

**Kitselas and Kitsumkalum
Forestry/Range Interim Measures Agreement
(the "Agreement")**

Between:

Kitselas and Kitsumkalum Indian Bands

As represented by

Chief and Council
Kitsumkalum Band Council

Chief Councillor
Kitselas Band Council

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 *Kitselas and Kitsumkalum Indian Bands* have asserted aboriginal rights and title ("aboriginal interests") within their asserted traditional territories as shown in bold black on the map attached in Appendix A (herein the "*Kitselas and Kitsumkalum* asserted territories").
- The Government of British Columbia and *Kitselas and Kitsumkalum Indian Bands* have interests in relation to forest resource development and related economic benefits arising from this development within the *Kitselas and Kitsumkalum* asserted territories.
- The Government of British Columbia intends to fulfill any responsibility it has to consult with the *Kitselas and Kitsumkalum Indian Bands* on forest resource development activities proposed within the *Kitselas and Kitsumkalum* asserted territories.

- *Kitselas and Kitsumkalum Indian Bands* have a responsibility to participate in consultation initiated by the Government of British Columbia or the holder of an agreement entered into under the *Forest Act* or *Range Act* in relation to forest resource development activities proposed within the Kitselas and Kitsumkalum asserted territories, that may lead to the infringement of Kitselas and Kitsumkalum aboriginal interests.
- The Parties have an interest in seeking workable accommodations of Kitselas and Kitsumkalum interests as a result of forest development activities proposed within the Kitselas and Kitsumkalum asserted territories that may lead to the infringement of Kitselas and Kitsumkalum aboriginal interests.
- The Parties wish to resolve issues relating to forest resource development through negotiation as opposed to litigation.
- This Agreement does not exclude the Kitselas and Kitsumkalum Indian Bands from accessing other forestry economic opportunities or benefits which may be available from time to time.

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, a Forest Stewardship Plan, a TFL Management Plan or a Range Use Plan as defined in provincial legislation respecting forest practices.
- 1.2 "Administrative Decision" means a decision made by a Ministry of Forests statutory decision maker related to forest resource development, or forest tenure administration and includes but is not limited to:
 - 1.2.1 decisions that set or vary Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure and apportionment decisions
 - 1.2.2 the replacement of Forest Tenures;
 - 1.2.3 the disposition of volumes arising from undercut decisions on a Forest Tenure;
 - 1.2.4 AAC apportionment and reallocation decisions;
 - 1.2.5 transfer or change in control of forest tenures, including any associated reductions to Forest Tenure AAC and exchange of rights;

- 1.2.6 takeback decisions under the *Forestry Revitalization Act*,
and,
- 1.2.7 the disposition or subdivision of a Forest Tenure.
- 1.3 "Forest Tenure" means an agreement issued under the Forest Act.
- 1.4 "Forestry decision" means an operational plan or administrative decision.

2.0 Purpose:

- 2.1 The purpose of this Agreement is to:
 - 2.1.1 set out the measures to be implemented to address Kitselas and Kitsumkalum Indian Bands interests regarding forestry decisions within the Kitselas and Kitsumkalum traditional territories during the term of this Agreement;
 - 2.1.2 assist in the revitalization of the forest economy in northwest British Columbia by providing opportunities for increased First Nation participation in the forest economy and stability to forest and range resource development and operations within the Kitselas and Kitsumkalum traditional territories over the term of this Agreement.

3.0 Economic Benefits to Kitselas and Kitsumkalum Indian Bands

3.1 Invitation to apply for a licence

- 3.1.1 Upon execution of this agreement by the Parties, the Minister will invite the Kitselas and Kitsumkalum Indian Bands to apply for a non-replaceable forest licence under the *Forest Act* to harvest a total of up to 300,000 cubic meters over a five year term (60,000 cubic meters annually) in the Kalum Forest District under the *Forest Act*.
- 3.1.2 The invitation to apply and any licence(s) entered into as a result of the invitation to apply under this agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.
- 3.1.3 The invitation to apply under this agreement will contain terms and conditions required by the Minister of Forests, including the requirement that the Kitselas and Kitsumkalum

Indian Bands submit, with their application for the licence, a tenure business plan that is acceptable to the Minister.

- 3.1.4 Upon execution of this Agreement, British Columbia will provide Kitselas and Kitsumkalum with a total of \$30,000 under the Economic Measures Fund (through an Economic Measures Agreement with Kitselas and Kitsumkalum Band Councils) for the development of a tenure business plan.
- 3.1.5 Any licence entered into as a result of the invitation to apply under this agreement will:
- 3.1.5.1 be for a term of no longer than 5 years as determined by the Minister,
 - 3.1.5.2 not be transferable or divisible without the consent of the Minister,
 - 3.1.5.3 not be replaceable as defined in the *Forest Act*, but the licence will contain a renewal provision by which the Minister may invite a new licence under section 47.3 of the *Forest Act* upon the expiry of the licence referred to in 3.1.1. The renewal is subject to:
 - the Kitselas and Kitsumkalum Indian Bands having substantially performed their obligations under this Agreement;
 - the licence holder having substantially performed its obligations under the licence referred to in 3.1.1; and,
 - the renewal or replacement of this agreement by the Parties.
 - 3.1.5.4 contain other terms and conditions required by law, including the condition that the *Kitselas and Kitsumkalum Indian Bands* must comply with this agreement, and,
 - 3.1.5.5 include other terms and conditions related to administration of the licence as may be required by the Regional Manager.
- 3.1.6 The Parties will agree to the operating area prior to making application for the non-replaceable forest licence. The operating area will be within *Kitselas and Kitsumkalum* asserted territories.

3.2 Revenue Sharing

- 3.2.1 The Government of British Columbia will provide a revenue sharing economic benefit to the *Kitselas Indian Band* totalling \$241,000 annually (\$1,205,000 over the five year term of this Agreement) and to the *Kitsumkalum Indian Band* totalling \$317,000 annually (\$1,585,000 over the five year term of this Agreement) to address workable accommodation of Kitselas and Kitsumkalum economic interests related to forestry decisions to be made over the term of this Agreement.
- 3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount will be used for each fiscal quarter or part of that the Agreement is in effect. Payments will be made quarterly.
- 3.2.3 Revenue transfer payments will be subject to annual appropriations by the Province.

4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Government of British Columbia will consult with the *Kitselas and Kitsumkalum Indian Bands* in a timely manner on all operational plans that will potentially infringe *Kitselas and Kitsumkalum* aboriginal interests within the *Kitselas and Kitsumkalum* asserted territories.
- 4.2 The *Kitselas and Kitsumkalum Indian Bands* will fully participate in a timely manner in the review of all operational plans submitted to them within the *Kitselas and Kitsumkalum* asserted territories by the Ministry of Forests, and by the holder of an agreement entered into under the *Forest Act* or *Range Act*.
- 4.3 In reviewing and responding to an operational plan submitted to them, *Kitselas and Kitsumkalum Indian Bands* will, in a timely manner, provide the applicable party with all relevant, reasonably available information about their aboriginal interests potentially affected by the development activities proposed in the operational plan other than the economic component of those interests addressed in paragraphs 3.1 and 3.2.
- 4.4 For the purposes of this section "timely manner" is defined as 60 days.

- 4.5 British Columbia will seek workable accommodation with the *Kitselas and Kitsumkalum Indian Bands* where Kitselas or Kitsumkalum aboriginal interests are likely to be unjustifiably infringed as a result of Operational Plans within the *Kitselas and Kitsumkalum* asserted territories for the term of the Agreement.
- 4.6 For the purposes of this section “workable accommodation” means modifications made to “Operational Plans” made in response to concerns raised by the Kitselas and Kitsumkalum Indian Bands and may include spatial or temporal changes, different harvesting systems and similar changes.
- 4.7 After executing this Agreement, the Parties may initiate discussions towards a protocol that sets out the basic responsibilities and timeframes for an efficient and effective consultation process for future forestry operational plans and such a protocol, when agreed to by the Parties, may serve to vary or amend section 4.
- 4.8 Kitselas and Kitsumkalum acknowledge that the Ministry of Forests Aboriginal Rights and Title Policy dated October 2002 as may be amended from time to time will be followed by the Ministry of Forests in the absence of a different consultation process being agreed to under paragraph 4.7 of this Agreement.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 In consideration of the Economic Benefits provided by British Columbia in this Agreement, *Kitselas and Kitsumkalum Indian Bands* agree that the Government of British Columbia has fulfilled its duties to consult and seek workable accommodation with *Kitselas and Kitsumkalum Indian Bands* with respect to Administrative Decisions that will be made from time to time within the *Kitselas and Kitsumkalum* asserted territories by statutory decision makers during the term of this Agreement including, but not limited to:
- the Minister of Forests’ consent to the transfer of shares of Skeena Cellulose Inc. to NWBC Timber and Pulp Ltd.,
 - the Regional Manager’s decision respecting cut control penalties (AAC reductions) for New Skeena’s Forest Products’ forest tenures (TFL 1, FL A16835),

- the Minister of Forests' decision respecting disposition of undercut volumes associated with New Skeena Forest Products' forest tenures (TFL 1, FL A16835),
 - the Minister of Forests' consent to the replacement of TFL 1 as required under the *Forest Act*; and, the Regional Managers' consent to the replacement of forest licence A16835.
- 5.2 The Government of British Columbia will include the *Kitselas and Kitsumkalum Indian Bands* in Timber Supply Review processes.
- 5.3 The *Kitselas and Kitsumkalum Indian Bands* agree to fully participate in a timely manner in the Timber Supply Review processes and will provide in a timely manner all relevant and reasonably available information about their aboriginal interests potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act* within *Kitselas and Kitsumkalum* asserted territories for the term of the Agreement.
- 5.4 For the purposes of this section "timely manner" is defined as 60 days.

6.0 Land and Resource Stability

- 6.1 If, during the term of this Agreement, the *Kitselas and Kitsumkalum Indian Bands* challenge, by way of legal proceedings or otherwise, the sufficiency or appropriateness of the benefits set out in this Agreement as substantially addressing and providing workable accommodation of *Kitselas and Kitsumkalum* aboriginal interests with regard to Administrative Decisions and the economic component of those aboriginal interests with regard to Operational Plans, the Province may suspend or terminate this Agreement.
- 6.2 The *Kitselas and Kitsumkalum Indian Bands* will not support, condone or encourage any acts of unlawful interference of *Kitselas and Kitsumkalum Indian Band* members with activities related to timber harvesting or other forestry or range activities covered by this Agreement, and will use their best efforts to assist the Government of British Columbia to resolve promptly any disputes that may arise in the event that such acts of interference by *Kitselas and Kitsumkalum Indian Band* members occur.

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and the Kitselas and Kitsumkalum Indian Bands regarding the interpretation of a provision of this agreement, or the obligation of a party under this agreement, the parties or their duly appointed representatives will meet as soon as is practicable to consider the dispute and may attempt to resolve the dispute.

8.0 Term

- 8.1 This Agreement will take effect on the date that the Parties have executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or
 - 8.2.2 the coming into effect of a treaty; or,
 - 8.2.3 the mutual agreement of the parties.; or,
 - 8.2.4 at the option of the Kitselas and Kitsumkalum Indian Bands, in the event that the Government of British Columbia fails to deliver the revenue sharing pursuant to section 3.2 or the Minister fails to grant the licences pursuant to section 3.1 and to the Memorandum of Understanding (October 2003) between the Kitselas and Kitsumkalum Indian Bands and the Government of British Columbia.

9.0 Suspension or Cancellation of Economic Benefits

- 9.1 Without limiting the actions that may be taken by the Minister or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend the revenue sharing economic benefit and, in accordance with the terms of the non-replaceable forest licence entered into as a result of the invitation to apply under this agreement, may suspend or terminate the non-replaceable forest licence if the Minister determines that the Kitselas and Kitsumkalum Indian Bands are not in substantial compliance with this agreement.

10.0 Renewal of the Agreement

- 10.1 If the terms and conditions of this Agreement are being met, and if this Agreement has not been superceded by a treaty or other process, the Parties will enter into negotiations for a renewal of this agreement prior to the expiry of the Agreement.
- 10.2 Any subsequent forestry/range interim measures agreement between British Columbia and *Kitselas and Kitsumkalum Indian Bands* will address a Forest Tenure and may address revenue sharing economic benefits and other terms and conditions.
- 10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay as an interim measure and the *Kitselas and Kitsumkalum Indian Bands* have agreed to accept only 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.

12.0 Notice

- 12.1 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.
- 12.2 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.
- 12.3 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

Kitselas and Kitsumkalum Indian Bands

Chief Councillor,
Kitselas Band Council
4562 Queensway Drive
Terrace, BC V8G 3X6
Telephone: (250) 635 5084
Facsimile: (250) 635 5335

Chief Councillor,
Kitsumkalum Band Council
PO Box 544
Terrace, BC
Telephone: (250) 635 6177
Facsimile: (250) 635 4622

13.0 Miscellaneous

- 13.1 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.
- 13.2 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, affirm, or deny the existence of aboriginal rights, including aboriginal title, or treaty rights.
- 13.3 This Agreement will not limit the positions that a Party may take in future negotiations or court actions other than as set out in paragraph 6.
- 13.4 Any reference to a statute in this agreement includes all regulations made under that statute and any amendments or replacement of that statute.

13.5 The applicable laws of British Columbia and Canada shall govern this agreement.

This agreement is dated for reference September 18, 2003

Signed on behalf of:
Kitselas Indian Band by:

Date: Jan 20, 2004


Glenn Bennett, Chief Councillor



Wilfred H. McKenzie, Witness


Signed on behalf of:
Kitsumkalum Indian Band by:

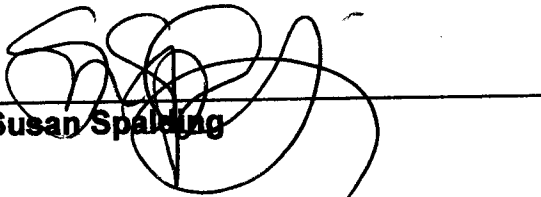
Date: January 20, 2004

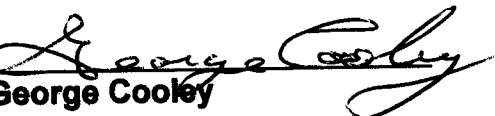

Steve Roberts, Chief Councillor


Witness


P. Ernie Gerow


Ed Brown


Susan Spalding

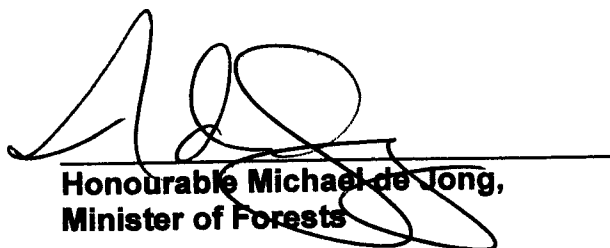

George Cooley

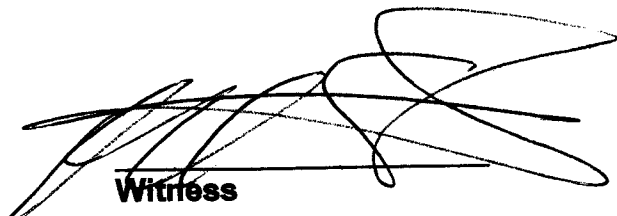

Adam McCarron


John Christiansen

Signed on behalf of:
Government of British Columbia

Date: Jan. 20, 2004


Honourable Michael de Jong,
Minister of Forests


Witness

APPENDIX "A"

**THE ASSERTED TRADITIONAL TERRITORIES
OF THE KITSELAS AND KITSUMKALUM INDIAN BANDS**