

Mountain Pine Beetle Agreement
(the "Agreement")

Between:
Neskonlith Indian Band
as represented by Chief and Council

and
Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Forests and Range
(the "Government of British Columbia")

(collectively the "Parties")

Whereas

- The Neskonlith Indian Band has aboriginal rights/and or aboriginal title (the "Aboriginal Interests") within its traditional territory as outlined in bold on the map attached as Appendix A.
- Neskonlith Indian Band has a relationship to the land that is important to Neskonlith Indian Band culture and the maintenance of its community, governance and economy.
- Mountain pine beetle annual allowable cut increases in the Okanagan Timber Supply Area have lead to increased timber harvesting activity and potential impacts on Neskonlith Indian Band's Aboriginal Interests.
- The Parties wish to enter into an agreement as per Section 47.3 of the Forest Act in relation to mountain pine beetle uplifts and harvesting in the Okanagan Timber Supply Area.
- The Government of British Columbia wishes to support economic opportunities for the Neskonlith Indian Band.

Purpose

1. The purposes of this Agreement are to:
 - a. Provide an interim accommodation of potential infringements of the economic component of the Neskonlith Indian Band's Aboriginal Interests arising from or as a result of forest and range development that:
 - i. occur during the term of this Agreement;
 - ii. are within the Okanagan Timber Supply Area; and,

- iii. are a result of temporary mountain pine beetle increases to the Allowable Annual Cuts in the Okanagan Timber Supply Area dated January 1, 2006, and consequent increased harvest levels;
- b. increase the participation of the Neskonlith Indian Band in the forest sector;
- c. provide an economic development opportunity by inviting the Neskonlith Indian Band to apply for a non-replaceable forest licence in the Okanagan Timber Supply Area; and,
- d. assist in providing stability to provincially authorised forest resource development on Crown lands within the asserted traditional territory of the Neskonlith Indian Band.

Therefore the Parties agree as follows:

- 2. After execution of this Agreement by the Parties, the Minister of Forests and Range (the "Minister") will invite the Neskonlith Indian Band to apply for a non-replaceable forest licence (the "Licence") under section 47.3 of the *Forest Act* to harvest a total of up to 65,725 cubic meters of beetle infested timber over a five year term within the traditional territory of the Neskonlith Indian Band, as identified in black bold in Appendix A in the Okanagan Timber Supply Area.
- 3. If the intended holder of the licence(s) is a legal entity other than the Neskonlith Indian Band, this Agreement must include supporting documentation as specified in Appendix B stating that the intended holder has been validly appointed by the Neskonlith Indian Band as its representative.
- 4. If during the term of this Agreement a further Mountain Pine Beetle temporary allowable annual cut volume increase becomes available in the Okanagan Timber Supply Area, the Parties agree to explore further tenure opportunities in this Timber Supply Area, in accordance with Section 47.3 of the *Forest Act*.
- 5. The invitation will be subject to a condition that prior to making an application for the Licence; the Neskonlith Indian Band will contact the Ministry of Forests and Range and the Parties will work co-operatively to identify an operating area, consistent with the intent of this agreement, within the traditional territory of the Neskonlith Indian Band within the Okanagan Timber Supply Area.
- 6. The Licence(s) entered into as a result of the invitation to apply under this Agreement will:
 - a. be for a term of no longer than five years as determined by the Minister;
 - b. contain other terms and conditions required by law, including the condition that Neskonlith Indian Band must comply with this Agreement;
 - c. include a term that Neskonlith Indian Band may not dispose of the Licence except in accordance with the *Forest Act*; and,

- d. include other terms and conditions as may be required by the Regional Manager.
7. An invitation to apply for a non-replaceable forest licence entered into as a result of the invitation to apply under this Agreement may be consolidated with other non-replaceable forest licenses in accordance with section 19(3)(a) of the *Forest Act*.

Consultation

8. During the term of this Agreement, and subject to the terms and intent of this Agreement being met and adhered to by the Government of British Columbia, the Neskonalith Indian Band agrees that the Government of British Columbia has provided an accommodation with respect of the economic component of potential infringements of Neskonalith Indian Band's aboriginal title and/or rights resulting from operational and administrative decisions pertaining to increases in harvest levels to address the mountain pine beetle epidemic in the Okanagan TSA, as an interim measure.
9. The Parties agree to participate in any consultation initiated by the Government of British Columbia regarding mountain pine beetle-related forestry operational plans and administrative decisions within the traditional territory of the Neskonalith Indian Band.

Dispute resolution

10. If a dispute arises between the Government of British Columbia and the Neskonalith Indian Band 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.
11. 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 the Neskonalith Indian Band.
12. If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to assist them to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

Amendments

13. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
14. Either Party may request, in writing, the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

Term

15. This Agreement will take effect on the date on which the last Party has executed it.
16. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - a. five years from the date this Agreement is executed; or,
 - b. the mutual agreement of the Parties; or,
 - c. 90 days notice by either Party.
17. The Government of British Columbia will not terminate this Agreement on the grounds that the Neskonalith Indian Band has challenged an administrative or operational decision by way of legal proceedings.

Notice

18. 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 as in this section of the Agreement.
19. 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. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

Government of British Columbia

Deputy Minister
Ministry of Forests and Range
P.O. Box 9525 STN PROV GOVT
Victoria, B.C. V8W 9C3
Telephone: (250) 387-3656
Facsimile: (250) 953-3687

Neskonlith Indian Band

Chief and Council
Neskonlith Indian Band
P.O. Box 608
33 Chief Neskonlith Road
Telephone: (250) 679-3295
Facsimile: (250) 679-5306

Miscellaneous

20. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
21. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982 and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
22. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
23. This Agreement is without prejudice to the positions that a Party may take in future negotiations or in current or future legal proceedings, except as provided in this Agreement.
24. The Government of British Columbia acknowledges and enters into this Agreement on the basis that the Neskonlith Indian Band has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Neskonlith Indian Band have not yet been determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests of the Neskonlith Indian Band.
25. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
26. This Agreement does not address or affect any claims by the Neskonlith Indian Band regarding infringement of its Aboriginal Interests arising from past operational or administrative decisions made previous to the signing of this Agreement.
27. This Agreement and any decisions and or Licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
28. 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.
29. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

30. The applicable laws of British Columbia and Canada shall govern this Agreement.
31. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Neskonlith Indian Band.
32. 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.
33. This Agreement does not exclude the Neskonlith Indian Band from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.
34. Any subsequent agreement between the Government of British Columbia and the Neskonlith Indian Band may provide for an opportunity to acquire a Forest Tenure, and/or other economic benefits.

Signed on behalf of:

Neskonlith Indian Band:

Date: June 15 - 2007


Chief Judy Wilson


Councillor


Councillor



Witness


Witness


Witness

Signed on behalf of:

Government of British Columbia


Honourable Rich Coleman
Minister of Forests and Range

Date: SEP 13 2007


Witness

**APPENDIX A: NESKONLITH INDIAN BAND ASSERTED TRADITIONAL
TERRITORY**



APPENDIX B: (Optional)

***Description and Documentation pertaining to the Intended Holder of the
licence***

Please complete part A or B, whichever is appropriate, and attach appropriate documentation:

A) Applicant for the license: _____

OR

**B) Full legal name, or corporate description of the legal entity, authorized
to represent the applicant of the licence**

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- (i) Copy attached of legal instrument (letter) authorizing that legal entity to be their representative;
 - (ii) Copy attached of the ownership structure of the legal entity (the intended holder of the licence).