

**Cowichan Tribes Forest Agreement**  
(the "Agreement")

**Between:**

**Cowichan Indian Band also known as Cowichan Tribes**  
As represented by the Cowichan Indian Band Chief and Council  
(*"Cowichan Tribes"*)

**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:**

- *Cowichan Tribes* have Aboriginal Interests within their Traditional Territory.
- The Parties wish to enter into a forest agreement for forest 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/or seek interim workable accommodation with *Cowichan Tribes* on forest resource development activities proposed within the Traditional Territory that may lead to the infringement of *Cowichan Tribes'* Aboriginal Interests.
- *Cowichan Tribes* intends to participate in consultation initiated by the Government of British Columbia or a Licensee in relation to forest resource development activities proposed within the Traditional Territory, that might lead to the infringement of *Cowichan Tribes'* Aboriginal Interests.
- The Parties have an interest in seeking interim workable accommodation of *Cowichan Tribes'* Aboriginal Interests where forest development activities are proposed within the Traditional Territory that may lead to the infringement of *Cowichan Tribes'* Aboriginal Interests.

- The Parties wish to resolve issues related to forest resource development where possible through negotiation as opposed to litigation.
- This Agreement does exclude *Cowichan Tribes* from accessing future direct award tenure opportunities through section 47.3 of the *Forest Act*, which may be available from time to time.
- This Agreement addresses all commitments in all other agreements between the Government of British Columbia and *Cowichan Tribes* regarding future tenure opportunities to *Cowichan Tribes*, including clause 8.4 of the *Hw' t̓e shutsun Interim Measures Agreement*.
- The Parties further agree that the *Hw' t̓e shutsun Interim Measures Agreement* will not be renewed once it expires.

**Therefore** the Parties agree as follows:

## **1.0 Definitions:**

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

- 1.1 "Aboriginal Interests" means asserted or proven aboriginal rights and/or aboriginal title. The Aboriginal Interests of the *Cowichan Tribes* are referred to in this Agreement as *Cowichan Tribes' Aboriginal Interests*.
- 1.2 "Administrative Decision" means a decision made by a person under the *Forest Act* that has an effect in the Traditional Territory 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;
  - 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 between or among tenure holders;

- 1.2.6 the issuance or subdivision of a Forest Tenure;
- 1.2.7 the conversion of Timber Sale Licenses to other forms of tenure;
- 1.2.8 Timber License term extensions; and,
- 1.2.9 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.
- 1.3 “Cultural component of Aboriginal Interests” means the cultural values and traditional practices of *Cowichan Tribes*.
- 1.4 “Economic component of Aboriginal Interests” means the financial or commercial aspects of Aboriginal Interests.
- 1.5 “Forest Tenure” means an agreement granting rights to harvest Crown timber issued under the *Forest Act*.
- 1.6 “Infringement of Aboriginal Interests” means potential or actual infringement of Aboriginal Interests.
- 1.7 “Interim Workable Accommodation” means accommodation of the potential infringement of *Cowichan Tribes’* Aboriginal Interests, as set out in this Agreement, arising from or a result of forest development, prior to the full reconciliation of these interests through a land claim settlement or other processes.
- 1.8 “Licensee” means a holder of a Forest Tenure.
- 1.9 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan or a Forest Stewardship Plan that has an effect in the Traditional Territory.
- 1.10 “Operational Plan” means a Forest Development Plan and/or a Forest Stewardship Plan that has an effect in the Traditional Territory.
- 1.11 “Response Period” means a period of 60 days from initiation of the processes set out in this Agreement in Sections 4.0 and Section 5.0 which begins in the case of:

1.11.1 an Administrative Decision or public Timber Supply Review process, on the date *Cowichan Tribes* is notified in accordance with Section 5.0 of this Agreement;

1.11.2 an Operational Plan on the date *Cowichan Tribes* receives the plan in its complete form.

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.

1.12 "Traditional Territory" means *Cowichan Tribes'* asserted traditional territory as shown on bold black on the map attached in Appendix A.

## **2.0 Purpose:**

2.1 The purposes of this Agreement are to:

2.1.1 increase the opportunity for participation of *Cowichan Tribes* in the forest sector;

2.1.2 provide economic benefits to *Cowichan Tribes* by sharing of revenues received by the Government of British Columbia from forest resource development;

2.1.3 address consultation requirements and provide an interim workable accommodation as set out in this Agreement, with regard to any infringements of *Cowichan Tribes'* Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory during the term of this Agreement;

2.1.4 provide a period of stability to forest resource development on Crown lands within the Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or other processes.

## **3.0 Economic Benefits to *Cowichan Tribes***

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Sections 4.0 and 5.0 of this

Agreement and will provide the following economic benefits to *Cowichan Tribes* to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any infringements of *Cowichan Tribes'* Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory. For greater certainty, the Government of British Columbia agrees that it will not seek to use economic benefits provided to *Cowichan Tribes* pursuant to Section 3.0 as justification for the infringement of the cultural component of *Cowichan Tribes'* Aboriginal Interests in respect of Operational Decisions.

### **3.1 Revenue Sharing**

- 3.1.1 During the term of this Agreement, the Government of British Columbia will pay to *Cowichan Tribes* approximately \$1,844,000 annually for purposes described in Section 3.0.
- 3.1.2 By March 31, 2004, the Government of British Columbia will provide a one-time funding amount of \$2,000,000 and *Cowichan Tribes* accepts this funding in lieu of receiving any Forest Tenure opportunities directed to them by the Government of British Columbia through section 47.3 of the *Forest Act*.
- 3.1.3 The Parties further agree that the funding noted under Section 3.1.2 will be referenced and considered to be an economic benefit that addresses consultation and provides a interim workable accommodation in respect of any infringement of *Cowichan Tribes'* Aboriginal Interests, in any subsequent forestry agreement between the *Cowichan Tribes* and the Government of British Columbia for the purposes described in Section 3.0, and as set out in that subsequent forestry agreement.
- 3.1.4 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount set out in Section 3.1.1 will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.1.5 The funding commitment in Section 3.1.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia. The Government of British Columbia acknowledges it has an appropriation for \$15 million for 2003/3004 and its present intent is to seek appropriations of \$30 million in 2004/05; and \$50 million in 2005/06 to fund revenue sharing commitments through

Forest and Range Agreements with eligible First Nations throughout the Province.

- 3.1.6 Upon signing of this Agreement, *Cowichan Tribes* will be paid the full revenues referred to in Section 3.1.1 for the quarter in which the Agreement is signed, with subsequent payments being made at the end of each quarter.
- 3.1.7 *Cowichan Tribes* will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.1.8 Upon request, *Cowichan Tribes* will conduct an audit of the revenue sharing expenditures and funding expenditures noted in Sections 3.1.1 and 3.1.2 and will provide a copy of the audit to the Government of British Columbia.

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

- 4.1 The Government of British Columbia agrees to consult with *Cowichan Tribes* on Operational Plans that may potentially infringe *Cowichan Tribes'* Aboriginal Interests within the Traditional Territory, except for any economic component of those interests or proven rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.
- 4.2 While this Agreement is in effect, *Cowichan Tribes* 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 *Cowichan Tribes'* Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and the development activities that occurs as a result of those decisions.
- 4.3 *Cowichan Tribes* agrees to fully participate, as set out in Sections 4.1 to 4.8 of this Agreement, in the review of all Operational Plans 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, *Cowichan Tribes* 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 that may result from 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 *Cowichan Tribes* as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with *Cowichan Tribes* any site specific operational impacts on *Cowichan Tribes'* Aboriginal Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.6 If no response is received from *Cowichan Tribes* within the Response Period, then the Government of British Columbia may assume that *Cowichan Tribes* 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 *Cowichan Tribes*, whether received directly or through a Licensee, and will consider whether concerns identified by *Cowichan Tribes* have been addressed.
- 4.8 The Government of British Columbia will provide *Cowichan Tribes* with a copy of its final decision on an Operational Plan within 7 days of making a final decision. Within 60 days of making a final decision, the Government of British Columbia will also inform *Cowichan Tribes* the way in which their concerns have been considered and sought to be addressed.

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

- 5.1 The Government of British Columbia will provide to *Cowichan Tribes* 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 *Cowichan Tribes* or as soon as practicable when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to *Cowichan Tribes* an updated list.
- 5.2 The Government of British Columbia will meet with *Cowichan Tribes* at mutually agreed times throughout the year to provide an opportunity for *Cowichan Tribes* to make known to representatives of the Government of British Columbia their concerns and

comments relative to the anticipated effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.

- 5.3 The Government of British Columbia will include *Cowichan Tribes* in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Arrowsmith Timber Supply Area, Tree Farm Licence #44, and Tree Farm Licence #46.
- 5.4 *Cowichan Tribes* agrees to fully participate within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests 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 *Cowichan Tribes*, the statutory decision-maker is of the opinion that those comments and concerns make it clear that an Administrative Decision creates a potential infringement of the cultural component of *Cowichan Tribes'* Aboriginal Interests, that is not adequately addressed by the economic benefits provided by the Government of British Columbia, the statutory-decision maker will seek to address the comments and concerns either a) in the Administrative Decision where reasonably possible, or b) through the consultation and accommodation process set out under Section 4.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a response to *Cowichan Tribes* as to how their concerns raised in Section 5.2 have been addressed, in a timely manner.
- 5.8 *Cowichan Tribes* 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 *Cowichan Tribes'* Aboriginal Interests resulting from Administrative Decisions made by statutory decision-makers from time to time during the term of this Agreement.



- 5.9 *Cowichan Tribes* 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 infringements of their Aboriginal Interests 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 *Cowichan Tribes'* Aboriginal Interests.

## **6.0 Stability within *Cowichan Tribes'* Traditional Territory**

- 6.1 *Cowichan Tribes* will respond immediately to any discussions initiated by the Government of British Columbia and work co-operatively to assist in resolving any issues that may arise where acts of unlawful interference by *Cowichan Tribes'* members with provincially authorized activities related to forestry 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 *Cowichan Tribes* 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 *Cowichan Tribes*.
- 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:
- 8.2.1 six years from the date this Agreement is executed; or
  - 8.2.2 the coming into effect of a final treaty agreement; or
  - 8.2.3 the mutual agreement of the Parties; or
  - 8.2.4 the Government of British Columbia cancels economic benefits under this Agreement pursuant to Section 9.0; or,
  - 8.2.5 at the option of the *Cowichan Tribes*, in the event only that the Government of British Columbia fails to deliver the economic benefits pursuant to Section 3.0 of this Agreement.

## 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 seek repayment of the one-time funding entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that *Cowichan Tribes* is not in substantial compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will notify *Cowichan Tribes* of any alleged contravention of this Agreement that may lead *Cowichan Tribes* to be determined not to be in compliance with this Agreement and will provide *Cowichan Tribes* with an opportunity that is reasonable in the circumstances to remedy the non-compliance.
- 9.3 If while the Agreement is in effect, *Cowichan Tribes* challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or, 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, substantially address *Cowichan Tribes'* concerns and to provide an interim workable accommodation in respect of any potential infringements of *Cowichan Tribes'* Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory; or
- 9.3.2 substantially address the economic component of *Cowichan Tribes'* Aboriginal Interests with regard to Operational Decisions relating to forest 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 and request repayment of the one-time funding.

- 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, if the terms and conditions of this Agreement are being met, the Government of British Columbia and *Cowichan Tribes* will consider whether to seek their necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and *Cowichan Tribes* may only include revenue sharing but no other economic benefits, and may include other terms and conditions that are agreed to by the Parties.

## **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.

## **12.0 Entire Agreement**

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

### **Cowichan Tribes**

Chief Councillor, Chief Harvey Alphonse  
Address: 5760 Allenby Road  
Duncan, B.C. V9L 5J1  
Telephone: (250) 748-3196  
Facsimile: (250) 748-1233

## 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, affirm, or deny the existence of 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, including treaty negotiations, or court actions.
- 14.4 The Parties differ on the question of the existence or extent of any duty or duties of consultation and/or accommodation owed by Licensees to the *Cowichan Tribes* and nothing in this Agreement, or the fact that the Parties have entered into this Agreement, is intended to limit or prejudice the position that either Party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by Licensees or other third parties to the *Cowichan Tribes*.
- 14.5 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, and nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 14.6 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.
- 14.7 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.8 The applicable laws of British Columbia and Canada shall govern this Agreement.

- 14.9 This Agreement is not intended to change or affect the positions either Party has, or may have, regarding its jurisdictions or authorities.
- 14.10 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.

In Witness whereof the Parties have executed this Agreement on the date as set out below:

**SIGNED AND DELIVERED by CHIEF COUNCILLOR HARVEY ALPHONSE on November 20<sup>th</sup>, 2003 for and on behalf of Cowichan Tribes in the presence of:**



**Robert H. Botterell, witness as to the signature of the Chief Councillor of Cowichan Tribes**

**COWICHAN TRIBES  
Chief Councillor**

  
**Harvey Alphonse**

**SIGNED AND DELIVERED on November 20<sup>th</sup>, 2003 by the Minister of Forests in the presence of:**



**Witness as to the signature of Michael de Jong, Minister of Forests**

**HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA, as  
represented by the Minister  
of Forests**

  
**The Honourable Michael de Jong**

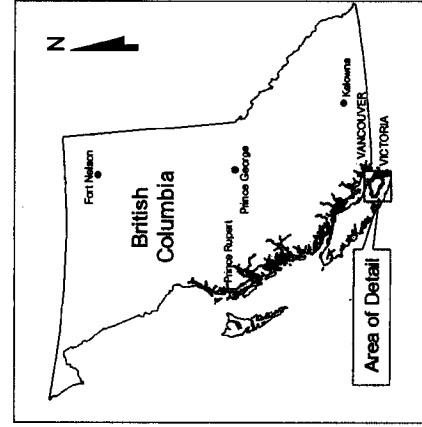
# APPENDIX "A"

## The Asserted Traditional Territory of Cowichan Tribes



### LEGEND

-  Statement of Intent Boundary
-  Roads
-  Populated Places
-  Parks and Protected Areas



July 22, 2003

