

**Nuxalk First Nation  
Interim Agreement on Forest & Range Opportunities  
(the "Agreement")**

**Between:  
The Nuxalk First Nation**

As represented by  
Chief and Council  
(the "Nuxalk First Nation")

**And**

**Her Majesty the Queen in Right of the Province of British Columbia**  
As represented by the Minister of Forests and Range  
(“British Columbia”)

(collectively the “Parties”)

**Whereas:**

- A. British Columbia and First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs (“Leadership Council”) has entered into a New Relationship in which they are committed to reconciliation of Aboriginal and Crown titles and jurisdiction, and have agreed to implement a government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights.**
- B. This Agreement is in the spirit and vision of the “New Relationship”.**
- C. Work is underway regarding the implementation of the New Relationship and that this Agreement may need to be amended in the future to reflect the outcomes of that work.**
- D. The Nuxalk First Nation has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.**
- E. The Nuxalk First Nation has Aboriginal Interests within its Ancestral Territory as shown by the bold line on the map in Appendix A.**



- F. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development within the Ancestral Territory.
- G. References in this Agreement to Crown Lands are without prejudice to the Nuxalk First Nation's Aboriginal title and/or rights claims over those lands.
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Nuxalk First Nation on forest and/or range resource development activities proposed within the Nuxalk First Nation Ancestral Territory that may lead to the infringement of the Nuxalk First Nation's Aboriginal Interests.
- I. The Nuxalk First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Nuxalk First Nation's Ancestral Territory, that may lead to an infringement of the Nuxalk First Nation's Aboriginal Interests.
- J. British Columbia and the Nuxalk First Nation wish to resolve issues relating to forest and/or 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 "Aboriginal Interests" means aboriginal rights and/or aboriginal title.
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation.
- The making, varying or postponing of Allowable Annual Cut (AAC) determinations for a Timber Supply Area or a Forest Tenure;
  - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or a Range Tenure;
  - The adjustment of Animal Unit Months in a Range Tenure;
  - The extension of the term of, or replacement of a Forest and/or Range Tenure;
  - The disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - The conversion of a Forest Tenure to a different form of Forest Tenure;



- The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
  - The issuance of a Special Use Permit;
  - The decision regarding approval or extension of a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
  - The deletion or addition of provincial forest;
  - The transfer of AAC between Timber Supply Areas;
  - The removal of private land from a Woodlot Licence or Tree Farm Licence; and,
  - The establishment of an interpretive forest site, recreation site and/or recreation trail.
- 1.3 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.4 “Interim Accommodation” means the accommodation provided in this Agreement, of the potential infringements of the economic component of the Nuxalk First Nation’s Aboriginal Interests arising from or as a result of forest and range development, prior to the full reconciliation of these Interests. The revenue component reflects the present budget limitations of the Minister of Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.
- 1.5 “Licensee” means a holder of a Forest Tenure or a Range Tenure.
- 1.6 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has potential effect in the Nuxalk First Nation’s Ancestral Territory.
- 1.7 “Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan that has a potential effect in the Nuxalk First Nation’s Ancestral Territory.
- 1.8 “Range Tenure” means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.9 “Ancestral Territory” means the Nuxalk First Nation’s Ancestral Territory as shown on bold black on the map attached in Appendix A.
- 1.10 “Economic Component” of Nuxalk’s Aboriginal Interests as used in this Agreement is intended to refer to the financial or commercial aspects rather than the cultural component of aboriginal interests

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which includes measures to protect cultural values and the opportunity to undertake traditional practices of aboriginal peoples in the forest.

## **2.0 Purpose and Objectives**

The purposes and objectives of this Agreement are to:

- 2.1 Create viable economic opportunities and to assist in the improvement of social conditions of the Nuxalk First Nation through economic diversification.**
- 2.2 Provide interim payment and other economic benefits to the Nuxalk First Nation through a forest tenure opportunity and/or economic benefits related to forestry received by British Columbia from forest resource development.**
- 2.3 Address consultation and provide Interim Accommodation, as set out in this Agreement.**
- 2.4 Provide a period of stability to forest and/or range resource development on Crown lands within the Ancestral Territory of the Nuxalk First Nation during the term of this Agreement, while longer term interests are addressed through other agreements or processes.**

## **3.0 Economic Benefits to the Nuxalk First Nation**

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Nuxalk First Nation:

### **3.1 Forest Tenure**

- 3.1.1 For the purposes of the provisions of section 3.1, Licence includes a non replaceable Forest Licence, a Forestry Licence to Cut, or other forms of agreements as agreed to by the Parties.**
- 3.1.2 After the execution of this Agreement, and if applicable, once volume becomes available through the timber reallocation process, the Minister will invite the Nuxalk First Nation, or such legal entity as the Nuxalk First Nation has appointed as its representative to hold the licence to apply under the *Forest Act* for a non-replaceable licence (the "Licence") on a non-competitive basis for up to 62,200 cubic meters annually in the Mid Coast Timber Supply Area.**

- 3.1.3** For greater certainty, the maximum volume that may be available under the Licence referred to in Section 3.1 will be up to 311,000 cubic meters over 5 years.
- 3.1.4** The Parties will strive to ensure that the assigned operating area for the Licence in the Mid Coast Timber Supply Area has a representative timber profile and logging chance relative to other licensees and BC Timber Sales, taking into account the quality of timber, access and commercial viability. Prior to the Nuxalk First Nation making an application for the Licence, the Parties will work together to identify the location of an operating area for the Licence, which to the extent that it is operationally feasible will be within the Ancestral Territory.
- 3.1.5** Will be subject to any Allowable Annual Cut adjustments in the Mid Coast Timber Supply Area that result from the implementation of land use planning decisions.
- 3.1.6** A Licence entered into as a result of an invitation under section 3.1 will be for a term of 5 years.
- 3.1.7** If the Licence remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be Interim Accommodation until the Licence expires or is terminated.
- 3.1.8** The Minister may invite the Nuxalk First Nation to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

### **3.2 Range Tenure**

If Crown range vacancy is available for disposition to the Nuxalk First Nation within the Mid Coast Timber Supply Area, then subject to the *Range Act*, the North Island Central Coast District Manager may be directed to enter into a Range Permit, within Nuxalk First Nation Ancestral Territory with the Nuxalk First Nation.

### **3.3 Interim Payment**

- 3.3.1** During the term of this Agreement, British Columbia will make an interim payment to the Nuxalk First Nation of approximately \$662,129 annually. Payments will be made quarterly,



- 3.3.2** The funding commitment set out in section 3.3.1 is subject to the availability of annual appropriations for that purpose by British Columbia.
- 3.3.3** Upon signing of this Agreement, the Nuxalk Nation will be paid the full revenue for one year (\$662,129). Subsequent payments will be made at the end of each quarter starting at March 31, 2008.
- 3.3.4** For the purposes of determining amounts for partial years, one-fourth (i.e.  $\frac{1}{4}$  or \$165,533) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect.
- 3.3.5** In the circumstances that the Nuxalk Nation provides notice under section 6.3 to terminate the agreement, and the termination date is after December 31, 2006 but prior to January 1, 2008, the Nuxalk Nation agrees to reimburse the Government of British Columbia an amount equivalent to the total of the payment they have received under section 3.3.3 minus the amount calculated under section 3.3.6 for the period of time between January 1, 2007 and the date that the agreement is terminated.
- 3.3.6** For the purposes of determining the amount that the Nuxalk Nation will reimburse to the Government of British Columbia under section 3.3.5, the amount will be determined by calculating the number of days between January 1, 2007 and the termination date, determining the percentage of a year that those days represent, converting that percentage into a dollar amount and deducting that dollar amount from the payment received by the Nuxalk Nation under 3.3.3
- 3.3.7** British Columbia will not seek to direct or influence the expenditure of the funds provided to the First Nation.

#### 4.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 4.1** The Nuxalk First Nation is entitled to full consultation with respect to all potential infringements of their Aboriginal Interests arising from any Operational or Administrative Decisions or Plans affecting the Nuxalk First Nation's Aboriginal Interests, regardless of benefits provided under this Agreement.

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- 4.2 During the term of this Agreement, and subject to the terms and the intent of this Agreement being met and adherence by British Columbia, the Nuxalk First Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Nuxalk First Nation's Aboriginal Interests as an interim measure as a result of forest activities occurring within their Ancestral Territory.**
- 4.3 The interim payment set out in this Agreement reflects an amount that British Columbia, through the Minister of Forests and Range is able to pay as an interim measure, which the Nuxalk First Nation has agreed to accept.**
- 4.4 The Province acknowledges that the timber opportunities and funding provided through this Agreement are an interim accommodation only and that broader processes are underway that will assist in determining the appropriate accommodation in respect of impacts on the Nuxalk First Nation's Aboriginal Interests as a result of forest activities occurring within their Ancestral Territory.**
- 4.5 Nothing in this Agreement restricts the ability of Nuxalk First Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resource development within its Ancestral Territory.**
- 4.6 The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational Plans which may affect the Nuxalk First Nation's Aboriginal Interests within their Ancestral Territory.**
- 4.7 In developing such consultation processes, the Parties further agree to address consultation on Administrative Decisions, Operational Decisions and Operational Plans through participation of the Nuxalk First Nation in strategic level planning and policy development processes.**
- 4.8 Unless agreed to otherwise, the Parties will use every reasonable effort to agree upon a consultation process within 3 months of signing this Agreement and, in helping to achieve this, will endeavour to develop draft processes to govern consultation under this Agreement within 45 days after signing this Agreement.**
- 4.9 Where Nuxalk First Nation is a member of a larger Tribal Nation, this Agreement does not limit the obligation of British Columbia to fulfil its consultation obligations with the Tribal Nation.**

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## **5.0 Dispute Resolution**

- 5.1 If a dispute arises between British Columbia and the Nuxalk First Nation 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.**
- 5.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Nuxalk First Nation.**
- 5.3 If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator 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.**

## **6.0 Term and Termination**

- 6.1 The term of this Agreement is 5 years.**
- 6.2 This Agreement will take effect on the date on which the last Party has executed it.**
- 6.3 This Agreement will terminate on the occurrence of the earliest of any of the following events: Expiry of its term; 90 days notice; or mutual agreement of the parties.**
- 6.4 Neither Party shall terminate this Agreement on the grounds that the other Party has challenged an Administrative or Operational Decision by way of legal proceedings.**
- 6.5 Prior to the expiry of the 90 days when 90 day notice of termination has been given under Section 6.3, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.**

## **7.0 Renewal of the Agreement**

- 7.1 Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and the Nuxalk First Nation will seek the necessary authorities and approvals to enter into negotiations to renew this Agreement, or to conclude a new forestry agreement, consistent with the New Relationship.**

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- 7.2 Any subsequent forestry agreement between British Columbia and the Nuxalk First Nation may provide for an opportunity to acquire a licence, other forest tenures, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.**

## **8.0 Amendment of Agreement**

- 8.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.**
- 8.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.**
- 8.3 The Parties agree that new approaches for consultation and accommodation, including benefit and revenue sharing, will be developed as a priority under the New Relationship by British Columbia and the Leadership Council. The Nuxalk First Nation may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.**

## **9.0 Entire Agreement**

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

## **10.0 Notice**

- 10.1 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.**
- 10.2 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.**
- 10.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.**

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## **British Columbia**

Deputy Minister  
Ministry of Forests and Range  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 356-5012  
Facsimile (250) 953-3687

## **Nuxalk First Nation**

Chief Archie Pootlass  
Nuxalk First Nation  
PO Box 65  
Bella Coola,, British Columbia  
V0T 1C0

Telephone: (250) 799-5613  
Facsimile: (250) 799-5426

### **11.0 Miscellaneous**

- 11.1 This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.**
- 11.2 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.**
- 11.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.**
- 11.4 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.**
- 11.5 The Province acknowledges and enters into this Agreement on the basis that the Nuxalk First Nation has Aboriginal Interests within their Ancestral Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Nuxalk First Nation 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 or treaty interests of the Nuxalk First Nation.**



- 11.6 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.**
- 11.7 This Agreement does not address or affect any claims by the Nuxalk First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement.**
- 11.8 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.**
- 11.9 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.**
- 11.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.**
- 11.11 The applicable laws of British Columbia and Canada shall govern this Agreement.**
- 11.12 British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Nuxalk First Nation.**
- 11.13 This Agreement is not intended to limit any obligation of Licensees or other third parties to the Nuxalk First Nation.**
- 11.14 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.**
- 11.15 This Agreement does not exclude the Nuxalk First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly, set out in this Agreement.**
- 11.16 For purposes of calculating the Interim Accommodation benefits in this agreement the Nuxalk population figures were obtained from the Department of Indian and Northern Affairs in April 2003 and may not reflect the current population in 2006.**

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## **12.0 Giving Effect to the New Relationship**

**12.1 Notwithstanding this agreement, the Parties will, at the request of the Nuxalk First Nation, enter into discussions, and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship, which may include, but are not limited to the following components:**

- (a) a process for shared decision making about the land and resources;**
- (b) new mechanisms for land and resource protection;**
- (c) a process for the Nuxalk First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Nuxalk First Nation's plans;**
- (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;**
- (e) financial capacity for the Nuxalk First Nation and resourcing for British Columbia to develop and implement new frameworks for shared land and resource decision making and other components listed above;**
- (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Nuxalk First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above; and**

**12.2 The Parties acknowledge that there are broader processes underway with respect to the New Relationship which will benefit and, at times assist, the Parties in negotiating with respect to the issues set out in section 12.1.**



Signed on behalf of:

**Nuxalk First Nation**

Date: JANUARY 11, 2007

  
\_\_\_\_\_  
**Chief**

  
\_\_\_\_\_  
**Witness of Nuxalk First Nation's signatures**

Signed on behalf of:

**Government of British Columbia**

Date: Feb 12/07

  
\_\_\_\_\_  
**Rich Coleman**  
**Minister of Forests and Range**

  
\_\_\_\_\_  
**Witness of Minister's signature**

**APPENDIX A**  
**Map of Nuxalk First Nation Ancestral Territory**

# Nuxalk Nation Land Use Plan Nuxalk Ancestral Territory

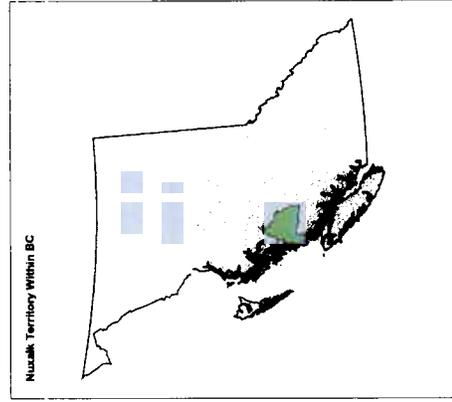
1:750,000

Projection: Albers  
Datum: NAD83  
Date: July, 2005



- Nuxalk Ancestral Territory Boundary \*\*
- Nuxalk Ancestral Territory
- Central Coast LRMP Boundary

\*\* This boundary represents the exclusive ancestral territory of the Nuxalk Nation and acknowledges that Nuxalk have historically traveled and continue to travel outside the Territory for trade, resource access and diplomatic purposes



Nuxalk Territory Within BC

