

**KASKA DENA  
Forest and Range Agreement  
(the "Agreement")**

**Between:**

**The Dease River Band Council, as represented by the Chief Cat Lee**

**The Daylu Dena First Nation, as represented by the Deputy Chief Walter Carlick**

**The Kwadacha Band, as represented by the Chief Emil McCook  
(the Kaska Dena)**

**And**

**Her Majesty the Queen in Right of the Province of British Columbia  
As represented by the Minister of Forests  
(the "Government of British Columbia")**

(collectively the "Parties")

**Whereas:**

- The Kaska Dena has Aboriginal Interests within its Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development and related economic benefits arising from this development within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the Kaska Dena on forest and/or range resource development activities proposed within the Kaska Dena Traditional Territory that may lead to the infringement of the Kaska Dena's Aboriginal Interests.
- Kaska Dena has a responsibility to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Kaska Dena Traditional Territory, that may lead to an infringement of Kaska Dena Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of Kaska Dena's Aboriginal Interests where forest and/or range development activities are proposed within the Kaska Dena Traditional Territory that may lead to the infringement of Kaska Dena's Aboriginal Interests.
- The Government of British Columbia and the Kaska Dena wish to resolve issues relating to forest and range resource development where possible through negotiation as opposed to litigation.

Therefore the Parties agree as follows:

## **1.0 Definitions**

For the purposes of this agreement, the following definitions apply:

- 1.1 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, a Range Use Plan, or Range Stewardship Plan that has an effect in Kaska Dena's Traditional Territory.
- 1.2 "Operational Decision" means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan, a Forest Stewardship Plan, a Range Use Plan or a Range Stewardship Plan that has an effect in Kaska Dena's Traditional Territory.
- 1.3 "Aboriginal interests" means asserted aboriginal rights and/or aboriginal title.
- 1.4 "Administrative Decision" means one or more of the following decisions made by a person under the *Forest Act* or *Range Act*.
  - The decisions setting or varying the allowable annual cut (AAC) for a Timber Supply Area or a Forest Tenure;
  - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or Range Tenure where these events may have an impact on Aboriginal Interests;
  - The adjustment of animal unit month in a Range Tenure;
  - the replacement or extension adjustment of Forest Tenure or Range Tenure;
  - The disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - The issuance of a special use permit;
  - The establishment of an interpretative forest site, recreation site and/or recreation trail;
  - The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
  - The decision regarding a tree farm licence management plan, community forest management plan and/or woodlot licence management plan;
  - The deletion of land from provincial forest; and,
  - The transfer of AAC between TSAs.
- 1.5 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6 "Range Tenure" means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.7 "Response Period" means a period of up to 60 days from initiation of the processes set out in Sections 4 and 5 of this Agreement, where the initiation date is the date on which Kaska Dena is notified of an Administrative decision or Timber Supply Review process, or in the case of Operation Plan reviews, the date on which Kaska Dena receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.

- 1.8 "Traditional Territory" means the Kaska Dena asserted traditional territory as shown on bold black on the map attached in Appendix A.
- 1.9 "Licensee" means a holder of a Forest Tenure or a Range Tenure.

## **2.0 Purpose**

The purposes of this Agreement are to:

- 2.1 Increase the Kaska Dena's opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Kaska Dena through a forest tenure opportunity and/or the sharing of revenues received by the Government of British Columbia from forest resource development.
- 2.3 Address consultation and to provide an interim workable accommodation, as set out in this Agreement, with regard to any infringements of Kaska Dena's Aboriginal Interests or proven aboriginal rights that result from Administrative Decisions and/or Operational decisions relating to forest or range resource development within the Kaska Dena's Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest and/or range resource development on Crown lands within the Kaska Dena Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

## **3.0 Economic Benefits to Kaska Dena**

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in sections 4 and 5 of this Agreement and will provide one or more of the following economic benefits to Kaska Dena to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any infringements of Kaska Dena's Aboriginal Interests or proven aboriginal rights that result from Administrative Decisions and/or Operational decisions relating to forest or range resource development within the Kaska Dena's Traditional Territory.

### **3.1 Forest Tenure**

In consideration of the access to timber volumes that have previously been provided to Kaska Dena, and current discussions with regard to an interim measures agreement between the Ministry of Forests and the Ministry of Agriculture and Lands, to address their aboriginal interests no additional timber volumes are contemplated under this agreement.

### **3.2 Revenue Sharing**

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to the Dease River Band Council \$ 79 696 annually, the Daylu Dena First Nation \$ 100 247 annually, and the Kwadacha Band \$ 213 525 annually for purposes described in Section 3.0. For greater certainty the Government of British Columbia will pay collectively to the Kaska \$393 468 annually or up to \$ 1 967 340 over the five year term of this agreement to address workable accommodation of Kaska economic interests related to forestry decisions to be made over the term of this agreement.

- 3.2.2 The funding commitment set out in section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e.  $\frac{1}{4}$ ) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.4 Upon signing of this Agreement, the Kaska Dena will be paid the full revenues for the quarter in which the Agreement is signed (e.g. if this Agreement is signed at the end of the quarter, the FN would receive payment for that entire quarter), with subsequent payments being made at the end of each quarter.
- 3.2.5 Kaska Dena will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.2.6 Upon request, Kaska Dena will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

#### **4.0 Consultation and Accommodation Regarding Operational Plans**

- 4.1 The Government of British Columbia agrees to consult with Kaska Dena through the Forest Resource Council on Operational Plans that may potentially infringe Kaska Dena's Aboriginal Interests or proven aboriginal rights within the Traditional Territory, except for any economic component of those interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, Kaska Dena agrees that the Government of British Columbia has fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of Kaska Dena's Aboriginal Interests or proven aboriginal rights in the context of Operational Decisions that the Government of British Columbia will make and any forest practices or range practices that may be carried out under an Operational Plan in *Kaska Dena's* Traditional Territory.
- 4.3 Kaska Dena agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest development within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, Kaska Dena will, within the Response Period, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests or proven aboriginal rights that may result from the forestry development activities within the Traditional Territory, other than the economic component of those Interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.5 Upon receiving the response from Kaska Dena as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Kaska Dena any site specific operational impacts on Kaska Dena's Aboriginal Interests or proven aboriginal rights that may occur as a result of

proposed forest and/or range development activities within the Traditional Territory, other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.

- 4.6 If no response is received from Kaska Dena within the Response Period, then the Government of British Columbia may assume that Kaska Dena does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from Kaska Dena, whether received directly or through a Licensee, and will consider whether concerns identified by Kaska Dena have been addressed.

#### **5.0 Consultation and Accommodation Respecting Administrative Decisions**

- 5.1 The Government of British Columbia will provide to Kaska Dena, through the Forest Resource Council, on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of Kaska Dena or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Kaska Dena an updated list.
- 5.2 The Government of British Columbia will meet with Kaska Dena, through the Forest Resource Council, at mutually agreed times throughout the year to provide an opportunity for Kaska Dena to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests or proven aboriginal rights within the Traditional Territory.
- 5.3 The Government of British Columbia will include Kaska Dena, through the Forest Resource Council representatives, in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the Forest Act for the Cassiar, Fort Nelson, and Mackenzie Timber Supply Areas.
- 5.4 Kaska Dena agrees to fully participate, within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests or proven aboriginal rights within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the Forest Act.
- 5.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 5.6 If after considering the concerns and comments of Kaska Dena, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Kaska Dena's Aboriginal Interests or proven aboriginal rights that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a response to Kaska Dena as to how their concerns raised in Section 5.2 have been addressed.

- 5.8 Kaska Dena agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of Kaska Dena's Aboriginal Interests or proven aboriginal rights resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.
- 5.9 Kaska Dena further agrees that, in consideration of Sections 5.1 to 5.7 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests or proven aboriginal rights resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of Kaska Dena's Aboriginal Interests or proven aboriginal rights.

## **6.0 Stability for Land and Resource Use**

- 6.1 Kaska Dena will respond immediately to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Kaska Dena members with provincially authorized activities related to forestry and/or range resource development including timber harvesting or other forestry economic activities occur.

## **7.0 Dispute Resolution**

- 7.1 If a dispute arises between the Government of British Columbia and Kaska Dena regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 7.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and Kaska Dena.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **8.0 Term**

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- five years from the date this Agreement is executed; or
  - the coming into effect of a treaty between the Parties; or
  - the mutual agreement of the Parties; or
  - the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 9.0.

## **9.0 Suspension or Cancellation of Economic Benefits by the Minister**

- 9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that Kaska Dena is not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to Kaska Dena of any alleged contravention of this Agreement that may lead Kaska Dena being determined to not be in compliance with this Agreement.
- 9.3 If, during the term of this Agreement, Kaska Dena challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to
- 9.3.1 provide adequate consultation, to substantially address Kaska Dena's concerns and to provide an interim workable accommodation in respect of any potential infringements of Kaska Dena's Aboriginal Interests or proven aboriginal rights with regard to Administrative Decisions relating to forest and/or range resource development within the Traditional Territory, or
- 9.3.2 substantially address the economic component of Kaska Dena's Aboriginal Interests or proven aboriginal rights with regard to Operational Decisions relating to forest and/or range resource development within the Traditional Territory,
- then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.
- 9.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

## **10.0 Renewal of the Agreement**

- 10.1 Prior to this Agreement terminating in accordance with Section 8.2., and subject to Section 10.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and Kaska Dena will seek the necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and Kaska Dena may provide for an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.
- 10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available

appropriations, as an interim measure and Kaska Dena has agreed to accept as an interim measure for the term of this Agreement.

#### **11.0 Amendment of Agreement**

- 11.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.
- 11.3 If, during the term of this Agreement, the Government of British Columbia amends its policy on forest and range consultation and accommodation as a result of recommendations from the "New Relationship" discussions taking place among the Government of British Columbia, the First Nations Summit, the Union of B.C. Indian Chiefs and the Assembly of First Nations, and where those amendments result in a change of economic accommodations for First Nations provided under that policy relating to forest development activities, then the Parties will amend this Agreement to give effect to those amendments to the forest and range policy. Any amendment to this Agreement will not be applied retroactively.

#### **12.0 Entire Agreement**

- 12.1 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

#### **13.0 Notice**

- 13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 13.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 13.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

#### **British Columbia**

Deputy Minister  
Minister of Forests  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 387-4809  
Facsimile (250) 387-7065



## **Kaska Dena**

Chief Cat Lee  
Dease River Band Council  
P.O. Box 79  
Good Hope Lake, B.C. V0C 2Z0  
Telephone: (250) 239-3000  
Facsimile: (250) 239-3003

Deputy Chief Walter Carlick  
Daylu Dena First Nation  
P.O. Box 10  
Lower Post, B.C. V0C 1W0  
Telephone: (250) 779-3161  
Facsimile: (250) 779-3371

Chief Emil McCook  
Kwadacha Band  
General Delivery  
Fort Ware, B.C. V0J 3B0  
Telephone: (250) 471-2302  
Facsimile: (250) 471-2701

### **14.0 Miscellaneous**

- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.
- 14.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.
- 14.3 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.4 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 14.5 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 14.6 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.7 The applicable laws of British Columbia and Canada shall govern this Agreement.

14.8 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of:

Dease River Band Council

Date: June 28/2005

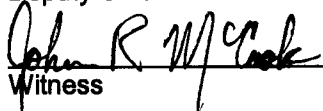
  
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Chief Gai Lee

  
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Witness

Daylu Dena First Nation

Date: June 28/2005

  
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Deputy Chief Walter Carlick

  
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Witness

Kwadacha Band

Date: June 28/2005

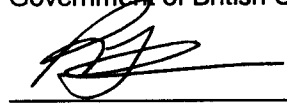
  
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Chief Emil McCook

  
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Witness

Signed on behalf of:

Government of British Columbia

Date: June 28/2005

  
\_\_\_\_\_  
Rich Coleman  
Minister of Forests

  
\_\_\_\_\_  
Witness

# Appendix A

## KASKA DENA BAND TRADITIONAL TERRITORY

