

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

**Between:  
The Hesquiaht First Nation**

As Represented by  
Hereditary Chief Dominic Andrews  
Hereditary Chief Vince Ambrose,  
Hereditary Chief Eddie Jones,  
Hereditary Chief Michael Tom,  
Chief Councillor Joseph Tom Jr.  
(the "Hesquiaht")

**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 Hesquiaht 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 Hesquiaht First Nation has Aboriginal Interests within its Hahoulthee.

- F. The Parties wish to enter into an interim measures agreement in relation to forest resource development within the Hahoulthee.
- G. References in this Agreement to Crown Lands are without prejudice to the Hesquiaht 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 Hesquiaht First Nation on forest resource development activities proposed within the Hesquiaht First Nation Hahoulthee that may lead to an infringement of the Hesquiaht First Nation's Aboriginal Interests.
- I. The Hesquiaht First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest resource development activities proposed within the Hesquiaht First Nation's Hahoulthee that may lead to an infringement of the Hesquiaht First Nation's Aboriginal Interests.
- J. British Columbia and the Hesquiaht 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 Hesquiaht First Nation's Hahoulthee.
- 1.2. "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, or Woodlot Licence Plan that has a potential effect in the Hesquiaht First Nation's Hahoulthee.
- 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. “Hahoulthee” means the Hesquiaht First Nation’s Traditional Territory as shown on bold black on the map attached in Appendix A.
- 1.7. “Licensee” means a holder of a Forest Tenure or a Range Tenure.
- 1.8. “Interim Accommodation” means an accommodation provided in this Agreement, of the potential infringements of the economic component of the Hesquiaht First Nation’s Aboriginal Interests arising from or as a result of forest and range development, prior to the full reconciliation of these Interests. The revenue component reflects the present budget limitations of the Minister of Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.

## 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 Hesquiaht First Nation through economic diversification.
- 2.2. Provide interim payment and other economic benefits to the Hesquiaht First Nation through economic benefits related to forestry received by British Columbia from forest resource development.
- 2.3. Address consultation and provide Interim Accommodation, as set out in this Agreement.
- 2.4. Provide a period of stability to forest and/ or range resource development on Crown lands within the Hahoulthee of the Hesquiaht 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 Hesquiaht First Nation**

During the term of this Agreement, British Columbia will provide the following economic benefits to the Hesquiaht First Nation:

#### **3.1. Interim Payment**

- 3.1.1 During the term of this Agreement, British Columbia will make an interim payment to the Hesquiaht First Nation of approximately \$314,774 annually. Subject to section 3.1.4, payments will be made quarterly.
- 3.1.2 The funding commitment set out in section 3.1.1 is subject to the availability of annual appropriations for that purpose by British Columbia.
- 3.1.3 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.
- 3.1.4 Upon signing of this Agreement, the Hesquiaht First Nation will be paid the full revenues for one year (\$314,774). Subsequent payments will be made at the end of each quarter starting at the quarter ending June 30, 2007.
- 3.1.5 In the circumstances that the Hesquiaht provides notice under section 6.3. to terminate the agreement, and the termination date is after April 1, 2007 but prior to March 31,

2008, the Hesquiaht agrees to reimburse the Government of British Columbia an amount equivalent to the total of the payment they have received under section 3.1.4 minus the amount calculated under section 3.1.6 for the period of time between April 1, 2007 and the date that the agreement is terminated.

- 3.1.6 For the purposes of determining the amount that the Hesquiaht will reimburse to the Government of British Columbia under section 3.1.5, the amount will be determined by calculating the number of days between April 1, 2007 and the termination date, determining the percentage of the fiscal year that those days represent, converting that percentage into a dollar amount and deducting that dollar amount from the payment received by the Hesquiaht under 3.1.4.
- 3.1.7 Upon signing of this Agreement, the Government of British Columbia will provide a one time funding amount of \$124,394 which the Hesquiaht accepts in lieu of receiving any tenure opportunity pursuant to section 47.3 of the *Forest Act* through this Agreement.
- 3.1.8 If the Hesquiaht provides notice under section 6.3. to terminate the Agreement, then British Columbia may seek repayment of the amount provided under section 3.1.7 in its entirety or a portion thereof calculated by determining the percentage of the 5 year term the agreement has been in effect, multiplying that percentage by the total amount under 3.1.7 and deducting that dollar amount from the total amount.
- 3.1.9 British Columbia will not seek to direct or influence the expenditure of the funds provided to the First Nation.

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

- 4.1. The Hesquiaht 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 Hesquiaht 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, the Hesquiaht First Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Hesquiaht First Nation's Aboriginal Interests as an interim measure as a result of forest and range activities occurring within their Hahoulthee.
- 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 Hesquiaht 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 Hesquiaht First Nation's Aboriginal Interests as a result of forest and range activities occurring within their Hahoulthee.
- 4.5. Nothing in this Agreement restricts the ability of Hesquiaht First Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resources development within its Hahoulthee.
- 4.6. The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational Plans, which may affect the Hesquiaht First Nation's Aboriginal Interests within their Hahoulthee.
- 4.7. In developing such consultation processes, the Parties further agree to address consultation on Administration Decisions, Operational Decisions and Operational Plans through participation of the Hesquiaht First Nation in strategic level planning and policy development processes.
- 4.8. Unless agreed to otherwise, the Parties will use every reasonable effort to agree upon a consultation process within 3 months of signing this Agreement and, in helping to achieve this, will endeavour to develop draft processes to govern consultation under this Agreement within 45 days after signing this Agreement.

- 4.9. Where Hesquiaht First Nation is a member of a larger Tribal Nation, this Agreement does not limit the obligation of British Columbia to fulfill its consultation obligations with the Tribal Nation.

## 5.0 Dispute Resolution

- 5.1. If a dispute arises between British Columbia and the Hesquiaht 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 Hesquiaht First Nation.
- 5.3. If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## 6.0 Term and Termination

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

## 7.0 Renewal of the Agreement

- 7.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and

the Hesquiaht 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 Hesquiaht First Nation may provide for 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 Hesquiaht 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

**Hesquiaht First Nation**

Chief Councillor  
Hesquiaht First Nation  
PO Box 2000  
Tofino, B.C. V0R 1A0  
Telephone: 250-670-1100  
Facsimile: 250-670-1102

**11.0 Miscellaneous**

- 11.1. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 11.2. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 11.3. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 11.4. This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 11.5. The Province acknowledges and enters into this Agreement on the basis that the Hesquiaht First Nation has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Hesquiaht First Nation have not yet been determined. Broader processes engaged in to bring about reconciliation will result in a common

## Giving Effect to the New Relationship

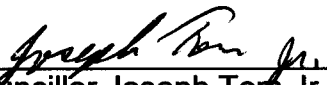
- 11.16. Notwithstanding this agreement, the Parties will, at the request of the Hesquiaht First Nation, enter into discussions, and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship, which may include, but are not limited to the following components:
- (a) a process for shared decision making about the land and resources;
  - (b) new mechanisms for land and resource protection;
  - (c) a process for the Hesquiaht First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Hesquiaht 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 Hesquiaht 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 Hesquiaht First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-f above.
- 11.17. 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.

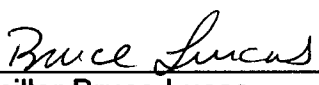
understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Hesquiaht First Nation.

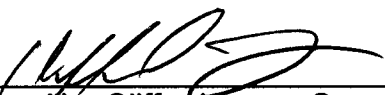
- 11.6. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
- 11.7. This Agreement does not address or affect any claims by the Hesquiaht First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement.
- 11.8. This Agreement and any decisions and or Licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 11.9. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 11.10. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 11.11. The applicable laws of British Columbia and Canada shall govern this Agreement.
- 11.12. British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Hesquiaht First Nation.
- 11.13. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Hesquiaht First Nation.
- 11.14. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 11.15. This Agreement does not exclude the Hesquiaht First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.


**Hesquiaht First Nation**

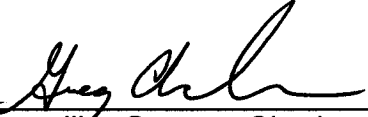
As represented by:

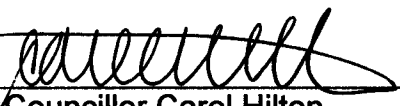
 Date: *May 24/07*  
Chief Councillor Joseph Tom Jr.


 *May 29, 2007*  
Councillor Bruce Lucas


 Date: *June 4 2007*  
Councillor Clifford Lucas Sr.

 Date: *May 29 - 2007*  
Councillor Constant Charleson

 Date: *June 4/07*  
Councillor Gregory Charleson Sr.

 Date: *MAY 24/07*  
Councillor Carol Hilton

 Date: *June 8/07*  
Councillor Felix Jackson

 Date: *June 8/07*  
Witness of Hesquiaht First Nation  
signatures

Signed on behalf of:

Hesquiaht ~~HAWI~~

*JA*  
First Nation

As represented by:

*Michael Tom*  
\_\_\_\_\_  
Hereditary Chief Michael Tom      Date: *June 8/07*

*Dominic Andrews*  
\_\_\_\_\_  
Hereditary Chief Dominic Andrews      Date: *June 8/07*

*Vince Ambrose*  
\_\_\_\_\_  
Hereditary Chief Vince Ambrose      Date: *June 8/07*

\_\_\_\_\_  
Date: \_\_\_\_\_  
Hereditary Chief Eddie Jones

*[Signature]*  
\_\_\_\_\_  
Witness of Hesquiaht HAWI  
signatures      Date: *June 8/07*

Signed on behalf of:

**Government of British Columbia**

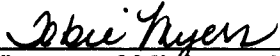
Date:

July 18/07



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Rich Coleman  
Minister of Forests and Range



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Witness of Minister signature

**APPENDIX A**  
**Map of Hesquiaht First Nation Hahoulthee (Traditional Territory)**

