

Memorandum

To: 'Namgis First Nation Members
From: Chief and Council
Date: March 16, 2015
Re: Forestry Agreements

A general meeting will be held on April 24-25, 2015. At the general meeting, Council will seek 'Namgis membership approval of a draft Forest Fund Agreement between the 'Namgis First Nation ('Namgis) and the Government of British Columbia (BC).

Background information regarding the Forest Fund Agreement is summarized below.

A. Memorandum of Understanding

On May 16, 2013, 'Namgis, Western Forest Products (WFP) and BC concluded a 'Namgis Forestry and Treaty Enhancement Memorandum of Understanding (MOU). The purpose of the MOU is to develop options for maintaining forest company access to timber supply on proposed treaty settlement land between agreement in principle approval and final treaty.

B. Forestry Agreements

'Namgis, BC and WFP concluded the following two forestry agreements (the "Forestry Agreements") pursuant to the MOU:

1. 'Namgis Treaty Settlement Lands Operating Agreement between 'Namgis and WFP (NTSLOA)
2. Forest Fund Agreement between 'Namgis and BC (FFA)

1. 'Namgis Treaty Settlement Lands Operating Agreement ("NTSLOA")

Under the NTSLOA, in exchange for allowing WFP to log on the portion of proposed 'Namgis treaty settlement land (TSL) shown on the attached map, 'Namgis and WFP agree as follows:

- Atli Forests, the 'Namgis First Nation's forest company, will form a partnership with WFP. The Atli/WFP partnership will log the proposed TSL shown on the attached map and will share the profits generated from logging on those lands.
- The term of the NTSLOA is five years.
- 'Namgis' estimated share of the profits for Years 1 and 2 are as follows:
 - Year 1: \$900,000; and
 - Year 2: \$500,000.
- 'Namgis profits for Years 3 to 5 are contingent upon 'Namgis concluding an Agreement in Principle (AIP) and Final Treaty with Canada and BC.

- If an AIP concluded in Year 3, 'N̄amḡis' estimated share of the profits are as follows:
 - Year 3: \$500,000
 - Year 4: \$500,000
- If a Final Agreement is concluded in Year 5, 'N̄amḡis' estimated share of the profits are as follows:
 - Year 5: \$500,000

Part 16 of the NTSLOA provides that the essential terms of this agreement can be discussed with 'N̄amḡis members, but it cannot be distributed in printed form.

2. Forest Fund Agreement (“FFA”)

Under the FFA, BC will pay 'N̄amḡis an amount approximately equal to the remaining profits that 'N̄amḡis would have earned if the TSL shown on the attached map was logged exclusively by 'N̄amḡis after a Final Treaty is concluded. Projected amounts payable to 'N̄amḡis under the FFA are as follows:

- BC will pay 'N̄amḡis the following estimated amounts in Year 1 and 2:
 - Year 1: \$368,000
 - Year 2: \$368,000
- BC will pay 'N̄amḡis the following estimated amounts in Year 3 and 4, if 'N̄amḡis concludes an AIP with Canada and BC in Year 3:
 - Year 3: \$368,000
 - Year 4: \$368,000
- BC will pay 'N̄amḡis the following estimated amounts, if 'N̄amḡis concludes an Final Treaty with Canada and BC in Year 5.
 - Year 5: \$368,000
- In addition to the above payments, deferred payments totaling an estimated \$6,992,000 will be placed into a Forest Fund by BC.
- These deferred payments in the Forest Fund will only be payable to 'N̄amḡis, if 'N̄amḡis concludes an Final Treaty with Canada and BC in Year 5

The calculations and formulas in Schedule 2 of the FFA must be kept confidential. Enclosed is a copy of the FFA with these calculations and formulas redacted.

C. Legal Opinion on Effect of Forestry Agreements on 'N̄amḡis Aboriginal Title

We obtained a legal opinion on the effect of the forestry agreements on 'N̄amḡis aboriginal title. In particular, we asked for an opinion on the following two questions:

1. If 'N̄amḡis members consent to logging on a portion of our aboriginal title lands, will this affect the ability of the 'N̄amḡis First Nation to bring an

- aboriginal title claim in respect of those aboriginal title lands at a future date;
and
2. If the 'Namgis bring an aboriginal title claim for those aboriginal title lands where we have allowed logging, how would consent to logging on those lands impact on the remedies that the court might grant if the aboriginal title claim is successful?

In response to the first question, legal counsel concluded "it is our opinion that the logging agreement will likely have no effect on whether the NFN will be able to make a future aboriginal title claim."

In response to the second question, legal counsel concluded "it is our opinion that the NFN can expect reduced monetary compensation in the future if it consents to the proposed logging activity, likely reduced commensurately with the compensation NFN will receive through the agreement.

A copy of the legal opinion is attached for your review.

D. Why we are seeking your approval of the Forest Fund Agreement

In March 2013, community votes were held at Alert Bay, Vancouver and Victoria to seek 'Namgis membership approval of the 'Namgis Agreement in Principle. 'Namgis members did not approve the 'Namgis Agreement in Principle during the March 2013 community votes. Thus, while we remain in the BC Treaty Process, we do not have a mandate to continue negotiations with Canada and BC at this time.

The MOU with BC and WFP was concluded in May 2013, two months after the 'no' vote on the 'Namgis Agreement in Principle. The FFA is an incremental treaty agreement that was concluded pursuant to this MOU and has milestones that are tied to the successful conclusion of an AIP and a Final Treaty.

The goals of the 'Namgis First Nation are to be transparent and accountable to members. Sharing information about the NTSLOA and FFA and seeking membership approval of the FFA helps advance these goals.

For the reasons set out above, Council is seeking 'Namgis member approval of the FFA.

E. Recommendation

The 'Namgis Council recommends that 'Namgis members approve the FFA for the following reasons:

- Most First Nations do not have an opportunity to share in the wealth derived from their traditional territories. Under the NTSLOA and FFA, 'Namgis will have an

opportunity to share in the wealth generated from logging on a portion of our traditional territory. Without this arrangement these lands may be harvested without any financial benefits flowing to 'Namgis.

- The arrangement is relatively short-term and involves a small portion of 'Namgis territory.
- Forest resources are renewable and areas harvested as part of this arrangement will be replanted and will continue to benefit future generations of 'Namgis members.
- The NTSLOA and FFA will provide 'Namgis with approximately \$2.1 million dollars over two years, which can be used to address community priorities, create jobs and determine next steps for advancing our aboriginal title and rights.
- The NTSLOA and FFA will not affect our ability to bring an aboriginal title claim in respect of the proposed TSL where logging will occur.
- If we are subsequently granted a declaration of aboriginal title over the proposed TSL where logging will occur, it would still be open to us to seek compensation in respect of an amount at least equal to, if not greater than deferred payments in the Forest Fund.

F. Draft Motion to Approve the Forest Fund Agreement

If you accept our recommendation to approve the Forest Fund Agreement, we seek a mover and seconder for the following draft resolution:

'Namgis First Nation members hereby approve the Forest Fund Agreement between the 'Namgis First Nation and British Columbia (as represented by the Minister of Aboriginal Relations and Reconciliation and the Minister of Forest Lands and Natural Resource Operations) and authorize the 'Namgis Chief to sign the agreement on our behalf.