

MOWACHAHT/MUCHALAHT FORESTRY CONSULTATION POLICY

A. INTRODUCTION

Adoption

1. This Forestry Consultation Policy (the “Policy”) has been adopted by the Mowachaht/Muchalaht First Nation (MMFN).
2. The consultation protocols set out in this Policy have been taken from the consultation principles articulated in Canadian jurisprudence on the fiduciary duty owed by the Crown to First Nations.

Purpose

3. The purpose of this Policy is to establish consultation protocols to enable meaningful consultation with the Provincial Crown in light of the Crown’s fiduciary duty to consult with the MMFN in the utmost good faith and attempt to substantially address their concerns and accommodate their interests when considering actions that may affect their aboriginal rights and title.
4. Further, the MMFN wish to foster a long-term positive relationship with the MOF by jointly designing and implementing a consultation and information sharing process to address administrative decisions and operational plans subject to Ministry of Forests approval in the traditional territory of the MMFN;
5. The MMFN also wish to increase its economic role in the forest sector;
6. The MMFN also wish to address the financial costs incurred by the MMFN resulting from their participation in the consultation process.

Application

7. This Policy shall apply to any consultation arising in connection with any forestry activity being considered for approval by the Provincial Crown within the Traditional Territory of the MMFN (the "Activity"). This includes, but is not limited to, the issuance of cutting permits, volume reallocation, approvals of forestry licenses and the approval of operational plans.
8. This Policy shall apply to any consultation undertaken by either the Provincial Crown, including its Ministers, employees and agents, in connection with an Activity described in this Policy.

Territory

9. A map of the Traditional Territory of the MMFN (the "Territory") is attached as Schedule "A".

B. INITIATION OF CONSULTATION

Timing

10. The MMFN expect to be consulted at an early stage of any Activity and, in any event, before any licenses, permits or other authorizations are issued which may affect MMFN rights in the Territory.
11. The MMFN do not want consultation limited to the later stages of any Activity, when significant time pressures and deadlines are applied to the MMFN which may undermine effective consultation.

Notification in Writing

12. The MMFN wish to be notified by the Crown in writing when an Activity is being considered by the Crown that requires consultation.
13. Notice of a situation requiring consultation does not constitute consultation.

Particularity

14. This notice shall contain sufficient information to allow the MMFN to:
 - i) understand the nature and scope of the proposed activity;
 - ii) understand the timing of the proposed activity;
 - iii) understand the location of the proposed activity;
 - iv) understand how the proposed activity may affect MMFN Territory, including impacts on wildlife, cultural resources such as archaeology sites – including culturally modified trees, and title;
 - v) understand who will be undertaking the activity;
 - vi) understand who will be making the final decision for the Crown and who will be assisting that person in making that decision;
 - vii) understand what documents, including applications, studies, assessments, policies are available to be reviewed which are pertinent to the proposed activity;
 - viii) understand any relevant deadlines or filing dates;
 - ix) understand the Crown's proposed form of consultation;
 - x) understand such further other relevant information the Crown may possess relating to the proposed activity; and
 - xi) be advised of all pertinent addresses and phone numbers for contacting the relevant decision makers and those assisting him or her.

Generality

15. The above particulars should ensure that adequate notice is given to the MMFN to permit them to:
- i) understand how their rights and interests may be affected; and
 - ii) understand how they can meaningfully respond to the proposed action.

C. FORM OF CONSULTATION

Consultation

16. The following shall be deemed acceptable consultation:
- i) oral consultation with the Council of Chiefs of the MMFN either with or without their legal counsel at formal meetings with minutes being taken as agreed in advance between the MMFN and the Crown; and
 - ii) written consultation with the Council of Chiefs and MMFN Administrator.
17. No other form of contact between the Crown and the MMFN will be understood to be consultation. Without limiting the generality of the foregoing, the following activities in particular will not constitute consultation:
- i) participation by the MMFN in public meetings; and
 - ii) telephone calls, faxes, and other material sent by the Crown to the Band office to Band officials and employees.

Crown Representatives

18. The MMFN will only engage in consultation with:

- i) the relevant decision maker for the Activity; and
- ii) such other Crown representatives as agreed in advance in writing by the MMFN and the relevant decision maker for the Activity.

Availability for Oral Consultation

19. The Council of Chiefs will be available one day per month to engage in oral consultation. This allocation of time is based upon the Chiefs' assessment of their available resources.
20. Oral consultation should be scheduled well in advance and, in any event, no less than 21 days before the date of the proposed oral consultation.
21. All communications regarding oral consultation sessions, including matters relating to the scheduling or the agenda of such sessions, shall be directed to the Administrator for the MMFN.

Availability of Band Members

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

Substance of Consultation

23. The MMFN will consult with Crown agencies and ministries solely on matters that fall within the mandate, powers and responsibilities of that agency or ministry. Where the Activity comprises issues or activities that fall within the mandate, powers and responsibilities of more than one Provincial agency or ministry, each agency or ministry will conduct separate consultations with the MMFN.

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

- i) a duty to fully inform the MMFN of the nature and implications of the Activity;
- ii) a duty to inform itself of the MMFN's land and resource uses, cultural sites and traditional practices that may be affected by the Activity; and
- iii) a duty to attempt to substantially address the concerns and accommodate the economic and cultural interests of the MMFN.

25. The MMFN particularly expect, without in any way limiting the generality of the foregoing, that:

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

- ix) imposing limitations or conditions on the activity.
- x) the Crown and third parties provide resources to the MMFN to allow them to meaningfully participate in the consultation process, including reasonable remuneration for the time and expense incurred in responding to referrals.

Compensation

26. In any event, the Crown is under a legal duty to compensate the MMFN where any infringement of aboriginal rights or title occurs.