



2007/ 2008 FIRST NATIONS INFORMATION SHARING AND CONSULTATION GUIDELINES

Forests For Tomorrow Program

PURPOSE

This document outlines the process involved in information sharing and consultation with First Nations for projects under the Forests for Tomorrow (FFT) program. As the program moves forward a commitment has been made by the MoFR to develop and implement a more strategic approach to information sharing and consultation with First Nations.

The target audience is Ministry of Forests and Range staff, Recipient Agreement Holders (RAH) (silvicultural contractors, licensees) and third party administrators involved in the Forests for Tomorrow program. This document sets out to clarify roles and responsibilities among the FFT funding recipients as well as district staff, and the FFT administrator.

DEFINITIONS

“**PINES**” refers to the Program Investment Entry System managed by Pricewaterhouse Coopers (PwC). This system records and tracks investment made under provincial forestry investment programs and administered by Pricewaterhouse Coopers.

“**Pricewaterhouse Coopers (PwC)**” is the third party administrator involved in the Forest for Tomorrow program.

“**Forests for Tomorrow**” is the provincial silvicultural program directed at the reforestation and restoration of areas catastrophically damaged by the mountain pine bark beetle and/or wildfires.

“**Recipient Agreement Holder (RAH)**” means a party designated by the MOFR to receive funding pursuant to a Recipient Agreement under Forests for Tomorrow program.

CONSULTATION

Background

Information sharing with First Nations with regard to FFT activities is based on the premise that the legal obligation associated with consultation in respect of aboriginal interests (potential aboriginal rights and/or title) rests with the Crown. However, the

Crown has the ability to delegate procedural aspects associated with this consultation process.

In fulfilling this legal obligation, the Crown will consider “third party” information sharing activities, of which it has knowledge, as part of the broader consultation process. For the FFT Program, the “third party” is the Recipient Agreement Holder (RAH) who leads the information sharing step of the larger consultation process through obligations outlined in the Recipient Agreement, the FS 1001 General Standards for Ministry Programs, and this document.

The MoFR District Manager (DM) or designate has decision making authority as to whether the First Nation consultation process, including the information sharing step by the RAH, has been appropriate. This decision must be made before on the ground activities associated with the project proceeds.

Note that in areas of the province where treaty rights have been established (eg. McLeod Lake Indian Band in the Prince George District), the same process as described in this document is followed but information sharing and consultation associated with treaty rights will be the relevant consideration as compared to aboriginal interests.

The appropriate level of First Nation consultation will depend on the **strength of the First Nation’s aboriginal interests** within the project area and the **potential impact** the proposed forestry project(s) may have on those interests. The Ministry of Forests and Range, *Aboriginal Rights and Title Policy* and *Consultation Guidelines* (2003) provides guidance on this subject and may be found at the Ministry of Forests and Range, Aboriginal Affairs Branch website: http://www.for.gov.bc.ca/haa/policies_reports.htm.

In the FFT program, the majority of the projects undertaken by recipients involve activities that are likely to directly impact the land base, such as; site prep, danger tree falling, planting, brushing, fertilization, and restoration. In addition, the FFT program includes strategic resource planning and resource inventory projects which will have minimal impacts on the land base.

PROGRAM DELIVERY

The FFT program involves strategic planning and project delivery for the establishment of free-growing forests on areas that lie outside industry obligations. The program has committed to involving First Nations input at all levels of the planning process from the development of Management Unit (MU) Silviculture Strategies to site level implementation activities.

The initial focus of the program is to treat not satisfactorily restocked areas and reduce brush competition in impeded stands in management units impacted by the mountain pine bark beetle (MPB), and to reforest the large wildfire areas of 2003/2004 to mitigate the mid to long term impacts of the current MPB epidemic. Following treatment of these areas, the emphasis of the FFT program will shift to reforestation of unsalvaged MPB

killed stands. These silvicultural treatments will impact the land base and a significant portion of the work will be done on unmanaged forests.

The FFT program is currently completing detailed Type I and II Silviculture Strategies on some of the impacted MU's, which will subsequently direct funding to selected treatments on the land base. Strategic level input gathered at information sharing meetings with First Nations are integral to increasing program efficiency by identifying targeted areas for treatment and allowing site level consultation to be initiated early in the process.

The FFT information sharing process needs to start as early as possible in the planning cycle in order to maximize efficiencies, allow First Nations time to review and respond and ultimately to begin projects on schedule.

The RAH must follow their contractual obligations with regards to the information sharing step with the potentially affected First Nation(s). This contact will provide the First Nations with a high level, strategic overview of all activities that the RAH is planning within a management unit and where these activities will occur on the land base. This contact will occur at a minimum annually and at the beginning of the field season where any on the ground activities are scheduled to occur.

Where feasible, information sharing should not be done on a project by project or activity basis but should be undertaken on all proposed projects or activities contemplated within the First Nation's asserted traditional territory within a particular timeframe. This will assist in providing the First Nation with an understanding of the overall impact the activities and projects may have on their aboriginal interests, and will assist in reducing the workload for the First Nation.

An overview of the roles and responsibilities for FFT program/activity development and the information sharing process for RAH and the District is provided below, followed by the detailed process for information sharing and consultation.

Roles and Responsibilities for Information Sharing/Consultation

The District First Nation specialist and/or the District Manger (DM) is responsible for:

- 1) Reviewing the proposed FFT activities (for a “batch” of projects/activities) with the RAH/Project Manger to: advise on and document the appropriate level of information sharing for the RAH and the broader consultation process required.
- 2) Confirming the First Nation(s) that need to be contacted.
- 3) Confirming, documenting and informing the Recipients regarding the adequacy of the information sharing carried out by the RAH.
- 4) Carrying out further consultation with the First Nation(s) as required, e.g., when the First Nation does not engage in the information sharing/consultation process within the referral time frame, when comments from the First Nation cannot be addressed by the RAH, or when projects require a higher level of consultation than originally considered appropriate.
- 5) Providing the RAH with relevant history on the planned projects and information sharing/consultation completed.

The Recipient Agreement Holder(s) (RAH) is responsible for:

- 1) Fully understanding the information sharing requirements and process for the FFT program.
- 2) Providing information regarding proposed projects to district staff so that district staff can determine what an appropriate level of information sharing/consultation may be. RAH for management units within a Forest District will contact the District Staff before contacting First Nations. This will also help create efficiencies for RAH Districts and the First Nation(s) involved.
- 3) Following the Process for Information Sharing/Consultation as outlined below and any additional direction given by the District with regard to the level, type and appropriate action(s) required.
- 4) Documenting the information sharing, including the decision by the District that the information sharing has been adequate. A clear statement is required in PINES to indicate that the information sharing requirements have been completed as required and that a confirmation of adequacy was received from the District.

Process for Information Sharing/Consultation

1 Contract obligations

1.1 RAH must review and understand their obligations with respect to information sharing with First Nations as outlined in the Recipient Agreement and this document as well as how this information sharing fits within the MOFR First Nation consultation process. The Ministry of Forests and Range, *Aboriginal Rights and Title Policy* and *Consultation Guidelines* (2003) provides guidance on this subject and may be found at the Ministry of Forests and Range, Aboriginal Affairs Branch website: http://www.for.gov.bc.ca/haa/policies_reports.htm.

2 Level of information sharing and identification of affected Aboriginal Groups

2.1 RAH must review and understand the level of information sharing required and the First Nation(s) that may be potentially affected for each of their proposed activities, as confirmed by the MoFR District First Nation Specialist and/or District Manager.

Note: For some activities, Districts may indicate where low/no interests and a low/no impact FN notification may be appropriate in some situations. Here, the RAH should notify the FN and use a batched approach to referring some low impact projects in their area (See 3 Notifications for process).

Note: The level of information sharing may adjust as the process unfolds in relation to information a First Nation may provide regarding aboriginal interests.

Note: Where project locations overlap two districts, one district should take the lead and notify the other district.

3 Notifications

3.1 Where a RAH is instructed by the MoFR, with documentation, to undertake “notification only” for a project or set of projects, the notification should be preferably done prior to the project starting and may be in the form of a letter from the RAH. The letter would describe the project, explain the purpose for it, when and where it will occur, and request comments from the First Nation and/or any additional elements requested by the District. The RAH will document the steps taken in PINES and submit all documentation to the District Manager for review.

4 Information Sharing

4.1 For projects that require information sharing beyond notification (as documented in the PINES), the RAH must:

- a) Provide correspondence to the First Nation about these project(s) being proposed within the First Nation’s asserted traditional territory. The correspondence should;
 - i. explain the location, nature, and extent of the proposed activities,
 - ii. outline when the proposed project should take place, and
 - iii. provide First Nations with an understanding of the potential on-the-ground impact of the proposed activities, and
 - iv. for those projects requiring a higher level of information sharing, technical and descriptive information, such as diagrams and mapping products depicting the location of the proposed activities, should be sent or delivered to the potentially affected First Nations.
- b) Provide an opportunity for the First Nation(s) to have the information explained to them.
- c) Provide the First Nation with an appropriate time to respond with concerns and aboriginal interests information. Where projects require shorter

timelines, an explanation is required in the letter. Short timelines should be avoided by starting the process as early as possible.

4.2 If First Nation's comments are not received, the RAH must:

- a) Contact the First Nation and determine whether the First Nation does not wish to provide comments or does not want to participate in the process.
- b) Notify the MoFR District First Nation Specialist outlining steps taken and reasons for lack of First Nation participation.
- c) Document steps taken in PINES.

Note: The District First Nation Specialist and/or the District Manager, if not already involved, may contact the First Nation and may undertake further steps to ensure that consultation has been appropriate.

Note: The District Manager will determine whether the consultation process has been appropriate and whether the project(s) should go ahead, determine the adequate response, and send notification of the final decision to the RAH and First Nation.

4.3 If First Nation's comments are received, the RAH must:

- a) Consider any concerns and information on aboriginal interests received in writing or in person.
- b) With the concurrence of the District First Nation Specialist the RAH may propose appropriate revisions to the project to address concerns and aboriginal interests raised.
- c) Summarize results from information sharing including comments received from the First Nation(s), concerns raised and how aboriginal interests and other concerns raised were addressed/or not. The RAH will send the summary to the MoFR District First Nation Specialist and District Manager or designate and record the information in PINES.
- d) Work with the District First Nation Specialist to ensure that appropriate steps are followed and to confirm that the revisions in fact address FN's concerns.

4.4 The District Manager (DM) will review the consultation summary and:

- a) If the DM is satisfied that the information sharing and the consultation process was adequate, they will notify the RAH and First Nation of the final decision, or
- b) The DM or designate will notify the RAH if they require;
 - i. additional information sharing to be carried out, or
 - ii. a more detailed copy of the review and comment documentation is required, and/or
 - iii. modifications to be done to the proposed LBIP project to address aboriginal interests.

4.5 If the RAH receives further requests from the DM or designate they must:

- a) Complete the requirements as requested by the DM or designate.

- b) Inform the DM or designate that the change has been made*; and,
- c) Amend the Project Plan in PINES.

Note: The DM or designate will review the modified project information to determine if the requirements have been addressed, and will communicate the final decision to the RAH and the First Nation.

- 4.6 If the RAH cannot address the First Nation's comments the RAH must:
- a) Notify the District First Nation Specialist and/or DM with a summary of the information sharing to date, nature of the impasse including why the First Nation's aboriginal interest or concern cannot be addressed, and
 - b) Document the steps taken in PINES
- 4.7 The District Manager or designate will review the consultation summary and:
- a) Will determine whether the First Nation information sharing and consultation process has been adequate, and determine if the project(s) should go ahead, and if so, the circumstances and any adjustments, where appropriate, that are necessary to accommodate aboriginal interests and concerns rose.
 - b) Will notify the RAH if they require;
 - i. additional information sharing to be carried out, or
 - ii. a more detailed copy of the review and comment documentation is required, and/or
 - iii. modifications to be done to the proposed FIA project to address aboriginal interests.
- 4.8 If the RAH receives further requests from the DM or designate they must:
- a) Complete the requirements as requested by the DM or designate, and
 - b) Amend the Project Plan in FIRS and,
 - c) Inform the DM or designate.
- 4.9 The DM or designate will review the modified project information to determine if the requirements have been addressed, and will communicate the final decision to the RAH and the First Nation.

5 Project Approvals

- 5.1 Upon receiving notification from the District Manager:
- a) The RAH must ensure that documentation of the information sharing process and final decision is entered into PINES with a clear statement to indicate that the consultation process was deemed to be adequate and that a confirmation was received from the District.
 - b) Once it has been confirmed that the information sharing and consultation process was adequate, the project funding can then be released.