

**Kwantlen First Nation  
Interim Agreement on Forest Opportunities  
(the "Agreement")**

**Between:  
The Kwantlen First Nation**

As represented by  
Chief Marilyn Gabriel and Council  
(the "Kwantlen")

**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 (of which Kwantlen is a member), and the Union of BC Indian Chiefs (“Leadership Council”) have in the year 2005 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”, expressed in written form by a document agreed to by the Government of British Columbia, and the First Nations Leadership Council.**
- C. Work is underway regarding the implementation of the New Relationship and this Agreement may need to be amended in the future to reflect the outcomes of that work.**
- D. The Kwantlen has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.**
- E. The Kwantlen has Aboriginal Interests within its Traditional Territory.**

- F. The Parties wish to enter into an interim measures agreement in relation to forest resource development within the Traditional Territory.**
- G. References in this Agreement to Crown Lands are without prejudice to the Kwantlen's Aboriginal title and/or rights claims over those lands.**
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Kwantlen on forest resource development activities proposed within the Kwantlen Traditional Territory that may lead to the infringement of the Kwantlen's Aboriginal Interests.**
- I. The Kwantlen intends to participate in any consultation with British Columbia or a Licensee, in relation to forest resource development activities proposed within the Kwantlen's Traditional Territory, that may lead to an infringement of the Kwantlen's Aboriginal Interests.**
- J. British Columbia and the Kwantlen wish to resolve issues relating to forest resource development where possible through honourable, mutually respectful, good faith negotiations 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.**
  - 1.2.1 The making, varying or postponing of Allowable Annual Cut (AAC) determinations for a Timber Supply Area or a Forest Tenure;**
  - 1.2.2 The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure;**
  - 1.2.3 The extension to the term of, or replacement of a Forest Tenure;**
  - 1.2.4 The disposition of volumes of timber arising from undercut decisions on a Forest Tenure;**
  - 1.2.5 The conversion of a Forest Tenure to a different form of Forest Tenure;**
  - 1.2.6 The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;**
  - 1.2.7 The issuance of a Special Use Permit;**

- 1.2.8 The decision regarding approval or extension of a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
  - 1.2.9 The deletion or addition of provincial forest;
  - 1.2.10 The transfer of AAC between Timber Supply Areas;
  - 1.2.11 The removal of private land from a Woodlot Licence or a Tree Farm Licence; and,
  - 1.2.12 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 Kwantlen’s Aboriginal Interests arising from or as a result of forest 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 “Joint Kwantlen/British Columbia Forestry Council” means the Joint Forestry Council established by the Parties pursuant to Appendix C of this Agreement.
- 1.6 “Licensee” means a holder of a Forest Tenure.
- 1.7 “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 Traditional Territory.
- 1.8 “Operational Plan” means a Forest Development Plan, Forest Stewardship Plan or a Woodlot Licence Plan that has a potential effect in the Traditional Territory including any amendments to those plans that require statutory approval.
- 1.9 “Traditional Territory” means Kwantlen’s asserted Traditional Territory as shown on bold black on the map attached in Appendix A.
- 1.10 “Workplan” means one of the deliverables to be developed by the Joint Kwantlen/British Columbia Forest Council as outlined in appendix C of this Agreement.

## **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 Kwantlen through economic diversification.**
- 2.2 Provide interim payment and other economic benefits to the Kwantlen 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 resource development on Crown lands within the Traditional Territory of the Kwantlen during the term of this Agreement, while longer term interests are addressed through other agreements or processes.**
- 2.5 Build and foster meaningful good faith working relations between the Parties and between Kwantlen and Licensees, through their voluntary participation in the Joint Kwantlen/British Columbia Forest Council and other cooperative activities related to land and natural resource issues.**

## **3.0 Economic Benefits to the Kwantlen**

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

### **3.1 Forest Tenure**

After the execution of this Agreement, the Minister will invite the Kwantlen, or such legal entity as the Kwantlen has appointed as its representative to hold the licences to apply under the *Forest Act* for a Woodlot Licence and a non-replaceable forest licence (NRFL) on a non-competitive basis for up to a combined total of 5,200 *cubic meters* annually in the Fraser Timber Supply Area.

- 3.1.1 For greater certainty, the maximum volume that may be available under the two licences referred to in Section 3.1 will be up to 26,000 cubic meters over 5 years.**

- 3.1.2** The Parties will strive to ensure that the assigned operating area for the NRFL in the Fraser 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 Kwantlen making an application for the NRFL, the Parties will work together to identify the location of an operating area for the NRFL, which to the extent that it is operationally feasible will be within the Traditional Territory.
- 3.1.3** The NRFL entered into as a result of an invitation under section 3.1 will be for a term of 5 years.
- 3.1.4** The Woodlot licence entered into as a result of an invitation under Section 3.1 will be for a term no longer than 20 years.
- 3.1.5** The Woodlot Licence will be not more than 800 hectares in size, within the Area of Interest as shown on the attached Appendix B.
- 3.1.6** If either of the licences referred to in Section 3.1 remains in effect beyond the term of this Agreement, the licences will continue to be considered by the Parties to be Interim Accommodation until the licences expire or are terminated.
- 3.1.7** If no further agreement is entered into between the Kwantlen and British Columbia, British Columbia will consider the Woodlot Licence an on-going economic benefit that will be taken into consideration during any consultation and accommodation in respect of any future infringement of Kwantlen's Aboriginal interests.
- 3.1.8** The Minister may invite the Kwantlen to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

## **3.2 Interim Payment**

- 3.2.1** During the term of this Agreement, British Columbia will make an interim payment to the Kwantlen of \$86,713 annually. Payments will be made quarterly.
- 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 British Columbia.

- 3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e. ¼) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect.**
- 3.2.4 Upon signing this Agreement, Kwantlen 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, Kwantlen would receive payment for that entire quarter), with subsequent payments being made at the end of each quarter.**
- 3.2.5 British Columbia will not seek to direct or influence the expenditure of the funds provided to Kwantlen.**

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

- 4.1 The Kwantlen 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 Kwantlen's Aboriginal Interests, regardless of benefits provided under this Agreement.**
- 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 Kwantlen agrees that British Columbia will have provided Interim Accommodation with respect to the economic component of potential infringements of the Kwantlen's Aboriginal Interests as an interim measure.**
- 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 Kwantlen has agreed to accept.**
- 4.4 The Parties agree to develop consultation processes through the Joint Kwantlen/British Columbia Forest Council to address both Operational and Administrative Decisions or Plans which may affect the Kwantlen's Aboriginal Interests within their Traditional Territory. Until such time as particular consultation processes are developed pursuant to section 4.4 of this Agreement, British Columbia will continue to fulfil its legal obligation regarding consultation, and in doing so, the Parties agree that British Columbia will follow the decision of the Supreme Court of Canada in *Haida v. British Columbia* (Minister of Forests) 2004 Sec 73, and the *Ministry of Forests Aboriginal Rights and Title Policy and Consultation Guidelines (2003)*.**

- 4.5** Where Kwantlen 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.

## **5.0 Dispute Resolution**

- 5.1** If a dispute arises between British Columbia and the Kwantlen 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 Kwantlen.
- 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:
- 6.3.1** The expiry of its term;
  - 6.3.2** 90 days notice by one Party to the other Party; or,
  - 6.3.3** The 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** Notwithstanding section 6.4, British Columbia may terminate the Agreement when there is a challenge on the basis that the Economic Benefits set out in section 3 are not adequate or sufficient Interim Accommodation.
- 6.6** Prior to termination under section 6.5, the Parties agree to meet and endeavour to resolve the dispute.

## **7.0 Renewal of the Agreement**

- 7.1 Prior to this Agreement terminating in accordance with Section 6.3.1, if the terms and conditions of this Agreement are being met, British Columbia and Kwantlen will seek the necessary authorities and approvals to renew this Agreement.**
- 7.2 Any subsequent forestry agreement between British Columbia and the Kwantlen 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 is 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 Kwantlen 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.**

**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

**Kwantlen First Nation**

Tumia Knott  
Kwantlen First Nation  
Box 108  
Fort Langley, B.C. V1M 2R4  
Telephone: (604)888-2488  
Facsimile: (604)888-2442

**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 Nothing in this Agreement, including the recitals, defines or confirms the specific nature, scope, location or geographic extent of Aboriginal Interests of the Kwantlen.**

- 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 Kwantlen 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 Kwantlen.**
- 11.13 This Agreement is not intended to limit any obligation of Licensees or other third parties to the Kwantlen.**
- 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 Kwantlen from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.**

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

**12.1 Notwithstanding this agreement, the Parties 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:**

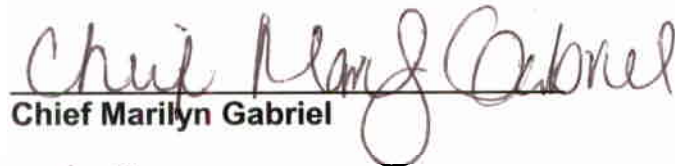
- (a) a process for shared decision making about the land and resources;**
- (b) new mechanisms for land and resource protection;**
- (c) a process for the Kwantlen's land use planning at all spatial scales and for reconciliation of Crown and the Kwantlen's plans;**
- (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;**
- (e) financial capacity for the Kwantlen and resourcing for British Columbia to develop and implement new frameworks for shared land and resource decision making and other components listed above; and**

- (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Kwantlen to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above.

Signed on behalf of:

**Kwantlen First Nation**

Date: MARCH 22, 2006

  
Chief Marilyn Gabriel

  
Councillor Les Antone

  
Councillor Tumia Knott

  
Witness of Kwantlen First Nation's signatures

Signed on behalf of:

**Government of British Columbia**

Date: May 3/06

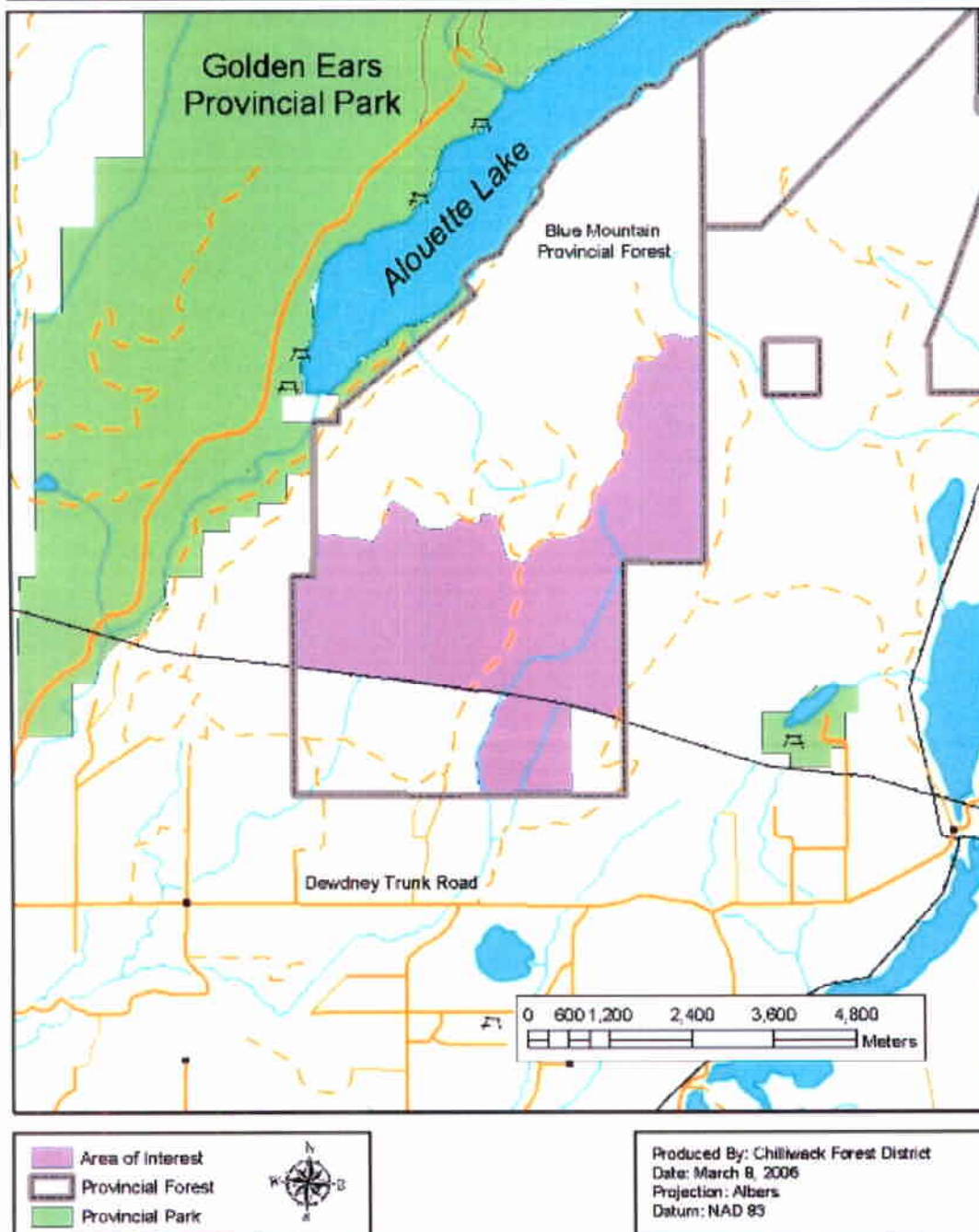
  
Rich Coleman  
Minister of Forests and Range

  
Witness of Minister's signature

## Kwantlen First Nation Traditional Territory - Appendix A-



Appendix B  
Area of Interest for Proposed Kanaka Creek Woodlot Licence



## **APPENDIX C**

### **JOINT KWANTLEN/BRITISH COLUMBIA FOREST COUNCIL**

- 1.0 Kwantlen and British Columbia will identify their respective participants in the Joint Kwantlen/ British Columbia Council hereinafter the “Council” within three months of the execution of this Agreement.**
- 1.1 The purpose of the Council is to undertake initiatives and specific projects to support the successful implementation of this Agreement, and shall constitute a forum for consultation and technical discussions between the Parties on strategic level forestry planning processes, including all Administrative Decisions and/or Operational Decisions within the Traditional Territory. To carry out these functions the Council will:**
  - 1.1.1 Meet semi-annually, or by agreement of the Parties;**
  - 1.1.2 Review progress on the implementation of this Agreement;**
  - 1.1.3 Develop, design, implement, review and modify a Workplan;**
  - 1.1.4 Identify, consider, and act on issues which arise from this Agreement;**
  - 1.1.5 Identify policy and legislative issues;**
  - 1.1.6 Consider agenda items proposed by any Party; and,**
  - 1.1.7 Provide advice to the Parties on the planning processes, plans and strategic initiatives affecting forestry management.**
  - 1.1.8 Develop an agreed upon method of dispute resolution.**
  - 1.1.9 The Council will develop the consultation process referred to in Section 4.4 of the Agreement by June 30, 2006.**
- 1.2 The Council will consist of up to three members appointed by Kwantlen, up to three members appointed by BC, with the Chair alternating between the Parties.**
- 1.3 The Council will meet to discuss the development of a Workplan within six months of the execution of this Agreement and thereafter on an annual basis.**
- 1.4 All public communications or releases related to this Agreement shall be jointly reviewed and approved by the Council prior to issuance.**