45) business days advance written notice and stating the reasons for termination.
- 14.4. Withdrawal from this Protocol by an individual Nation or First Nation is not a termination by a Party pursuant to 14.3, and the Nation or First Nation will advise the remaining Parties of any withdrawal by providing forty-five (45) business days written notice stating the reasons for the withdrawal.

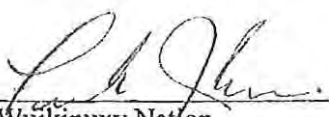
15. General Terms

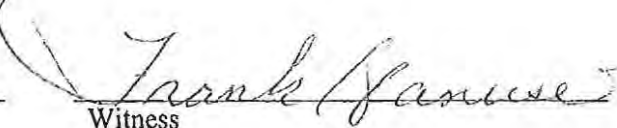
- 15.1. Other than as expressly indicated in this Protocol, this Protocol does not create, recognize, define, deny, limit, or amend any of the responsibilities or rights of the Parties.
- 15.2. Except as the Parties may agree, in the future, in writing, this Protocol will not limit any position either Party may take in future negotiations or legal proceedings.
- 15.3. There will be no presumption that any ambiguity in any of the terms of this Protocol should be interpreted in favour of any Party.
- 15.4. The word “including” when following any general statement or term is not to be construed to limit the general statement or term to the specific items listed immediately after the general statement or term. The general statement or term is to be construed to refer to all other items that may reasonably fall within a broad scope of the general statement or term.
- 15.5. This Protocol is not intended to affect any obligations that tenure or permit holders or other third parties may owe to the Nations or First Nations.
- 15.6. Nothing in this Protocol affects the ability of the Parties to respond to any emergency circumstances.
- 15.7. The Parties will monitor progress in the “New Relationship” discussions and, at the request of either Party, consider whether to amend this Protocol to reflect developments in those discussions.
- 15.8. This Protocol is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act*, 1982.
- 15.9. Concluding a comprehensive treaty agreement with the Province and Canada by any of the Coastal First Nations does not preclude those First Nations from remaining a Party to this Protocol.

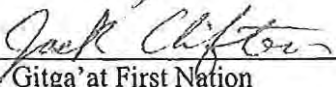
IN WITNESS WHEREOF the Parties hereby execute this Protocol as of the date first written above

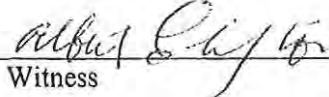
Signed this 10 day of December, ²⁰⁰⁹ on behalf of:

ON BEHALF OF THE NATIONS AND FIRST NATIONS, as represented by:


Wui kinuxv Nation

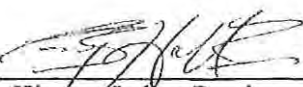

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Gitga'at First Nation


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Haisla Nation

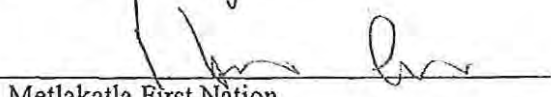
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Kitasoo Indian Band


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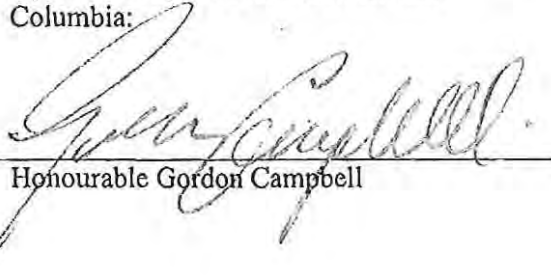

Heiltsuk Nation


Witness


Metlakatla First Nation


Witness

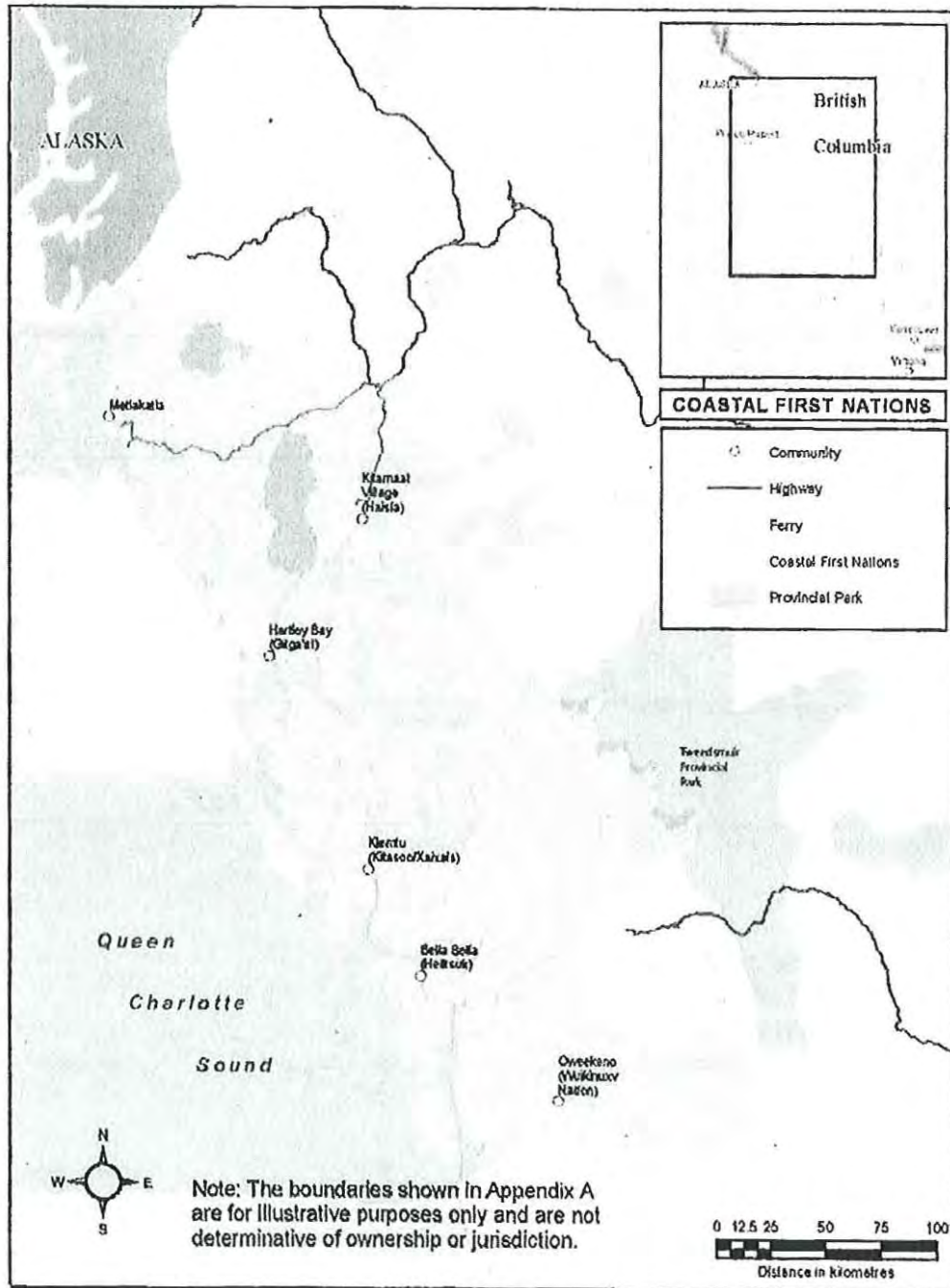
SIGNED ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Premier of British Columbia:


Honourable Gordon Campbell


Witness

Appendix A

Geographic Area of this Protocol



Schedule A

Provincial Legislation Associated with Provincial Land and Resource Decisions

Forest Act

Forest and Range Practices Act

Land Act

Lands, Parks and Housing Act

Integrated Pest Management Act

Environmental Management Act

Park Act

Protected Areas of BC Act

Water Act

Wildlife Act

Schedule B

Engagement Framework

1. Definitions

- 1.1. The additional defined terms used in this Schedule have the same meaning in the main body of this Protocol and its other Schedules, except where otherwise indicated.

“Applicable Nation or First Nation” means a Nation or First Nation that may be affected by a Land and Resource Decision;

“Applicant” means a person, corporation, or entity, or their agent that has submitted an Application requiring a Land and Resource Decision;

“Application” means a proposal submitted by an Applicant to a Provincial Agency for a Land and Resource Decision.

“Engagement Level” means the levels described in Table 1 of this Schedule;

“Implementation Date” means the date 6 months after the signing of this Protocol at which point Schedule B will be implemented;

“Land and Resource Decision” means an administrative or operational decision, or the approval or renewal of a tenure, permit, or other authorization;

“Provincial Agency” means the Provincial ministry or agency that has authority to manage the review and consideration of a Land and Resource Decision;

“Representatives” means the representatives appointed by a Provincial Agency or a First Nation for the purposes of Engagement; and

“Tenure Holder” means a person, corporation, or entity, or their agent who holds a tenure or permit awarded under Provincial legislation.

2. Engagement Framework

- 2.1. The Parties will use the Engagement Framework in Table 1 of this Schedule to guide Engagement on potential Land and Resource Decisions and the Engagement Framework will be implemented upon the Implementation Date.

3. Engagement Initiation

- 3.1. Provincial Agencies will, at the earliest opportunity, inform Applicants of this Engagement Framework, and, as appropriate direct Applicants to contact and provide application information directly to Applicable Nation(s) or First Nation(s).

- 3.2. Upon receiving an Application or when contemplating a Land and Resource Decision Provincial Agencies will initiate Engagement by providing Applicable Nation(s) or First Nation(s) with an information package containing:
 - a) a description of the type and characteristics of the potential Land and Resource Decision;
 - b) the identity and contact information of the Applicant or Tenure Holders that may or will be affected by the potential Land and Resource Decision;
 - c) a description of the location or geographic area that will be affected by the potential Land and Resource Decision;
 - d) relevant and available Applications, documents, studies and assessments; and
 - e) a description of the proposed Engagement Level and a supporting rationale for that proposal.
- 3.3. The Nation or First Nation will confirm receipt of the information package and, within 10 business days of receipt, advise the Provincial Agency whether:
 - a) no further Engagement is required; or
 - b) the proposed Engagement Level is appropriate, and if not what other level is needed along with supporting rationale.
- 3.4. If a Nation or First Nation requests a different Engagement Level, the Representatives will attempt to reach consensus on the Engagement Level within 2 business days. In the absence of consensus a third party, agreed to by the Parties, will make a binding decision on the Engagement Level.
- 3.5. If an Applicable Nation or First Nation does not provide a response within 10 business days, the Provincial Agency will:
 - a) if Engagement Level 1 was proposed, proceed to make the Land and Resource Decision and notify the Nation or First Nation of the decision; or
 - b) proceed to engage with the Nation or First Nation at the proposed Engagement Level.

4. Engagement Process (Levels 2 through 5)

- 4.1. Following Engagement initiation, the Nation or First Nation will, within the timeframes specified in Table 1, provide the relevant Provincial Agency with an Engagement response that identifies any issues or potential infringements that may exist in relation to the potential Land and Resource Decision.

- 4.2. If a response is not received from the Nation or First Nation within the response timeframes specified in Table 1, the Provincial Agency may proceed to make the Land and Resource Decision, but before doing so will advise the Nation or First Nation of the potential Land and Resource Decision, including the details of any measures that may be taken to accommodate any potential infringements of aboriginal rights titles and interests.
- 4.3. Subject to 4.1, Representatives of the Provincial Agencies and Applicable Nation or First Nation, or the forum Working Group if required, will engage in the processes and timeframes specified in Table 1, which include as appropriate to the Engagement Level:
 - a) Level 2,3 and 4 – Nation or First Nation and Provincial Agency Representatives sharing information and holding discussions to develop recommendations for the potential Land and Resource Decision(s);
 - b) Level 2, 3, and 4 – where agreed upon, Nation or First Nation and Provincial Representatives forwarding policy issues or other regional matters to the forum Working Group for their review and consideration;
 - c) Level 3 and 4 – Nation or First Nation and Provincial Agency Representatives reviewing additional information that the Representatives agree is required to fully assess identified issues or potential infringements of aboriginal title, rights and interests;
 - d) Level 4 – Nation or First Nation Representatives sharing information and having discussions to develop common views and recommendations in relation to potential Land and Resource Decisions that may affect shared areas; and
 - e) Level 5 -- if Parties agree, the forum Working Group meeting to share information and have discussions to develop recommendations regarding policy solutions or engagement for decision making in relation to special issues.

5. Land and Resource Decision Recommendations

- 5.1. To develop recommendations on potential Land and Resource Decisions, relevant Provincial and Nation or First Nation Representatives, or the forum Working Group as required, will review all available and relevant information and make recommendations on some or all of the following as appropriate to the Engagement Level:
 - a) Level 2, 3 and 4 -- whether Applications or potential Land and Resource Decisions should be approved or rejected.
 - b) Level 2, 3 and 4 -- conditions that may apply to Land and Resource Decisions;
 - c) Level 3 and 4 -- degree and acceptability of a potential infringement and any measures to accommodate that infringement;

- d) Level 3 and 4 -- whether additional information is required to support full consideration of the potential Land and Resource Decision;
 - e) Level 4 -- identification of policy and legislative issues;
 - f) Level 5 -- engagement process and procedures that will be followed for Land and Resource Decisions that require a Level 5 Engagement.
- 5.2. In making recommendations, Representatives or the forum Working Group will consider and address some or all of the following as required:
- a) any applicable laws, policies or customs of the Parties;
 - b) consistency with any applicable land use plan, forest stewardship plan or management plan;
 - c) compatibility with any economic development strategy agreed to by the Parties;
 - d) potential environmental and economic effects of the proposed Land and Resource Decision;
 - e) potential infringement of aboriginal title, rights and interests and any measures developed to accommodate aboriginal title, rights and interests;
 - f) delivery of economic benefits to the Nation(s), First Nation(s) and other local communities.
- 5.3. Representatives, or the forum Working Group as appropriate, will make best efforts to achieve consensus in their recommendations, and will respect principles of natural justice and procedural fairness.
- 5.4. The Parties will review recommendations made by the Representatives or the forum Working Group and will make and implement decisions in accordance with their respective laws, regulations, policies, customs and traditions.

6. Dispute Resolution

- 6.1. Where indicated for the Engagement Levels in Table 1, if the Parties' Representatives are unable to reach consensus on a particular recommendation, the Representatives will within the timelines specified in Table 1 of this Schedule:
- a) exchange, in writing, a full description of the impasse, together with any respective concerns and interests and the proposed specific actions that could be taken to address the issues; and
 - b) meet to discuss the written descriptions and attempt to reach agreement on proposed specific actions.

- 6.2. If the Nation(s) or First Nation(s) and Provincial Agency Representatives are still unable to reach consensus in relation to a Level 3 or Level 4 recommendation, they will forward the issue to senior representatives of the Provincial Agency and the Nation or First Nation for direction and assistance.
- 6.3. If a dispute remains unresolved after completing the above steps in relation to a Level 4 recommendation, the matter may be referred to the forum Working Group by any Party which will make reasonable efforts to achieve consensus on the matter, and to do so may use alternative dispute resolution measures such as non-binding facilitation and/or mediation.
- 6.4. In a dispute related to a proposed Land and Resource Decision, the Provincial Agency's senior representative involved will not be the person to make the Provincial Decisions.
- 6.5. If a dispute remains unresolved after completing steps 6.1. to 6.3., each Party will inform the other Party, and the relevant Provincial Agency of any disagreement.
- 6.6. Following the exchange of information in 6.5, and within the identified timeframe in Table 1, the Parties will review the Representatives' recommendations, and other relevant information, and may proceed to have further discussion and/or make a decision in accordance with their respective laws, regulations, policies, customs and traditions; but before doing so will inform the other Parties.

7. Timeline Extensions

- 7.1. If a Provincial Agency or any Nation or First Nation is unable to engage within specified timelines, then the Provincial Agency, Nation or First Nation will notify the other Parties and request an extension and provide a reason for the proposed extension. The Parties may, by mutual agreement, extend the Engagement timeline. Subject to 14.3, consideration towards the consent of an extension will be undertaken in a fair and reasonable manner.
- 7.2. If no Engagement response is received by the end of an extended timeframe for the submission of the Engagement response, the Provincial Agency may consider making a Land and Resource Decision without further Engagement.

8. General

- 8.1. Information sharing under the Engagement Framework is preferable in an electronic format when appropriate.
- 8.2. Only with prior written agreement of the applicable Nation or First Nation, as appropriate, will specific discussions that take place in the forum Working Group be considered part of Engagement towards meeting lawful obligations.

- 8.3. If the process and timelines of an Engagement Level conflict with a process or timeline specified in legislation, the legislative process or timeline will prevail to the extent of the conflict. If an Engagement timeframe in this Protocol specifies a timeline that is less than a consultation timeline specified in legislation, the legislative timeline prevails, if the legislative timeline affords an adequate Engagement opportunity to the affected Nation(s) or First Nation(s).
- 8.4. With agreement by all of the Parties or the Provincial Agency and one or more individual Nations or First Nations, Engagement on Land and Resource Decisions can be pursued in batches and/or on a pre-determined schedule.
- 8.5. A Provincial Agency may request an Applicant to undertake specific procedural aspects of the Engagement process while engaging with the applicable Nation or First Nation in a manner that is consistent with this Protocol.
- 8.6. The Parties will review implementation of the Engagement Framework on an annual basis and undertake discussions with the goal of improving the efficiency and effectiveness of the Engagement Framework.
- 8.7. The forum Working Group will meet as soon as practical upon signing of this Protocol and appoint a Technical Team that will be responsible for:
 - a) recommending how the Engagement Framework applies to relevant Land and Resource Decisions; and
 - b) developing an Implementation plan for the Engagement Framework.

Table 1 – Engagement Framework

Decision Characteristics	Engagement Level	Process Overview	Process Timeframe
<ul style="list-style-type: none"> • Significant potential for infringement of aboriginal, rights, title and interests • Land and Resource Decision may affect more than one Nation or First Nation • Involves more than one decision by more than one Provincial Agency 	<p>Level 5 Special Projects</p>	<p>In addition to Level 1:</p> <ul style="list-style-type: none"> • Parties pursue Government to Government discussions through the Forum Working Group to reach agreement on engagement process. • Forum Working Group provides coordination for agreed upon process. 	<ol style="list-style-type: none"> 1. Confirmation of Receipt and Determination of Engagement Level: 10 – 12 business days 2. Process Recommendations: Within 45 business days after #1.
<ul style="list-style-type: none"> • Land and Resource Decision will affect more than one Nation or First Nation 	<p>Level 4 Complex</p>	<p>In addition to Level 2 and 3:</p> <ul style="list-style-type: none"> • Coastal First Nations facilitates discussions between Nation or First Nation Representatives to develop common views and joint recommendations for shared areas. • Where requested by the Parties, the Forum Working Group pursues G2G discussions to attempt to resolve outstanding issues or reach consensus on policy recommendations. 	<ol style="list-style-type: none"> 1. Confirmation of Receipt and Determination of Engagement Level: Within 10 - 12 business days after receipt of information package 2. Response and Recommendations: Within 40 business days after #1 3. Dispute Resolution: Complete within 20 business days after #2. 4. Decision: 72 business days maximum before the Parties proceed to the consideration of Land and Resource Decision.
<ul style="list-style-type: none"> • Potential Land and Resource Decision covers relatively large geographic area within a traditional territory, or addresses a complex issue identified 	<p>Level 3 Standard</p>	<p>In addition to Level 2:</p> <ul style="list-style-type: none"> • Additional information regarding potential impacts or infringements reviewed by Representatives, if required. • Representatives engage to develop recommendations regarding accommodation of potential infringements of aboriginal, rights, 	<ol style="list-style-type: none"> 1. Confirmation of Receipt and Determination of Engagement Level : Within 10 - 12 business days after receipt of information package 2. Response and

<p>by a Nation or First Nation.</p> <ul style="list-style-type: none"> • Potential Land and Resource Decision may infringe aboriginal rights, title, and interests. 		<p>titles and interests, if required.</p> <ul style="list-style-type: none"> • The Parties review additional information related to potential infringements, if required. 	<p>Recommendations: Within 30 business days of #1.</p> <ol style="list-style-type: none"> 3. (Dispute Resolution: Complete within 20 business days of #2.) 4. Decision: Total of 62 business days maximum before the Parties proceed to the consideration of Land and Resource Decision.
<ul style="list-style-type: none"> • Potential Land and Resource Decision covers a relatively small geographic area • Land and Resource Decision may have environmental or economic effects and impact 	<p>Level 2 Limited</p>	<ul style="list-style-type: none"> • Provincial Agency provides Applicable Nation or First Nation(s) with information package. • Nation or First Nation reviews information package and provides response identifying potential issues. • Representatives engage to develop recommendations for Land and Resource Decision. • The Parties review recommendations and proceed to consideration of Land and Resource Decision. <p>Dispute resolution (if required)</p>	<ol style="list-style-type: none"> 1. Confirmation of Receipt and Determination of Engagement Level : Within 10 - 12 business days after receipt of information package 2. Response and Recommendations: Within 20 business days of #1. 3. (Dispute Resolution: Complete within 10 business days of #2.) 4. Decision: Total of 42 business days maximum before Provincial Agency proceeds to the consideration of Land and Resource Decision.
<ul style="list-style-type: none"> • No identified impact; or • Applicable Nation(s) or First Nation(s) supports the proposed Land and Resource Decision 	<p>Level 1 Information Sharing</p>	<ul style="list-style-type: none"> • Provincial Agency provides information about potential Land and Resource Decision and proposed Engagement Level to Applicable Nation(s) or First Nation(s). • If information sharing reveals no further engagement is required, the Parties proceed with Land and Resource Decision; or Representatives proceed with identified Engagement Level 	<ol style="list-style-type: none"> 1. Confirmation of Receipt and Determination of Engagement Level : Within 10 - 12 business days after receipt of information package 2. Decision: If no further Engagement required, the Parties proceed to consideration of Land and Resource Decision

Schedule C

Carbon Offsets Sharing

1. **Purpose:** The Parties share the goals of:
 - a. developing environmentally credible and marketable forest carbon offsets. These offsets would be associated with the additional sequestration and resulting greenhouse gas reductions from the creation of protected areas and changes to forestry practices ("Offsets") in the North and Central Coast land use planning area ("Land Use Planning Area");
 - b. researching the eligible program criteria, the appropriate offset protocol, and the requirements for offset project plans. These research findings will inform the Parties of the potential standards for qualifying carbon reductions that could be converted to marketable Offsets; and
 - c. entering into an "Offset Sharing Agreement" that would enable the Parties to share the Qualifying Offsets.

2. **Scope of Activities:** In order to build the framework for creating qualifying carbon reductions, the Parties recognize the following must be accomplished:
 - a. identification of potential offset programs that may provide credibility and economic value to the Parties such as: the B.C. *Greenhouse Gas Reductions Target Act*; the Western Climate Initiative, Environment Canada's offset program, the Climate Action Registry, and any other offset programs that the Parties may agree upon ("Offset Programs");
 - b. development, by August 31, 2010, of appropriate and credible models for estimating and proving long term projections of the additional carbon sequestration that will occur in the Land Use Planning Area as a result of new conservation measures and changes to forest practices;
 - c. development, by August 31, 2010, of a protocol describing the technical basis and standards for the quantification of carbon reductions from the creation of protected areas and from changes to forest management which could be applicable in the Land Use Planning Area ("Protocol"). This Protocol will reflect the standards of, and be suitable for designation under, the B.C. *Greenhouse Gas Reductions Target Act* and any other agreed-upon offset programs, such as the Western Climate Initiative and the Climate Action Registry; and
 - d. development of a process for validation or approval of a forests conservation project plan, or other documents, which:

- i. is appropriate for the B.C. *Greenhouse Gas Reductions Target Act*, and any agreed-upon Offset Programs;
 - ii. is eligible for approval for quantifying specific carbon reductions; and
 - iii. identifies who is responsible for carrying out the development, validation, and approval of a project plan or other documents and for paying the costs of these steps.
3. **Offset-Sharing Agreement:** Based on the results of completing the development work under section 2, the Parties will make best efforts to negotiate an Offsets Sharing Agreement by September 30, 2010.
- a. The Offsets Sharing Agreement will provide to the Parties a share of the total annual reductions from sources, sinks and reservoirs in the Land Use Planning Area that result from the carrying out of the conservation and changes to forest practices in the Land Use Planning Area (“Qualifying Offsets”) for the purpose of allowing the Parties to have such offsets recognized under the chosen programs.
 - b. The Parties acknowledge that some mutually agreed upon portion of the total annual Qualifying Offsets will be reserved and held outside of the Offsets Sharing Agreement in order to account for potential future participation in similar agreements of other First Nations whose territories are within the Land Use Planning Area.
 - c. The Agreement will set out how the total annual share of Qualifying Offsets will be distributed to the Coastal First Nations, less amounts under 3.b., based on the following priorities:
 - i. as first priority, a dedicated amount of each year’s verified Qualifying Offsets, in tonnes, agreed to by the Parties to cover the cost to the Coastal First Nations of implementing, managing and administering the Offset Sharing Agreement;
 - ii. as second priority, a dedicated amount of each year’s verified Qualifying Offsets, in tonnes, to be agreed to by the Parties, to cover the cost to the Coastal First Nations in meeting its obligations under this Reconciliation Protocol after taking into consideration any other revenues also provided under this Reconciliation Protocol {Protocol}; and
 - iii. as third priority, the Parties will each receive 50% of the remaining tonnes of each year’s verified Qualifying Offsets, from the project.

4. **Other Matters:** The Agreement will contain provisions for:
 - a. the review and monitoring of forest carbon data and models used to establish the quantum of Qualifying Offsets over the life of the Agreement;
 - b. the ownership of the Qualifying Offsets or Offset rights and the legal form and transfer of Qualifying Offsets or Offset rights will be defined;
 - c. the project, Offsets and agreements not creating any title or interest in land in the Land Use Planning Area;
 - d. the project and ownership and legal characterization of Offsets not prejudicing positions Parties may take on aboriginal rights and title or in treaty negotiations;
 - e. liability and managing risks of impermanence and reversals of Qualifying Offsets over time;
 - f. the responsibilities for transaction costs associated with validation, verification, monitoring, marketing costs, and management of any Offset revenue;
 - g. requirements that may enable Coastal First Nations participation in Pacific Carbon Trust procurement processes;
 - h. periodic review of the implementation of the Agreement;
 - i. dispute resolution; and
 - j. any other components agreed to by the Parties.
5. The Parties agree to continue discussions on sharing of additional emission reduction opportunities for renewable energy and other environmental attributes that may arise from land use measures.

Schedule D

Economic Opportunities

1. Forestry

- 1.1. The Minister of Forests and Range will enter into agreements with the Nations and First Nations that include a commitment to invite the Nations and First Nations to apply, on a non-competitive basis, for a replaceable, long term volume based forest licence for volumes outlined below:

Nation/ First Nation	Current Management Unit	Replaceable volume estimate (m ³ /year)
Gitga'at	North Coast TSA	15,800
Metlakatla	North Coast TSA	17,300
Kitasoo	TFL 25	14,500
Heiltsuk	Mid Coast TSA	47,000
Wuikinuxv	Mid Coast TSA	5,600
Haisla	TFL 41 (Kalum)	13, 175 Off shore 37, 399 On shore

Note that these volumes are subject to Chief Forester AAC decisions and Minister apportionment decisions for conservancy and EBM impacts.

*MFR and Haisla Nation will discuss the on-shore/ off shore split in the tenure opportunity agreement referenced in 1.1.

- 1.2. In addition to 1.1, non-replaceable volume tenures offered under the original Forest and Range Agreements (FRAs) will remain valid. Where licence documents have not been signed, the Nation or First Nation is expected to sign licence documents within a reasonable timeframe. Existing licences that have been issued are subject to the term of the licence document; however the licensor will consider extending the term of the licence to give the Nation or First Nation sufficient time to harvest the awarded volume.
- 1.3. MFR will work directly with the Nations and First Nations, on a priority basis, to assign operating areas for unplaced FRA licences and the new Nation or First Nation tenures, that are to the extent possible, located in the economic zones which have been identified by the Nations or First Nations in the Central Coast; or areas of interest which have been identified by the Nations or First Nations in the North Coast, TFL 25 and TFL 41.
- 1.4. Prior to completing the work in 1.3, the Province will consider governments market pricing objectives, and the interests and operations of other affected licensees in the management unit, including other non signatory Nation or First Nation licensees, to achieve fair and equitable chart area distributions.
- 1.5. In carrying out 1.3 and 1.4, the parties will avoid creating compensation obligations for the Province with respect to existing licensee and BCTS infrastructure and assets.

- 1.6. To support the Nations' and First Nations' goal of securing 50m³ per capita per year for a period of 5 years, after issuance of tenure opportunities in 1.1 and 1.2, MFR will consider additional non-replaceable tenure opportunities from unused volume :
- where feasible operating areas can be identified, and
 - where unused volume is available in the economic zones or areas of interest of the Nations or First Nations and associated management unit;
- 1.7. The total volume of additional tenures that may be issued under 1.6 will not exceed the volumes outlined below:

Nation/First Nation	Management Unit	Total lump sum unused volume (m ³)
Gitga'at	North Coast TSA	85,600
Metlakatla	North Coast TSA	93,700
Kitasoo	TFL 25	48,300
Heiltsuk	Mid Coast TSA	299,000
Wuikinuxv	Mid Coast TSA	35,600
Haisla	TFL 41 Off shore (requires operating area agreement with BCTS)	39,500
Total		601, 700

*MFR and Wuikinuxv Nation will discuss the potential for additional forestry business opportunities that may be available to Wuikinuxv Nation outside the scope of this agreement.

- Where the Nations and First Nations have an interest in purchasing or acquiring additional replaceable harvest volume from other forest licence holders, MFR will work with Nations and First Nations to facilitate such transactions
- If new legislation and policy is put in place for a new form of area based tenure for Nations and First Nations, the Minister may consider converting the forest tenures identified in 1.1 to area-based tenures in the future.
- MFR will continue to work with the Coastal First Nations to implement the commitments in the Deputy Minister's letter of March 2009.
- The Parties agree to discuss, on a priority basis, other measures which may improve the economic viability of forestry operations in the Central and North Coast.
- The Parties agree to discuss with the Coastal First Nations future forestry revenue sharing arrangements and proposals for new forms of First Nations forest tenures.
- The Parties will discuss the MFR restricted non-replaceable forest licence initiative for the pulp and paper sector.

2. Conservancies and Tourism

- 2.1. The Ministry of Environment (MOE) and the Integrated Land Management Bureau (ILMB) will work with Nations and First Nations to achieve a substantial increase in Nations' and First Nations' economic participation in conservancies and the tourism sector, with the goal that:
- a) Nations and First Nations secure and develop an equitable portion of the permit and tenure opportunities in their traditional territory, and
 - b) opportunities will be provided based on demonstrated Nations' and First Nations' interests and stated intentions of permit and tenure opportunities in their traditional territory, and
 - c) development is sustainable, based on sound business planning and consistent with applicable provincial and federal legislation.
- 2.2. As a first step, MOE and ILMB will collaborate with Nations and First Nations to identify, on a priority basis, protected area¹ use and tourism opportunities which the Nation or First Nation has an interest in developing in their traditional territory.
- 2.3. Where a Nation or First Nation has identified an interest in a protected area use or tourism economic opportunity, MOE or ILMB, as appropriate, will work to award authorizations or set aside the identified opportunities for future use by the Nation or First Nation using any or all of the following:

For protected areas:

- a) direct award of permits consistent with any agreed upon conservancy management direction or management plan;
- b) offer the Nation or First Nation the right of first refusal to develop the opportunity; or
- c) award concession-style park use permits to manage operation of any or all of a set of specified compatible opportunities in a conservancy.

For tourism outside of protected areas

- a) issue *Land Act* tenures for intensive (infrastructure) and/or extensive (activity only) tourism use, upon successful adjudication of application; or
- b) enter into discussions regarding fee simple land disposition for identified intensive use opportunities.

¹ For the purposes of this Schedule, the term "protected area" refers to provincial parks, conservancies, and lands established as parks or conservancies under the *Environment and Land Use Act*.

- 2.4. Where a Nation or First Nation does not have capacity to immediately develop an identified permit opportunity, MOE will work with the Nation or First Nation to either:
- a) reserve the identified permit opportunity for a specified period of time (i.e. up to 10 years) to enable the Nation or First Nation to develop such capacity, or
 - b) award the identified opportunity to a third party for a specified period of time, at the end of which, renewal of the park use permit will be subject to the right of first refusal by the Nation or First Nation.
- 2.5. Where a Nation or First Nation does not have capacity to immediately develop an identified tourism tenure or permit opportunity, ILMB will work with the Nation or First Nation to:
- a) reserve the identified intensive use tenure opportunities for a specified period under the *Land Act*, to enable the Nation or First Nation to develop such capacity;
 - b) place a notation of interest over the identified extensive use tenure opportunities for a specified period under the *Land Act* to enable the Nation or First Nation to develop such capacity, and
 - c) continue to accept applications from third parties for the identified opportunities, and upon Engagement with Nations or First Nations and, if appropriate, issue the tenure for a specified period and use, with no guarantee of replacement.
- 2.6. If MOE or ILMB and the Nation or First Nation cannot reach agreement on the allocation of opportunities in a conservancy, the matter will be referred to the Parties' senior representatives or the governance forum Working Group for discussion and resolution.
- 2.7. The Parties, recognizing that existing permits and tenures may limit equitable access to economic opportunities by a Nation or First Nation, will engage in Government to Government discussions to seek policy or other resolution for such matters.

Schedule E

Economic Strategies

ALTERNATIVE ENERGY ACTION PLAN

PURPOSE:

The purpose of developing an “Alternative Energy Action Plan” is to advance the development of alternative energy projects on the Central and North Coast and Haida Gwaii. The integrated strategy will provide for substantial economic and employment benefits for the Nations and First Nations and for British Columbians.

KEY FEATURES:

The Action Plan will explore the following key features:

- Involvement of Independent Power Producers (IPPs), in cooperation with the impacted Nations or First Nations, as the leading players in the development of alternative energy projects;
- Consideration of options for the development of transmission infrastructure, including public-private partnership models and submarine transmission;
- Assessment of export opportunities for sale of power into the United States and/or Alberta;
- Clarification of the roles of B.C. Hydro and BC Transmission Corporation in the acquisition, delivery and potential export of alternative energy; and
- Development of a “coastal regional strategy” to define the volume of energy, generation technologies, location of projects, participants, and price structures for the Alternate Energy Plan.

APPROACH:

A small group comprised of senior representatives from IPPs, Coastal First Nations, B.C. Hydro, BCTC and the Province will undertake the work activities for the review with a report being submitted to the Ministers of Aboriginal Relations and Reconciliation and Energy, Mines and Petroleum Resources by June 30, 2010.

The Nations and First Nations acknowledge that development of an Alternative Energy Plan will provide a forum on how to address the Nations’ and First Nations’ economic interests arising from their aboriginal rights and title.

TRANSPORTATION

To accommodate the Northern Expedition, BC Ferries and the Province of British Columbia, subject to funding and regulatory approval, are exploring the possibility of constructing a new ferry terminal at or near Klemtu.

Schedule 2

Geographic Area of this Agreement



Appendix B Haisla Nation Traditional Territory



Appendix C

Reconciliation Protocol – Amended Geographic Area of this Agreement



Appendix D

Haisla Nation – Province Engagement Process

1. Schedule B “Engagement Framework” of the Reconciliation Protocol

- a) Notwithstanding anything to the contrary in the Reconciliation Protocol, Schedule B of that Protocol is not applicable to the consultation and accommodation process between the Province and the Haisla Nation.

2. Consultation and Accommodation Process between the Province and the Haisla Nation:

- a) The Province will consult and, where appropriate, accommodate the Haisla Nation in respect of any proposed Land and Resource Decision that could adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation.
- b) The Province and the Haisla Nation agree that their consultation and accommodation processes will be undertaken pursuant to the Province’s “Updated Procedures for meeting Legal Obligations when Consulting with First Nations, 2010”, as amended from time to time, to reflect new judicial decisions (the “Updated Procedures, 2010”).
- c) As provided for in the Updated Procedures, 2010, the consultation and accommodation process will reflect:
 - i. the strength of the asserted Haisla Nation claims of aboriginal rights, including aboriginal title; and
 - ii. the degree of any anticipated adverse impact upon the asserted aboriginal rights and aboriginal title of the Haisla Nation.
- d) In addition to Provincial laws, policies and guidelines, the Province and the Haisla Nation will adhere to the additional processes set out in this Appendix D.
- e) The Province and the Haisla Nation agree that Engagement Levels 1-4 provided for in this Agreement do not apply to environmental assessments undertaken pursuant to the *Environmental Assessment Act* [SBC 2002] c. 43.
- f) Environmental assessments of projects will remain subject to applicable laws, including the Crown’s duty to consult and accommodate.

- g) This Agreement does not affect or prejudice any Party's position or views on environmental assessment processes or the Crown's duties in respect of environmental assessments.
- h) When it is determined that a Special Project will not be assessed pursuant to the *Environmental Assessment Act*, the Provincial Agency and the Haisla Nation may agree that the Special Project may have decision characteristics that:
 - i. require some unique or more elaborate form of Engagement other than Engagement Levels 1 to 3; and
 - ii. are amenable to a specific consultation protocol or a negotiated sector-specific protocol.
- i) For the Special Projects referred to above in section 2 h), the Haisla Nation and the Provincial Agency will seek to develop an alternative process of Engagement. If the Haisla Nation and the Provincial Agency are unable to develop a mutually acceptable approach to consultation and accommodation regarding a Special Project, and if agreed to by the Province and the Haisla Nation, government to government discussions may be pursued through the Working Group to reach agreement on an alternative process of Engagement that accords with the common law and section 35 (1) of the *Constitution Act*, 1982.

3. Definitions

- a) In Appendix D of this Amending Agreement, 2011:

“Applicant” means an individual, corporation or other legal entity, or their respective agent who has submitted an Application for a Land and Resource Decision.

“Application” means a proposal submitted by an Applicant to a Provincial Agency for a Land and Resource Decision.

“Effective Date” means the date upon which this Amending Agreement, 2011, is signed by the Coastal First Nations, the Province and the Haisla Nation.

“Engagement” and **“Engage”** means the processes and Engagement Levels agreed upon by the Province and the Haisla Nation in this Amending Agreement, 2011, to assist them in satisfying their legal obligations to consult and where appropriate, accommodate the Haisla Nation in accordance with the reasoning of the Supreme Court of Canada in *Haida Nation v. British Columbia (Ministry of Forests)*, 2004 SCC73 and *Taku River Tlingit v. British Columbia (Project Assessment Director)*, SCC 74, which includes: (i) formal information sharing and discussions between Provincial Agencies and the Haisla Nation in relation to Land and Resource Decisions

(LRD); and (ii) provision to the Haisla Nation of all relevant, available information about the potential significance of the adverse impact.

“Engagement Level” means any one or more of Engagement Levels 1, 2, 3 and 4.

“Engagement Level 1” addresses issues related to a proposed LRD that has minimal to no impact on the land or resources; minimal to no identified potential to adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation; or for which the Haisla Nation has confirmed, in writing to the Province, that the proposed LRD raises no issue requiring further Haisla Nation Engagement.

“Engagement Level 2” addresses issues related to a proposed LRD that physically impacts a relatively small geographic area and has limited potential impact on the land and resources; limited potential to adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation; and potential adverse impacts may be mitigated by attaching terms or conditions to the LRD.

“Engagement Level 3” addresses issues related to a proposed LRD that physically impacts a relatively large geographic area; may adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation; may include issues identified by the Haisla Nation or the Provincial Agency that cannot be resolved through Engagement Levels 1 or 2; and substantive measures may be required to substantially address any adverse impacts upon the asserted aboriginal rights, including aboriginal title of the Haisla Nation.

“Engagement Level 4” addresses issues related to a proposed LRD that pertains to a Special Project; has significant potential to adversely impact the asserted aboriginal rights, including aboriginal title of the Haisla Nation; and may include issues identified by the Haisla Nation or the Provincial Agency that cannot be resolved through Engagement Levels 1, 2 or 3.

“Information Package” means the package of information to be provided by the Province as set out in section 4.4 of this Appendix D.

“Land and Resource Decision” and **“LRD”** mean a proposed administrative or operational statutory decision and includes an Application initiated by an Applicant, and any authorization initiated by a Provincial Agency.

“Provincial Agency” means the Provincial ministry or agency that has authority to manage the review and consideration of a Land and Resource Decision.

“Representatives” mean the representatives appointed by a Provincial Agency or the Haisla Nation for the purposes of Engagement.

“Special Projects” address a large project or special initiative, referred to in section 2 h) of this Schedule 3, that will not be assessed under the *Environmental Assessment Act*,

but may adversely impact the aboriginal rights, including aboriginal title of the Haisla Nation, and may require an engagement process different from that of Engagement Levels 1 to 3.

“Statutory Decision-Maker” means a Provincial Agency delegate with the authority to make a statutory decision under the Provincial legislation included in Schedule A of the Reconciliation Protocol, as amended.

“Tenure Holder” means an individual, corporation, or other legal entity, or their respective agent, who holds a tenure or permit awarded under Provincial legislation.

“Working Group” means the group of Representatives of the governance forum designated by the Parties pursuant to section 5 of the Reconciliation Protocol.

4. Engagement Process

- 4.1 The Province and the Haisla Nation will use the Updated Procedures, 2010, as amended from time to time to reflect new judicial decisions, and the additional Engagement processes set out in this Amending Agreement, 2011, including the processes set out in Table 1 of this Appendix D to guide their Engagement on proposed Land and Resource Decisions.
- 4.2 The Province and the Haisla Nation will apply the Engagement processes set out in this Amending Agreement, 2011, to Applications received and Engagements initiated by a Provincial Agency, on or after the 30th day after the Effective Date.
- 4.3 the Province and the Haisla Nation may agree to apply the Engagement processes set out in this Amending Agreement, 2011, to Applications that are received from an Applicant and to Land and Resource Decisions that are initiated by a Provincial Agency before the date referred to in section 4.2.
- 4.4 Upon receiving an Application or initiating a Land and Resource Decision, the Provincial Agency will commence Engagement by providing the Haisla Nation with an Information Package that includes:
 - a) a description of the type and characteristics of the proposed Land and Resource Decision;
 - b) the identity and contact information of the Applicant or existing Tenure Holder(s) who are the subject of the proposed Land and Resource Decision;
 - c) a description of the specific location or geographic area that will be impacted by the proposed Land and Resource Decision;

- d) all relevant and available Applications, documents, studies and assessments; and
 - e) a description of the proposed Engagement Level and a supporting rationale for that proposed classification
- 4.5 The Provincial Agency will contact the Haisla Nation by telephone or email, within 5 business days of sending the Information Package, to confirm date of receipt by the Haisla Nation, and to confirm initiation of Engagement.
- 4.6 The Provincial Agency will, at the earliest opportunity, inform Applicants and other Provincial Agencies, as applicable, of this Engagement process with the Haisla Nation and, as appropriate, direct those Applicants and Provincial Agencies to contact and provide information directly to the Haisla Nation. Notwithstanding any such direction by a Provincial Agency, the Provincial Agency remains responsible for ensuring that a full and complete information package is sent to the Haisla Nation.
- 4.7 Within 10 business days of receipt, the Haisla Nation will provide the Provincial Agency with written confirmation that:
- a) the proposed Engagement Level is appropriate; or
 - b) the proposed Engagement Level is not appropriate and propose an alternative Engagement Level, along with a supporting rationale; and
 - c) the Information Package appears to contain all available information and materials described in section 4.4; and/or
 - d) the Haisla Nation has additional information to inform the Engagement process and supplement the information and materials specified in section 4.4;
- 4.8 If, in relation to Engagement Level 1 to 3, the Haisla Nation proposes, with supporting rationale, an Engagement Level other than that proposed by the Province, the Representatives will attempt to reach consensus on the Engagement Level within ten business days. The Province and the Haisla Nation agree that if the Representatives are unable to reach consensus on the Engagement Level within the above noted ten business days, the Land and Resource Decision will be dealt with at one Engagement Level higher than that initially proposed by the Provincial Agency.
- 4.9 If the Haisla Nation advises in writing that no further Engagement is required, then the Provincial Agency will proceed to make the Land and Resource Decision and will notify the Haisla Nation of the Land and Resource Decision.
- 4.10 If the Haisla Nation does not provide a written response within 10 business days of receipt of the Information Package, the Provincial Agency will:

- a) proceed to Engage with the Haisla Nation at the proposed Engagement Level; and
- b) if Engagement Level 1 was proposed, proceed to make the Land and Resource Decision and notify the Haisla Nation of the Land and Resource Decision, including the details of any measures to be taken to accommodate any potential adverse impacts upon asserted aboriginal rights, including aboriginal title.

4.11 The Haisla Nation will, within the timeframes specified in Table 1, provide the relevant Provincial Agency with a response that identifies any issues or potential adverse impacts on asserted aboriginal rights, including aboriginal title, which the Haisla Nation is aware of with regard to the proposed Land and Resource Decision.

4.12 If a response is not received from the Haisla Nation within the response timeframes identified in Table 1, the Provincial Agency may proceed to make the Land and Resource Decision, but before doing so will advise the Haisla Nation of the approximate date of the impending Land and Resource Decision, including the details of any measures to be taken to address any potential adverse impacts on asserted Haisla aboriginal rights, including aboriginal title.

4.13 In accordance with this section, Representatives of the Provincial Agency and the Haisla Nation will Engage in the processes and timeframes specified in Table 1, which may include:

- a) Haisla Nation and Provincial Agency Representatives reviewing the Information Package, sharing information and holding discussions to develop recommendations regarding the proposed Land and Resource Decision;
- b) Haisla Nation and Provincial Agency Representatives reviewing and discussing any additional information that the Parties agree to as being necessary to fully assess identified issues regarding potential adverse impacts upon of aboriginal rights, including asserted aboriginal title, and other interests; and
- c) if the Haisla Nation and Provincial Representatives agree, forwarding policy issues or other matters to the Working Group for review, consideration and advice.

5. Land and Resource Decision Recommendations

5.1 To develop recommendations regarding an Application or proposed Land and Resource Decision, the respective Representatives of the Province and the Haisla Nation will review all available and relevant information and make recommendations that include some or all of the following as appropriate:

- a) whether the Application or proposed Land and Resource Decisions should be approved or rejected;
- b) whether any conditions should be attached to the approval of an Application or proposed Land and Resource Decision and if so, what those conditions should be;
- c) the degree and nature of any potential adverse impacts upon Haisla Nation asserted aboriginal rights, including aboriginal title, and any measures necessary to substantially address those potential adverse impacts;
- d) whether additional information is required to support a full consideration of the Application or proposed Land and Resource Decision;
- e) identification of policy and/or legislative issues for Engagement Level 4 only; and
- f) alternative Engagement processes and procedures that will be followed for an Application or proposed Land and Resource Decisions identified by the Province and the Haisla Nation as Engagement Level 4.

5.2 In making recommendations, the respective Representatives of the Province and the Haisla Nation will consider and address some or all of the following, as required:

- a) any applicable laws, policies or customs of the Province and the Haisla Nation;
- b) consistency with any approved land use plan, forest stewardship plan or management plan;
- c) compatibility with any economic development strategy agreed to by the Province and the Haisla Nation;
- d) any potential environmental and economic impacts that may relate to the Application or proposed Land and Resource Decision; and
- e) any potential adverse impacts upon Haisla Nation asserted aboriginal rights, including aboriginal title, and any measures necessary to substantially address those potential adverse impacts.

5.3 In making recommendations, Representatives for the Province and the Haisla Nation may also consider and address some or all of the following:

- a) delivery of economic benefits to the Haisla Nation and other local communities, including any economic effects on other Haisla Nation interests; and
- b) the positive and negative effects of the Application or proposed Land and Resource Decision on the social, economic, health and cultural wellbeing of the Haisla Nation.

- 5.4 The respective Representatives of the Provincial Agency and the Haisla Nation will make best efforts to achieve consensus in their recommendations.
- 5.5 The Statutory Decision-Maker will review all of the recommendations by the respective Representatives of the Haisla Nation and Provincial Agency made under this section 5 and under section 6.4, and will make the Land and Resource Decision.
- 5.6 If the respective Representatives of the Haisla Nation and Provincial Agency have been unable to reach consensus recommendations after following the dispute resolution process outlined in section 6 below and the Statutory Decision-Maker proceeds to make a Land and Resource Decision; or the respective Representatives of the Haisla Nation and Provincial Agency have made consensus recommendations but the Land and Resource Decision differs, in substance, from the consensus recommendations, then:
- a) the Statutory Decision-Maker will provide the Haisla Nation with written reasons for the Land and Resource Decision; and
 - b) the Statutory Decision-Maker will also outline how the issues identified in the consultation process will be addressed in a manner consistent with the asserted aboriginal rights, including aboriginal title, of the Haisla Nation and consistent with the honour of the Crown.

6. **Dispute Resolution**

- 6.1. If the respective Representatives of the Haisla Nation and Provincial Agency are unable to make consensus recommendations following Engagement Level 2 or Engagement Level 3, the respective Representatives will (within the timelines specified in Table 1 of this Appendix D):
- a) exchange, in writing, a full description of the impasse, together with any respective concerns and interests and the proposed specific actions that could be taken to address the issues; and
 - b) meet to discuss the written descriptions and again attempt to make consensus recommendations.
- 6.2. If, in relation to Engagement Level 2 or Engagement Level 3, the respective Representatives of the Provincial Agency and Haisla Nation are still unable to make consensus recommendations following completion of section 6.1, they will forward the materials referred to in section 6.1 to the respective senior Representatives of the

Provincial Agency and the Haisla Nation, for direction and assistance (within the timelines specified in Table 1 of this Appendix D).

- 6.3. If, in relation to Engagement Level 3, the respective Representatives of the Haisla Nation and Provincial Agency are still unable to make consensus recommendations following completion of sections 6.1 and 6.2, the matter may be referred to the Working Group for assistance. The Working Group may then assist the Province and the Haisla Nation by offering, in good faith, to facilitate voluntary mediation by a mutually acceptable individual or body, to assist in developing consensus recommendations (within the timelines specified in Table 1 of this Appendix D).
- 6.4. If the respective Representatives of the Haisla Nation and Provincial Agency are still unable to make consensus recommendations following completion of the steps in sections 6.1. to 6.3 as applicable, they will forward their separate recommendations to the Statutory Decision-Maker and inform the Statutory Decision-Maker of the differences in their respective recommendations (within the timelines specified in Table 1 of this Appendix D).
- 6.5. The Province and the Haisla Nation will each bear their own costs associated with participation in developing consensus recommendations in the above dispute resolution process, and will equally share any joint costs.
- 6.6. Following the exchange of information in 6.4, the Statutory Decision-Maker will review the Haisla Nation and Provincial Agency Representatives' respective recommendations, and other relevant information. The Statutory Decision-Maker may proceed to make a Land and Resource Decision, in accordance with section 5.5 above, but before doing so will inform the Haisla Nation.
- 6.7. Any senior Representatives of the Provincial Agency who have participated in discussions regarding recommendations under this Agreement in respect of an Application or Land and Resource Decision, will not be the individual making the Land and Resource Decision.

7. **Timeline Extensions**

- 7.1. If a Provincial Agency or the Haisla Nation is unable to complete the Engagement within the specified timelines, then the Provincial Agency or the Haisla Nation will notify each other and request an extension and provide a reason for the proposed extension. Consent to an extension request will not be unreasonably withheld.
- 7.2. If the Haisla Nation has requested the extension and if the Haisla Nation has not provided a response by the end of an extended timeframe for the submission of the response, the Provincial Agency may consider proceeding to a Land and Resource Decision without further Engagement.

8. General

- 8.1. Subject to section 6.3, only with the specific and prior written agreement of the Haisla Nation will discussions that take place in the Working Group be considered part of Engagement towards meeting lawful obligations.
- 8.2. If the process and timelines of an Engagement Level set out in this Engagement process are less than and therefore in conflict with a process or timeline specified in legislation, the legislated process or timeline will prevail to the extent of the conflict.
- 8.3. With the prior written agreement of the respective Representatives of the Provincial Agency and Haisla Nation, Engagement on Land and Resource Decisions may be pursued in batches and/or on a pre-determined schedule.
- 8.4. The Provincial Agency and the Haisla Nation may request an Applicant to undertake specific procedural aspects of the Engagement process provided that the Provincial Agency continues to Engage with the Haisla Nation in a manner that is consistent with this Agreement.
- 8.5. The Province and the Haisla Nation will review implementation of these Engagement processes on an annual basis and undertake discussions with the goal of improving the efficiency and effectiveness of the Engagement processes.
- 8.6. Except as the Province and the Haisla Nation may agree in writing, the Reconciliation Protocol (as amended), the Amending Agreement 2011 including this Appendix D, will not limit any position either may take in future legal proceedings with regard to Land and Resource Decisions.
- 8.7. Nothing in the Reconciliation Protocol, 2009 (as amended) or the Amending Agreement 2011 (including this Appendix D) amends, derogates from or alters Haisla Nation aboriginal rights (including aboriginal title).

Table 1

Haisla Nation – Province Engagement Process Outline

Process Stages and Engagement Levels	Process Overview	Anticipated Outcomes and Timeframes	Decision Characteristics
Initiation of Engagement process	<ul style="list-style-type: none"> ▪ The Provincial Agency provides Information Package concerning proposed LRD with proposed Engagement Level and supporting rationale to the Haisla Nation. 	<ul style="list-style-type: none"> ▪ The Provincial Agency will contact the Haisla Nation by telephone or email, within 5 business days of sending the Information Package, to confirm date of receipt by the Haisla Nation, and to confirm initiation of Engagement. 	
Confirmation of Engagement Level	<ul style="list-style-type: none"> ▪ The Haisla Nation conducts initial review of Information Package provided, and Engagement Level is confirmed, or is raised with an accompanying rationale, as per section 4.7. 	<ul style="list-style-type: none"> ▪ Within 10 business days of receipt of Information Package, the Haisla Nation advises the Provincial Agency of its agreement with the proposed Engagement Level, or proposes a different Engagement Level. If the Haisla Nation proposes a different Engagement Level, along with supporting rationale, the Haisla Nation and the Provincial Agency will proceed, as per section 4.7 of this Amending Agreement, to determine the Engagement 	

		<p>Level.</p> <ul style="list-style-type: none">▪ Within the above noted 10 business days the Haisla Nation and the Provincial Agency will:<ul style="list-style-type: none">a) confirm that the proposed LRD raises no issue requiring further Haisla Nation Engagement (Engagement Level 1), and the Statutory Decision-Maker makes the proposed LRD; orb) confirm that the proposed LRD requires Engagement Level 2 , identify the Haisla Nation contact person, and the Provincial Agency and the Haisla Nation proceed to Engagement Level 2; orc) confirm that the proposed LRD requires Engagement Level 3, identify the Haisla Nation contact person, and the Provincial Agency and the Haisla Nation proceed to Engagement Level 3; ord) if the Haisla Nation and the	
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		<p>Provincial Agency agree that the proposed LRD requires Engagement Level 4, identify the Haisla Nation contact person, and the Provincial Agency and the Haisla Nation proceed to Engagement Level 4.</p>	
<p>Engagement Level 1 Information Sharing</p>		<ul style="list-style-type: none"> ▪ The Haisla Nation has confirmed, in writing, that the proposed LRD raises no issue requiring further Haisla Nation Engagement. The Statutory Decision-Maker proceeds to make the proposed LRD. ▪ If the Haisla Nation has not responded to an Engagement Level 1 referral, the Statutory Decision-Maker makes the proposed LRD in accordance with section 4.9b. 	<ul style="list-style-type: none"> ▪ The proposed LRD has minimal to no impact on the land or resources; ▪ there is minimal to no identified potential to adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation; ▪ the Haisla Nation supports the proposed LRD.
<p>Engagement Level 2 Limited</p>	<ul style="list-style-type: none"> ▪ Consultation between the Provincial Agency and the Haisla Nation will proceed in accordance with this Amending Agreement, 2011, including: <ul style="list-style-type: none"> 1) identification of and 	<ul style="list-style-type: none"> ▪ The Provincial Agency and the Haisla Nation agree that, in most cases, Engagement Level 2 will be completed within 21 business days, unless: <ul style="list-style-type: none"> a) the matter proceeds to 	<ul style="list-style-type: none"> ▪ The proposed LRD physically impacts a relatively small geographic area and has limited potential impact on the land and resources;

	<p>addressing information gaps;</p> <p>2) consideration of the nature of and strength of the asserted aboriginal rights, including aboriginal title of the Haisla Nation;</p> <p>3) consideration of the potential for adverse impacts upon the asserted aboriginal rights, including aboriginal title;</p> <p>4) consideration of appropriate measures to substantially address the concerns raised by the Haisla Nation regarding adverse impacts upon the aboriginal rights, including aboriginal title, of the Haisla nation, including measures to mitigate, minimize or avoid adverse impacts;</p> <p>5) consideration of issues relating to Haisla Nation economic, environmental, social, cultural and health matters that may be impacted by the proposed LRD; and</p> <p>6) provide recommendations to</p>	<p>dispute resolution; or</p> <p>b) a time extension is agreed to pursuant to section 7 of this Amending Agreement, 2011; or</p> <p>c) issues that go beyond Engagement Level 2 are identified, and the Engagement is raised to Engagement Level 3.</p> <p>▪ Even with an agreed upon extension of time for (a) and (b) above, the Haisla Nation and the Provincial Agency anticipate that there will be an overall maximum of 42 business days from the date of acknowledgement of receipt by the Haisla Nation of a complete Information Package, as per section 4.4, to the Statutory Decision-Maker making the proposed LRD.</p>	<p>▪ there is limited potential to adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation;</p> <p>▪ any potential adverse impacts on asserted Haisla Nation rights, including aboriginal title, may be mitigated by attaching terms or conditions to the LRD.</p>
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	<p>the Statutory Decision-Maker; or</p> <p>7) identify issues that go beyond Engagement Level 2, and the Provincial Agency and Haisla Nation will raise the Engagement to Engagement Level 3; and</p> <p>8) expand the Engagement timelines to Engagement Level 3 timelines.</p>		
<p>Engagement Level 3 Complex</p>	<ul style="list-style-type: none"> ▪ Consultation between the Provincial Agency and the Haisla Nation will proceed in accordance with this Amending Agreement, 2011, including: <ol style="list-style-type: none"> 1) identification of and addressing information gaps; 2) consideration of the nature of and strength of the asserted aboriginal rights, including aboriginal title of the Haisla Nation; 3) consideration of the potential for adverse impacts upon the asserted aboriginal rights, 	<ul style="list-style-type: none"> ▪ The Provincial Agency and the Haisla Nation agree that, in most cases, this Engagement Level will require 42 business days to complete, unless: <ol style="list-style-type: none"> a) the matter proceeds to dispute resolution in accordance with section 6; or b) a timeline extension is agreed to pursuant to section 7 of this Amending Agreement, 2011. ▪ Even with an agreed upon extension of time for (a) and (b) above, the Haisla Nation and 	<ul style="list-style-type: none"> ▪ The proposed LRD physically impacts a relatively large geographic area; ▪ may adversely impact the asserted aboriginal rights, including aboriginal title, of the Haisla Nation; ▪ may include issues identified by the Haisla Nation or the Provincial Agency that cannot be resolved through Engagement Levels 1 or 2; ▪ substantive measures may be

	<p>including aboriginal title;</p> <p>4) consideration of appropriate measures to substantially address the concerns raised by the Haisla Nation regarding adverse impacts upon the aboriginal rights, including aboriginal title, of the Haisla nation, including measures to mitigate, minimize or avoid adverse impacts;</p> <p>5) consideration of issues relating to Haisla Nation economic, environmental, social, cultural and health matters that may be impacted by the proposed LRD; and</p> <p>6) provide recommendations to the Statutory Decision-Maker.</p>	<p>the Provincial Agency anticipate that there will be an overall maximum of 62 business days, including any dispute resolution in accordance with section 6, from the date of acknowledgement of receipt of a complete Information Package, as per section 4.4, to the Statutory Decision-Maker making the proposed LRD.</p>	<p>required to substantially address any adverse impacts upon the asserted aboriginal rights, including aboriginal title of the Haisla Nation.</p>
<p>Engagement Level 4 Special Projects</p>	<ul style="list-style-type: none"> ▪ The Provincial Agency and the Haisla Nation will seek to agree upon and develop an alternative process of Engagement for a Special Project, which: <ol style="list-style-type: none"> 1) will require some unique or 	<ul style="list-style-type: none"> ▪ The Provincial Agency and the Haisla Nation will work collaboratively to determine, within 45 business days of acknowledgement of receipt of the complete Information 	<ul style="list-style-type: none"> ▪ The proposed LRD pertains to a Special Project that has significant potential to adversely impact asserted aboriginal rights, including aboriginal title of the Haisla

	<p>elaborate form of Engagement other than Engagement Levels 1, 2 or 3;</p> <p>2) may be amenable to a specific consultation protocol or a negotiated sector-specific protocol.</p>	<p>Package, an acceptable process and timeframe for Engagement on a Special Project that has triggered this Engagement Level 4.</p> <ul style="list-style-type: none"> ▪ When requested by the Haisla Nation and the Provincial Agency, the Working Group may assist the Haisla Nation and the Provincial Agency in their Government to Government discussions regarding in the development of consensus recommendations. ▪ If the Haisla Nation and the Provincial Agency are unable to develop a mutually acceptable approach to consultation and accommodation with respect to an Engagement Level 4 matter, the Provincial Agency will consult with and accommodate the Haisla Nation in a way that accords with the Updated Procedures, 2010. 	<p>Nation; and</p> <ul style="list-style-type: none"> ▪ may include issues identified by the Haisla Nation or the Provincial Agency that cannot be resolved through Engagement Levels 1, 2 or 3.
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