

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

**Between:  
The Ditidaht First Nation**

As Represented by  
Chief Councillor Jack Thompson  
(the "Ditidaht 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 the Union of BC Indian Chiefs (“Leadership Council”) have 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 DITDAHT 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 DITIDAHT First Nation 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 DITIDAHT 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 DITIDAHT First Nation on forest resource development activities proposed within the DITIDAHT First Nation Traditional Territory that may lead to an infringement of the DITIDAHT First Nation's Aboriginal Interests.
- I. The DITIDAHT First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest resource development activities proposed within the DITIDAHT First Nation's Traditional Territory that may lead to an infringement of the DITIDAHT First Nation's Aboriginal Interests.
- J. British Columbia and the DITIDAHT First Nation wish to resolve issues relating to forest 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. "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 DITIDAHT First Nation's Traditional Territory.
- 1.2. "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, or Woodlot Licence Plan that has a potential effect in the DITIDAHT First Nation's Traditional Territory.
- 1.3. "Aboriginal Interests" means aboriginal rights and/or aboriginal title.
- 1.4. "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 determinations (AAC) for a Timber Supply Area or a Forest Tenure;
  - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure;

- The extension of the term of, or replacement of a Forest Tenure;
  - The disposition of volumes of timber arising from undercut decisions on 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 a Tree Farm Licence; and
  - The establishment of an interpretive forest site, recreation site, and recreation trail.
- 1.5. “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6. “Traditional Territory” means the DITIDAHT First Nation's Asserted Traditional Territory as shown on bold black on the map attached in Appendix A.
- 1.7. “Licensee” means a holder of a Forest Tenure.
- 1.8. “Interim Accommodation” means an accommodation provided in this Agreement, of the potential infringements of the economic component of the DITIDAHT First Nation'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 and does not necessarily reflect the amount that the Ditidaht First Nation may be entitled to at some future time as a result of infringements of Ditidaht Interests during or after the term of this Agreement. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term 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 DITIDAHT First Nation through economic diversification.
- 2.2. Provide a share of revenue received by British Columbia from forest resource development and/or other economic benefits to the DITIDAHT First Nation through a forest tenure opportunity as an interim accommodation.
- 2.3. Address consultation and provide Interim Accommodation, as set out in this Agreement.
- 2.4. Provide a period of time for the parties to create greater stability for forest resource development on Crown lands within the Traditional Territory of the DITIDAHT 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 DITIDAHT First Nation

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the DITIDAHT 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 agreement as agreed to by the Parties.

3.1.2 The Minister of Forests and Range invited the DITIDAHT and Pacheedaht First Nations to apply for a timber sale licence of up to 300,000 cubic metres over a period of up to 10 years on January 28, 2003 which resulted in the award of Timber Sale Licence A71020 on August 25, 2003

3.1.3 Timber Sale Licence A71020 was entered into as a result of the invitation under the January 28, 2003 Interim Measures Agreement for a term of seven years which expires August 24, 2010.

3.1.4 The Minister of Forests and Range has invited the Ditidaht First Nation to apply for a Licence under the Forest Act to harvest a total of up to 76,265 cubic metres of undercut volume over a term of up to five years in Tree Farm Licence # 44 that resulted in the award of Forestry Licence to Cut A80490 effective March 21, 2007 that expires on March 20, 2012.

3.1.5 After the execution of this Agreement the Minister will invite the DITIDAHT First Nation, or such legal entity as the DITIDAHT First Nation has appointed as its representative to hold the licence to apply under the Forest Act for a subsequent Licence(s) for up to 5,819 cubic metres annually for a term of up to five years, for a total harvest of up to 29,095 cubic metres, in Tree Farm Licence #44.

3.1.6 After the execution of this Agreement the Minister of Forests and Range will invite the DITIDAHT First Nation, or such legal entity as the DITIDAHT First Nation has appointed as its representative to hold the licence to apply under the Forest Act for a subsequent Licence(s) for up to 13,578 cubic metres annually for a term of up to five years, for a total harvest of up to 67,890 cubic metres, in Tree Farm Licence #46.

3.1.7 For greater certainty, the maximum volume that may be available under the Licence(s) referred to in Section 3.1.5, and 3.1.6 will be up to 96,985 cubic metres over 5 years.

3.1.8 The Parties will strive to ensure that the assigned operating area for the Licence in Tree Farm Licences # 44 and #46 have 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 DITIDAHT First Nation making an application for the Licence(s), the Parties will work together to identify the location of an operating area for the Licence(s), which to the extent that it is operationally feasible will be within the Traditional Territory.

3.1.9 Licence(s) entered into as a result of an invitation under section 3.1 will be for a term of 5 years.

3.1.10 If the Licence(s) remains in effect beyond the term of this Agreement, the Licence(s) will continue to be considered by the Parties to be Interim Accommodation until the Licence(s) expires or is terminated.

3.1.11 The Minister of Forests and Range may invite the DITIDAHT 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 Interim Payment

3.2.1 During the term of this Agreement, British Columbia will make an interim payment to the DITIDAHT First Nation of approximately \$323,296 annually.

3.2.2 The funding commitment set out in section 3.3.1 is subject to the availability of annual appropriations for that purpose by British Columbia.

3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e.  $\frac{1}{4}$ ) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.

3.2.4 British Columbia will not seek to direct or influence the expenditure of the funds provided to the DITIDAHT First Nation.

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

- 4.1. The DITIDAHT 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 DITIDAHT First Nation'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, and notwithstanding section 11.13, the DITIDAHT First Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the DITIDAHT First Nation's Aboriginal

Interests as an interim measure as a result of forest activities occurring within their Traditional 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 DITIDAHT 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 DITIDAHT First Nation's Aboriginal Interests as a result of forest and range activities occurring within their Traditional Territory.
- 4.5. The parties may examine other opportunities for accommodation in respect of impacts on Ditidaht's Aboriginal Interests arising from forestry decisions within their Traditional Territory.
- 4.6. The Ditidaht and the Province are entering into broader discussions to further reconcile their interests. The Parties agree that this Agreement is an interim measure that links to broader coordinated efforts to address the Parties interests.
- 4.7. The Parties agree to work cooperatively with forest licensees and the British Columbia Timber Sales Program to support timely and effective forestry decisions.
- 4.8. The Parties further agree to work collaboratively to seek to resolve differences between them in relation to future forestry decisions.
- 4.9. Nothing in this Agreement restricts the ability of DITIDAHT First Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resources development within its Traditional Territory.
- 4.10. The Parties agree to use the consultation process attached in Appendix B, to address both Operational and Administrative Decisions and Operational Plans, which may affect the DITIDAHT First Nation's Aboriginal Interests within their Traditional Territory.

## 5.0 Dispute Resolution

- 5.1 If a dispute arises between British Columbia and the DITIDAHT 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 DITIDAHT 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 starting from the effective date of the Ditidaht First Nation Forestry Interim Measures Agreement which was fully executed on February 8, 2005.
- 6.2 This Agreement will replace the Ditidaht First Nation Forestry Interim Measures Agreement and will take effect on the date on which the last Party has executed it for the term referred to in Section 6.1.
- 6.3 This Agreement will terminate on the occurrence of the earliest of any of the following events: February 7, 2010, 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 DITIDAHT 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.
- 7.2 Any subsequent forestry agreement between British Columbia and the DITIDAHT 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 DITIDAHT 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 constitutes 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

#### **DITIDAHT First Nation**

Chief Councillor  
P.O. Box 340  
Port Alberni, B.C., V9Y 7M8  
Telephone: (250) 745-3333  
Facsimile: (250) 745-3332

### **11 Miscellaneous**

- 11.1 This Agreement will be implemented by the Ditidaht in accordance with their laws, policies, customs, traditions and their decision making processes.
- 11.2 This Agreement will be implemented by the Province in accordance with its laws, policies and decision making processes and authorities.
- 11.3 This Agreement will be implemented in a manner consistent with provincial, federal and constitutional law.
- 11.4 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.

- 11.5 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 11.6 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 11.7 The Province acknowledges and enters into this Agreement on the basis that the DITIDAHT First Nation has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the DITIDAHT 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 DITIDAHT First Nation.
- 11.8 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.
- 11.9 This Agreement does not address or affect any claims by the DITIDAHT First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement..
- 11.10 This Agreement and any decisions and or Licenses issued during the term of this Agreement does not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 11.11 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.
- 11.12 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 11.13 Nothing in this Agreement will be interpreted in a manner that suggests that the DITIDAHT First Nation has authorised infringement of DITIDAHT's interests that may occur during the term of this Agreement. The question of infringement of DITIDAHT's interests is one that may be further addressed in the context of discussions that occur pursuant to Sections 4.2 and 4.6.

- 11.14 This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the DITIDAHT First Nation.
- 11.15 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or fax 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.
- 11.16 This Agreement does not exclude the DITIDAHT First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly, set out in this Agreement.
- 11.17 British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Ditidaht First Nation.

## 12.0 Giving Effect to the New Relationship

- 12.1 Notwithstanding this agreement, the Parties will, at the request of the DITIDAHT First Nation, enter into discussions, and may negotiate interim agreements in relation to forestry 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 DITIDAHT First Nation's land use planning at all spatial scales and for reconciliation of Crown and the DITIDAHT 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 DITIDAHT 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; and
  - (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the DITIDAHT First

Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-f above.

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:

**DITIDAHT First Nation**

Chief Jack Thompson

Date: \_\_\_\_\_

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Witness of DITIDAHT First Nation  
signatures

Signed on behalf of:

**Government of British Columbia**

Date: \_\_\_\_\_

\_\_\_\_\_  
Pat Bell  
Minister of Forests and Range

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

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:

**DITIDAHT First Nation**

Chief Jack Thompson



Date: June 27-2008

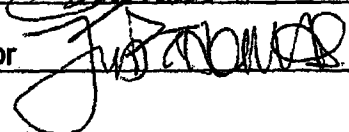
Councillor



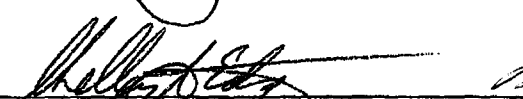
Councillor



Councillor



Councillor

  
Witness of DITIDAHT First Nation  
signatures



Signed on behalf of:

**Government of British Columbia**

Date: July 20/08



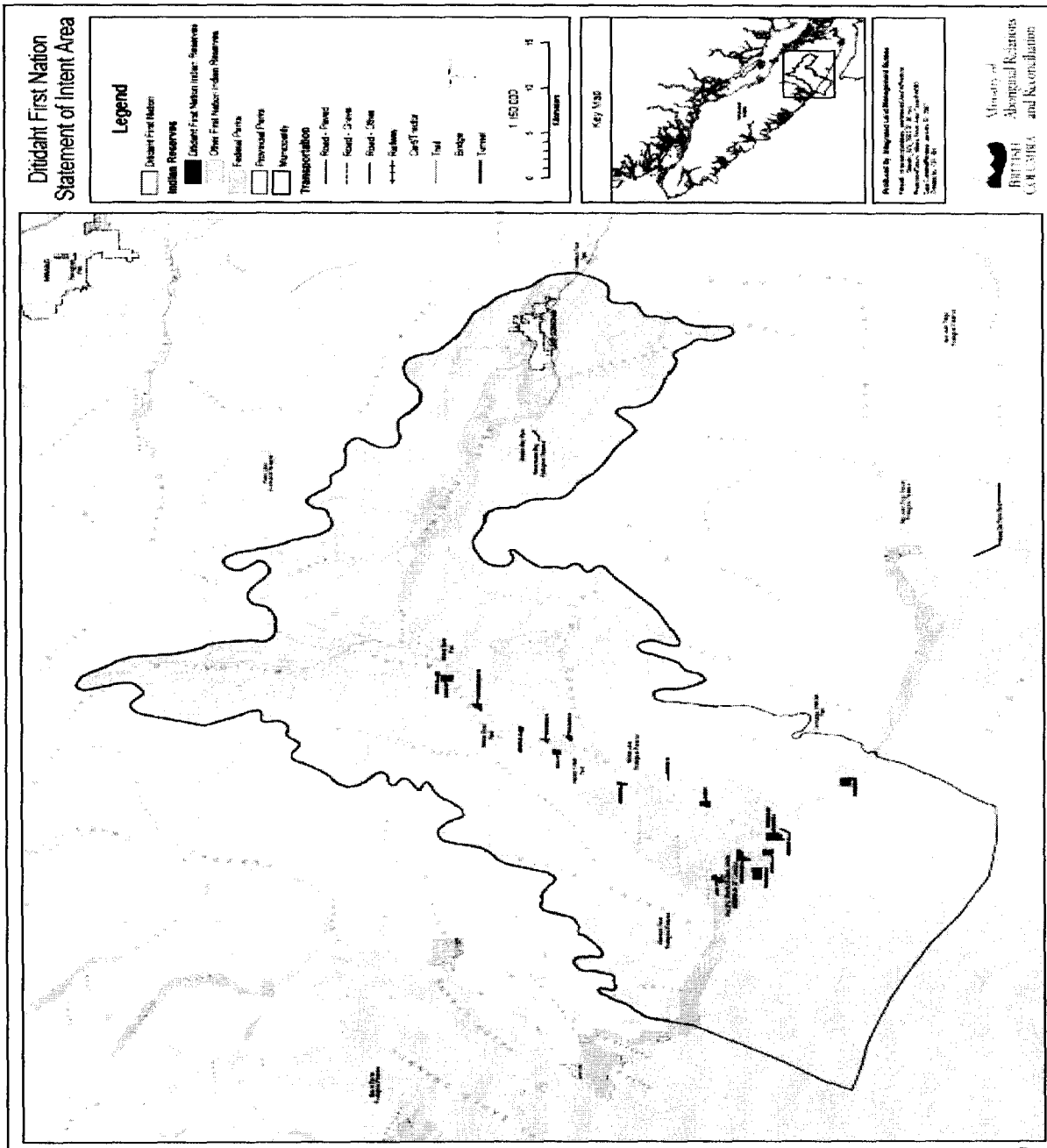
Pat Bell  
Minister of Forests and Range



Witness of Minister's signature

# APPENDIX A

## Map of DITIDAHT First Nation Asserted Traditional Territory



**APPENDIX B**  
**Ditidaht First Nation and Ministry of Forests and Range**  
**Interim Consultation Protocol (the Protocol)**

**Purpose:**

To establish an agreed upon interim consultation process between the Ministry of Forests and Range (MFR) and the Ditidaht First Nation with respect to current forestry related activities/decisions in the Traditional Territory.

This Protocol fulfills section 4.6 of the Forest and Range Opportunity Agreement (FRO) and will apply to those decisions and plans defined within the FRO as well as post operational plan decisions.

This Protocol applies to the provincial Crown lands in the Traditional Territory as defined in the FRO. The objectives of consultation are:

- a) To encourage to the greatest extent possible, sustainable forest management practices that incorporate the Aboriginal Interests of Ditidaht First Nation and
- b) To provide an opportunity for Ditidaht First Nation to provide the scope and nature of their Aboriginal Interests and how these interests may be affected by forest management/decisions in their Traditional Territory.

**Consultation principle**

The Parties acknowledge that the scope of the duty to consult and, where appropriate, accommodate, as described in the Supreme Court of Canada decision in *Haida*, exists on a spectrum and is proportionate to a preliminary assessment of the strength of the Aboriginal Interest(s) and to the seriousness of the potential effect the anticipated decision may have on the Aboriginal Interest(s). This spectrum will vary from a duty to provide notice, disclose information, and discuss issues in response to the notice, to deep consultation aimed at finding a satisfactory interim solution.

**Consultation in general**

- a) During the term of the FRO, Ditidaht First Nation agrees to fully participate in the consultation process as set out in this Protocol, and thereafter as the Parties may agree;



- b) During the term of the FRO, the Parties accept that this Protocol is intended to provide the Ditidaht First Nation with a process in which their Aboriginal Interests and impacts on these Aboriginal Interests can be identified to MFR;
- c) MFR agrees to initiate the consultation process at the earliest practical opportunity to provide the Ditidaht First Nation with a reasonable opportunity to engage in the consultation process before a decision is made concerning the forestry activity;
- d) Where no response is received within the Response Period, MFR may conclude that Ditidaht First Nation does not intend to respond or participate in the consultation process and a decision by MFR will proceed;
- e) This Protocol and its processes are not intended to constrain MFR or Licensee's relationship with Ditidaht First Nation and other opportunities may be taken to enhance the relationship;
- f) During the term of the FRO, MFR and Ditidaht First Nation will seek the participation of Licensees to discuss opportunities to clarify, refine and streamline the consultation process set out in the Protocol and may agree to amend the interim consultation process accordingly;
- g) Both Parties agree to meet every six months during the term of the FRO to discuss the effectiveness of the consultation activities under the Protocol.

## **Definitions**

- a) The definitions set out in section 1 of the FRO apply where those defined terms are used in this Protocol, and for greater certainty, will continue to apply in this Protocol after the expiry or termination of the FRO unless the Parties to this Protocol otherwise agree;
- b) For Operational Plans, the "Response Period" means a period of up to 60 days from the initiation of consultation outlined in this Protocol, where the initiation date is the date on which Ditidaht First Nation receives information regarding the proposed Operational Plan. 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.

- c) For Administrative Decisions, the “Response Period” means a period of up to 60 days from the initiation of consultation where the initiation date is the date on which Ditidaht First Nation is informed of the proposed Administrative Decision and has been provided with relevant information concerning the proposed decision. Where the Parties agree that additional information concerning the proposed Administrative Decision should be provided to Ditidaht First Nation, the Parties may extend the Response Period accordingly.
- d) Where MFR undertakes further consultation following licensee Operational Plan approval, the “Response Period” means a period of up to 30 days from the date the Ditidaht First Nation receives written correspondence from the MFR initiating the consultation. Where the Parties agree that additional information concerning the proposed activities should be provided to Ditidaht First Nation, the Parties may extend the Response Period accordingly.
- e) A reference to the “Ministry of Forests and Range” or “MFR” in this Protocol includes, as appropriate, a reference to a Minister, Deputy Minister, Regional Executive Director, Timber Sales Manager, District Manager or any of their designates. A reference to the “BC Timber Sales” or “BCTS” in this protocol includes, as appropriate, a reference to the Timber Sales Manager or any of their designate.

#### **Notices**

- a) Notification of initiation of consultation with appropriate information will be sent to:
  - Manager Natural Resources
  - Ditidaht First Nation
  - P.O. Box 340
  - Port Alberni, B.C.
  - V9Y 7M8
- b) Any Ditidaht First Nation replies to information sharing and consultation will be sent to the person who initiated the consultation or information sharing unless otherwise agreed by the Parties.

## **Consultation Process**

### **Administrative Decision Consultation**

#### **Step 1: MFR initiates consultation**

MFR will:

- a) provide a notification letter to the Ditidaht Natural Resources Manager, advising of the decision(s) required, the Response Period and person(s) undertaking the consultation on behalf of the MFR; and
- b) provide relevant information explaining the location, nature and extent of the proposed decision(s) in formats that will enable Ditidaht First Nation to assess the impacts of the proposed decision(s) on Ditidaht First Nation Aboriginal Interests including maps and other data.

#### **Step 2: Identification of Ditidaht First Nation Aboriginal Interests**

The Ditidaht First Nation or their designate will:

- a) following the provision to the Ditidaht First Nation by MFR of relevant information concerning the proposed Administrative Decision; Ditidaht First Nation will provide all reasonably available information, or the location of such information if it is in the public realm, that identifies the Ditidaht First Nation Aboriginal Interests and the potential impact on Ditidaht First Nation Aboriginal Interests that may result from the proposed decision;
- b) be responsible for conducting their own internal review of the information provided; and
- c) provide the information in Step 2(a) to the person initiating the consultation within the Response Period.

**Step 3: Consultation Meeting(s), additional Information sharing and extended Response Period.**

- a) If requested, MFR staff will meet one or more times during the Response Period with the Ditidaht First Nation to discuss the proposed decision(s). The expectation of the meeting(s) is to engage in discussions regarding:
  - (i) the information provided in steps 1 and 2;
  - (ii) Ditidaht First Nation Aboriginal Interests that may be impacted by the decision(s) and the nature of such impacts; and
  - (iii) the identification of opportunities for addressing the Ditidaht First Nation comments regarding Ditidaht First Nation Aboriginal Interests that may be impacted by the decision(s).
- b) In order to undertake steps 2 and 3(a), additional relevant information reasonably available to either of the Parties may be requested by either of the Parties prior to the MFR initiating step 4 in order to identify the Ditidaht First Nation Aboriginal Interests and how Ditidaht First Nation Aboriginal Interests may be impacted by the decision(s).
- c) If the information exchange by the Parties under steps 1, 2 and 3 has occurred throughout the Response Period and the Parties agree the Response Period should be extended, then the Ditidaht First Nation will respond within the extended Response Period.
- d) Ditidaht First Nation comments provided through steps 2 and 3 regarding Ditidaht First Nation Aboriginal Interests and how Ditidaht First Nation Aboriginal Interests may be impacted by the decision(s) will be communicated to the decision maker in Step 4.

**Step 4: Decision**

- a) Follow Decision Making Process outlined in this Protocol.

## Operational Plan Consultation

### **Step 1: Licensee or BC Timber Sales (BCTS) initiates information sharing**

The Parties agree that information sharing constitutes initiation of consultation on an Operational Plan.

Notwithstanding anything in this Protocol, the Parties acknowledge that Operational Plan proponents have obligations under the *Forest and Range Practices Act* with respect to advising and discussing Operational Plans with the Ditidaht First Nation where the plan is located within the Ditidaht First Nation's Traditional Territory.

The MFR will encourage the licensee or BCTS:

- a) to provide a notification letter to the Ditidaht Natural Resources Manager, advising of the operational plan commencing review and comment and the Response Period under the *Forest and Range Practices Act*,
- b) provide a copy of the proposed Operational Plan to the Ditidaht First Nation; and
- c) make reasonable efforts to meet with the Ditidaht First Nation to discuss the proposed Operational Plan.

MFR will:

- a) advise the Ditidaht First Nation in writing of the obligations of the licensee and BCTS under the *Forest and Range Practices Act* with respect to the proposed operational plan review and comment process near the commencement of the review and comment process on a proposed Operational Plan,
- b) provide a copy of or website access to the proposed Operational Plan if informed by the Ditidaht First Nation that they have not received a copy of the proposed Operational Plan from the licensee or BCTS and
- c) meet with the Ditidaht First Nation to discuss the proposed Operational Plan during the Response Period if requested.

## **Step 2: Identification of Ditidaht First Nation Interests**

The Ditidaht First Nation or their designate will:

- a) provide all reasonably available information, or the location of such information if it is in the public realm that identifies the Aboriginal Interests and the potential impact on these Aboriginal Interests that may result from the proposed Operational Plan within the Response Period,
- b) be responsible for conducting their own internal review of the information provided; and
- c) provide the information in Step 2(a) to the relevant licensee, BCTS or the District Manager within the Response Period.

## **Step 3: Submission of Operational Plan for a decision**

- a) When the licensee or BCTS submits the Operational Plan to the MFR for a decision, the MFR will advise the Ditidaht First Nation in writing
  - (i) that the Operational Plan has been submitted for a decision;
  - (ii) provide web site access to or a copy of the submitted Operational Plan;
  - (iii) advise the earliest date when a decision on the Operational Plan may be made;
  - (iv) request any new Aboriginal Interest information and how these interests may be impacted by the Operational Plan; and
  - (v) depending upon the comments provided by the Ditidaht First Nation under step 2; the Parties may undertake further consultation under step 4 prior to proceeding to step 5.

**Step 4: Further MFR consultation.**

- a) Where further consultation occurs and if requested, MFR staff will meet one or more times with Ditidaht First Nation to discuss the Operational Plan. The expectation of the meeting(s) is to engage in discussions regarding:
  - (i) the information provided in steps 1, 2 and 3;
  - (ii) the Ditidaht First Nation Aboriginal Interests that may be impacted by the Operational Plan and the nature of such impacts; and
  - (iii) the identification of opportunities for addressing the Ditidaht First Nation comments regarding Ditidaht First Nation Aboriginal Interests that may be impacted by the Operational Plan.
- b) Where further consultation occurs and the Parties agree upon a time period for the further consultation, then the Ditidaht First Nation will respond within that agreed upon time period.
- c) Where further consultation occurs, the Parties acknowledge that additional relevant information reasonably available to either of the Parties related to the Operational Plan may be requested by either of the Parties in order to identify the Ditidaht First Nation Aboriginal Interests, how Ditidaht First Nation Aboriginal Interests may be impacted by the Operational Plan, and opportunities to address Ditidaht First Nation's Aboriginal Interests that may be impacted by the Operational Plan.
- d) Where further consultation occurs, Ditidaht First Nation comments regarding Ditidaht First Nation Aboriginal Interests, how Ditidaht First Nation Aboriginal Interests may be impacted by the Operational Plan provided through steps 1, 2, 3 and 4, and possible options for addressing Ditidaht First Nation's Aboriginal Interests will be communicated to the decision maker in Step 5.

**Step 5: Decision**

- a) Follow Decision Making Process outlined in this Protocol.

**Following Operational Plan Approval**

**Licensee Operations**

### **Step 1: Information sharing meeting**

- a) Following approval of an Operational Plan and once annually thereafter, the MFR will propose a meeting with the licensee(s) and the Ditidaht First Nation to discuss:
  - (i) the licensee commitments for further information sharing regarding proposed harvesting and road construction contained within the Operational Plan;
  - (ii) the licensee expectations of further information sharing with the Ditidaht First Nation not specified in the Operational Plan prior to submission of a cutting permit and road permit application;
  - (iii) the District Manager expectations for reaching a decision that consultation has concluded prior to issuance of a cutting permit or road permit under that specific Operational Plan; and
  - (iv) prior to the issuance of a cutting permit or road permit associated with more than minor harvesting or road construction, the MFR will ensure that the Ditidaht First Nation will have reasonable opportunity to review all relevant site specific information reasonably available to the MFR with respect to the proposed harvesting and road construction if not provided by licensee.

### **Step 2: Where further consultation is determined appropriate prior to making a decision regarding the issuance of a road permit or cutting permit.**

- a) MFR will:
  - (i) provide a notification letter to the Ditidaht Natural Resources Manager, advising of the proposed timber harvesting or road construction and the Response Period;
  - (ii) if not provided by the licensee, provide all relevant and reasonably available information explaining the location, nature and extent of the proposed road or cutblock in formats that will enable Ditidaht to assess the impacts of the proposed road or cutblock on Ditidaht Aboriginal Interests including maps and other data to the extent that the MFR is in possession of the information or that the MFR can reasonably request from the licensee under the *Forest and Range Practices Act* or the *Forest Act*.
- b) The Ditidaht First Nation or their designate will:



- (i) provide all reasonably available information, or the location of such information if it is in the public realm, that identifies the Aboriginal Interests and the potential impact on these Aboriginal Interests that may result from the proposed road or cutblock;
- (ii) be responsible for conducting their own internal review of the information provided; and
- (iii) provide the information in Step 2 (b)(i) to the MFR within the Response Period.

**Step 3: Consultation Meeting(s), additional Information Sharing and extended Response Period.**

- a) Where further consultation is deemed necessary by both Parties, MFR staff will meet one or more times with Ditidaht First Nation within the Response Period to discuss a road or cutblock. The expectation of the meeting(s) is to engage in discussions regarding:
  - (i) the information provided in steps 2(a) and 2(b), Ditidaht First Nation Aboriginal Interests that may be impacted by the proposed cutblock or road and the nature of such impacts; and
  - (ii) the identification of opportunities for addressing the Ditidaht First Nation comments regarding Ditidaht First Nation Aboriginal Interests that may be impacted by the proposed road or cutblock.
- b) Where further consultation occurs and the Parties agree upon an extension to the Response Period, then the Ditidaht First Nation will respond within that extended Response Period.
- c) The Parties acknowledge that additional relevant information reasonably available to the Parties related to a road or cutblock may be requested by either of the Parties in order to identify the Ditidaht First Nation Aboriginal Interests and how Ditidaht First Nation Aboriginal Interests may be impacted by the road or cutblock.

**Step 4: Licensee submits road permit and cutting permit application to MFR.**

- a) The MFR will assess compliance of road permit or cutting permit application with respect to any aboriginal interest information sharing commitments outlined in the cultural heritage resource objective result or strategy contained within the approved Operational Plan.
- b) The MFR may receive new Ditidaht First Nation Aboriginal Interest information related to a road or cutblock through steps 1, 2 or 3 prior to making a decision regarding the issuance of a road permit or cutting permit.
- c) If the information provided in Step 4(a) and 4(b) meets the expectations of the District Manager identified in Step 1(a)(iii) and Step 1(a)(iv) ; MFR will proceed to step 5, If the District Manager expectations under Step 1(a)(iii) and Step 1(a)(iv) are not likely met, MFR will proceed to Step 2.
- d) The MFR will provide any new Ditidaht First Nation Aboriginal Interest information received under steps 1, 2, 3 or 4 to the Decision Maker for consideration prior to making a decision regarding the issuance of a road permit or cutting permit.

#### **Step 5: Decision**

- a) Follow Decision Making Process outlined in this Protocol.

### **BCTS Operations**

#### **Step 1 – Information sharing meeting**

- a) Following approval of an Operational Plan, BCTS will communicate with the Ditidaht First Nation :
  - (i) BCTS commitments for further information sharing contained within the Operational Plan;
  - (ii) BCTS expectations of further information sharing with the Ditidaht First Nation not specified in the Operational Plan prior to an invitation for a timber sale, issuing a road permit or constructing road under their Operational Plan; and
  - (iii) Timber Sales Manager’s expectations for concluding consultation prior to an invitation for a timber sale, issuing a road permit or constructing road under their Operational Plan.

#### **Step 2: BCTS actions.**

- a) BCTS will carry out further information sharing as communicated through Step 1.

**Step 3: Decision.**

- a) Follow Decision Making Process outlined in this Protocol.

**Decision Making Process**

The statutory decision maker, in making the decision, shall consider all relevant information provided by Ditidaht First Nation under this process and, in the context of the decision shall:

- a) consider the nature and scope of Ditidaht First Nation Aboriginal Interests and how these Interests may be impacted in relation to the contemplated decision;
- b) for Aboriginal Interests raised during the review of administrative decisions that cannot be addressed at the administrative decision stage, the decision maker will provide the Aboriginal Interest information to the appropriate future decision maker(s) for consideration prior to making further operational plan, post operational plan decisions or other relevant Administrative Decisions;
- c) consider any existing and new information regarding Aboriginal Interests and impacts the proposed decision may have on these Aboriginal Interests that is provided by the Ditidaht First Nation, and will ensure that the consultation process as described in this Protocol has been fulfilled;
- d) if the contemplated activity (ies) authorized by the proposed decision adversely impacts Ditidaht First Nation Aboriginal Interests, consider the potential impacts;
- e) if the contemplated activity (ies) adversely impacts Ditidaht First Nation Aboriginal Interests, determine what accommodation, if any, is appropriate;
- f) consider any options or recommendations provided by the Ditidaht First Nation for mitigation of the potentially adverse impacts; and
- g) inform Ditidaht First Nation in writing of the decision and will communicate a rationale, at the statutory decision maker's discretion, on how Ditidaht First Nation Aboriginal Interests were addressed. More particularly, if the statutory decision maker has determined that the

contemplated activity (ies) adversely impacts Ditidaht First Nation Aboriginal Interests, the statutory decision maker shall set out in the decision rationale any non economic accommodation, including mitigation measures taken.

### **Term**

- a) This Protocol will continue in effect between the Parties until such time as one or the other provides the other Party with 60 days notice of their intention to terminate and withdraw from this protocol.
- b) Upon expiry of the FRO, this Protocol will continue unless terminated upon request by either of the Parties, pursuant to section 6.3.

### **Amendments**

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

### **Dispute Resolution**

- a) This Protocol will follow the same dispute resolution process outlined in section 5 of the FRO, which will continue in effect after the termination or expiry of the FRO; unless the Parties otherwise agree.