

FOREST TENURE OPPORTUNITY "A&B" AGREEMENT

Forest Tenure Opportunity Agreement (the "Agreement")

Between:

Kitasoo/Xai'xais First Nation

As represented by
Chief and Council

and

Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Forests, Lands, and Natural Resource Operations
("British Columbia")

(collectively the "Parties")

WHEREAS:

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord.
- B. In 2009, in the spirit of the New Relationship and Transformative Change Accord, British Columbia and the Kitasoo/Xai'xais First Nation as part of the "Coastal First Nations" entered into a Reconciliation Protocol.
- C. This Agreement, is intended to assist the Parties in achieving progress towards the goals agreed to in the agreements stated above and in particular, help to address the conditions that contribute to poverty among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that the Kitasoo/Xai'xais First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Kitasoo/Xai'xais First Nation community's well-being.
- E. The Kitasoo/Xai'xais First Nation has Aboriginal Interests within its Traditional Territory.
- F. British Columbia and the Kitasoo/Xai'xais First Nation entered into a RP, which Agreement includes a commitment by British Columbia to invite the Kitasoo/Xai'xais First Nation to apply for a replaceable volume-based forest licence and a non-replaceable forest tenure opportunity.
- G. This Agreement is also intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the Traditional Territory of the Kitasoo/Xai'xais First Nation.

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THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1. "Aboriginal Interests" means aboriginal rights including aboriginal title .
- 1.2. "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.3. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in section 12(1) of the *Forest Act*.
- 1.4. "Licence" means a forest licence or a forestry licence to cut as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a forest tenure.
- 1.6. "Licence Area" means an area defined by agreement between the licensee and British Columbia, over which the licensee will have the right to apply for cutting authoritties to a specified level of harvest of Crown timber as defined in the *Forest Act*.
- 1.7. "RP" means the Reconciliation Protocol signed by the Kitasoo/Xai'xais First Nation and British Columbia dated December 10th, 2009.
- 1.8. "Representative" carries the same meaning as it is given in the *Forest Act*.
- 1.9. "Traditional Territory" means the Kitasoo/Xai'xais First Nation's claimed or asserted Traditional Territory as shown in bold black on the map attached in Appendix A.

2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. To provide an opportunity for the Kitasoo/Xai'xais First Nation to identify and pursue activities that will support the social, cultural and economic well-being of its members.
- 2.2. Promote and increase the Kitasoo/Xai'xais First Nation's participation in the forest sector by offering a forest tenure opportunity(s).
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on the Kitasoo/Xai'xais 's Aboriginal Interests.
- 2.4. Fulfill the commitment in section 1.1 of Schedule D of the RP to invite the Kitasoo/Xai'xais First Nation to apply for a replaceable, long term volume-based forest licence and section 1.6 of Schedule D of the RP to apply for a non-replaceable tenure opportunity(s).

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3. Forest Tenure Opportunity

- 3.1. After execution of this Agreement, the Kitsoo/Xai'xais First Nation, or its Representative, may apply on a non-competitive basis to the Regional Executive Director, in a form acceptable to the Regional Executive Director, for a replaceable, long-term volume based forest licence for up to 14,500 cubic metres annually and a non-replaceable tenure opportunity(s) for up to 48,300 cubic metres total volume within Tree Farm Licence 25, Block 5.

Information on the application requirements are included in the "Coast Area Application Procedures to Apply for Tenure under a Forest Tenure Opportunity Agreement" document, as amended from time to time, and is available upon request or at the following web address:

http://www.for.gov.bc.ca/ftp/RCO/external/publish/Coast_Area_Forest_Tenures_Public/Coast_Area_Forest_Tenures_FTOA_Tenure_Application_Procedures.pdf.

The Licence(s) will be comprised of:

Management Unit	Licence(s)	Volume Source	Allowable Annual Cut (AAC) (m ³ /yr)	Total Volume (m ³)	Term In Years
TFL 25, Block 5	Replaceable Forest Licence	Forestry Revitalization Act 2004	14,500		15
TFL 25, Block 5	Non-Replaceable Forest Licence	Unused Volume		48,300	5

- 3.2. If the Kitsoo/Xai'xais First Nation or its Representative already holds an existing Licence(s) that has or have been previously directly awarded under section 47.3 of the *Forest Act*, then the District Manager or Regional Executive Director may extend one or more of those existing Licence(s), authorizing additional volume or allowable annual cut (AAC) for those licences in the amounts identified under section 3.1.
- 3.3. The appointment of a Representative for the purpose of holding the licences (s) must be made in accordance with the *Forest Act*.
- 3.4. The Licence Area for the replaceable forest licence referenced in section 3.1 will be located in Tree Farm Licence 25, Block 5 that is within the Kitsoo/Xai'xais First Nation's traditional territory.

The Licence Area for the non-replaceable tenure opportunity(s) referenced in section 3.1 will be located in TFL 25, Block 5 that is within the Kitsoo/Xai'xais First Nation's traditional territory, as

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outlined on the map attached to this Agreement as Appendix B. It is expected that the proposed harvest areas within TFL 25, Block 5 will be further defined through discussions between the Kitasoo/Xai'xais First Nation and the TFL holder, Western Forest Products Inc.

- 3.5. The Licences(s) under section 3.1 of this Agreement will:
 - 3.5.1. Be a replaceable forest licence and a non-replaceable forest licence(s) as defined under the *Forest Act*.
 - 3.5.2. Include other terms and conditions required by law, including the condition that Kitasoo/Xai'xais First Nation must comply with this Agreement; and
 - 3.5.3. Include other terms and conditions as may be required by the Regional Executive Director.
- 3.6. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licence(s) referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, the Kitasoo/Xai'xais First Nation agrees that British Columbia has provided to the Kitasoo/Xai'xais First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on the Kitasoo/Xai'xais First Nation's Aboriginal Interests, in the form of the Licence(s) provided for under this Agreement.
- 3.8. If the Licence(s) entered into under this Agreement remain(s) in effect beyond the term of this Agreement, the Licence(s) will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.7 until the Licence(s) expires or is terminated.
- 3.9. Any Licence (s) entered into under this Agreement can only be transferred in accordance with the *Forest Act*.
- 3.10. Where the Kitasoo/Xai'xais First Nation has entered into a RP with British Columbia before the Effective Date of this Agreement which includes a commitment by British Columbia to invite the Kitasoo/Xai'xais First Nation to apply for a replaceable, long-term volume based forest licence and a non-replaceable tenure opportunity(s) and that commitment is fulfilled by the invitation in section 3.1 of this Agreement, termination or expiry of the RP will not affect any licence issued pursuant to this Agreement or affect the terms of this Agreement.

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4. Reporting of Tenure Information

- 4.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may require certain information from the Kitasoo/Xai'xais First Nation on what measurable benefits the Kitasoo/Xai'xais First Nation community has been able to achieve as a result of this Agreement.
- 4.2. The Kitasoo/Xai'xais First Nation agrees to cooperate with British Columbia in providing the information in a format acceptable to both Parties and in a manner that maintains the confidentiality of that information in accordance with applicable statutory requirements.

5. Kitasoo/Xai'xais First Nation Traditional Territory

- 5.1. British Columbia will use the map of Kitasoo/Xai'xais First Nation's Traditional Territory used in the "*Kitasoo/Xai'xais First Nation Forest Consultation and Revenue Sharing Agreement*" which map will be set out in this Agreement as Appendix A.

6. Economic and Operational Stability within Kitasoo/Xai'xais First Nation Traditional Territory

- 6.1. Each party will respond immediately to any discussions sought by the other Party regarding any events or actions that adversely affect the achievement of the purposes of this Agreement.

7. Term and Termination

- 7.1. The term of this Agreement is 15 years.
- 7.2. This Agreement will take effect on the date on which the last Party has executed it.
- 7.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - 7.3.1. expiry of its term;
 - 7.3.2. 90 days notice by either Party to the other Party; or
 - 7.3.3. mutual agreement of the Parties.
- 7.4. This Agreement may be terminated by British Columbia if the Licence(s) or any of them issued pursuant to section 3.1 is or are cancelled, surrendered or otherwise terminated under the *Forest Act*.
- 7.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 7.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

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- 7.6. If any of the Licence(s) entered into under this Agreement, are replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the longest of the terms of the replaced Licence(s).

8. Dispute Resolution

- 8.1. If a dispute arises between British Columbia and the KITASOO/XAI'XALS First Nation regarding the interpretation of a provision of this Agreement, the Parties or their Representatives will meet as soon as is practicable to attempt to resolve the interpretation dispute.
- 8.2. 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 KITASOO/XAI'XALS First Nation.
- 8.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation dispute.

9. Renewal of the Agreement

- 9.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met and if each party has received such authorizations as it may require to either renew this Agreement or negotiate a new agreement, British Columbia and the KITASOO/XAI'XALS First Nation will, negotiate a renewal of this Agreement or, where applicable, negotiate a new agreement.

10. Amendment of Agreement

- 10.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 10.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

11. Suspension or Cancellation by the Minister

- 11.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the Licence(s) issued under this Agreement, if the Minister or a person authorized by the Minister determines that the KITASOO/XAI'XALS First Nation is not in compliance with this Agreement.

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- 11.2. If this Agreement is terminated in accordance with section 7.3.2 or 7.3.3, the Minister may cancel the Licence(s) issued pursuant to this Agreement.
- 11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to the KITASOO/XAI'XAIS First Nation of any alleged contravention of this Agreement that may lead to the KITASOO/XAI'XAIS First Nation not being in compliance with this Agreement.

12. Entire Agreement

- 12.1. This Agreement, and any amendment to it, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

13. 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 set out 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. on that 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	KITASOO/XAI'XAIS First Nation
Deputy Minister	Chief Doug Neasloss
Ministry of Forests, Lands and Natural Resource Operations	KITASOO/XAI'XAIS First Nation
P.O. Box 9525, STN PROV GOVT	General Delivery
Victoria, B.C. V8W 9C3	Klemtu, B.C. V0T 1L0
Telephone: (250) 356-5012	Telephone: (250) 839-1255
Facsimile: (250) 953-3687	Facsimile: (250) 839-1256

- 13.4. 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 facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by the KITASOO/XAI'XAIS First Nation's Representative in respect to any licences issued under this Agreement.

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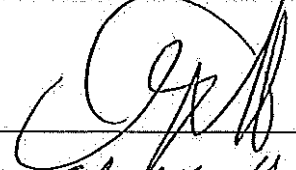
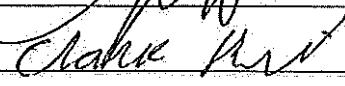
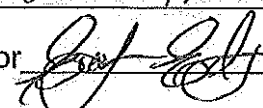
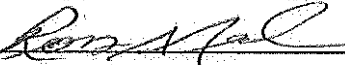
14. Miscellaneous

- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. British Columbia acknowledges and enters into this Agreement on the basis that Kitasoo/Xai'xais First Nation has Aboriginal Interests within their Traditional Territory but that the specific nature, scope or geographic extent of Aboriginal Interests of the Kitasoo/Xai'xais First Nation have yet to be determined.
- 14.4. This Agreement does not exclude the Kitasoo/Xai'xais First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.5. 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.
- 14.6. This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 14.7. 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.
- 14.8. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 14.9. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.10. The laws of British Columbia will govern this Agreement.
- 14.11. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Kitasoo/Xai'xais First Nation.
- 14.12. The appendices to this Agreement form part of the Agreement.

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Signed on behalf of:

Klitasoo/Xai'xais First Nation

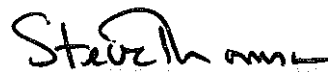
Chief  Date Dec 12, 2012
Councillor  Councillor 
Councillor Dianna Duncan Councillor _____
Councillor  Councillor _____
Councillor _____ Councillor _____


Witness of Klitasoo/Xai'xais First Nation signatures

Signed on behalf of:

British Columbia

Date March 7 2013

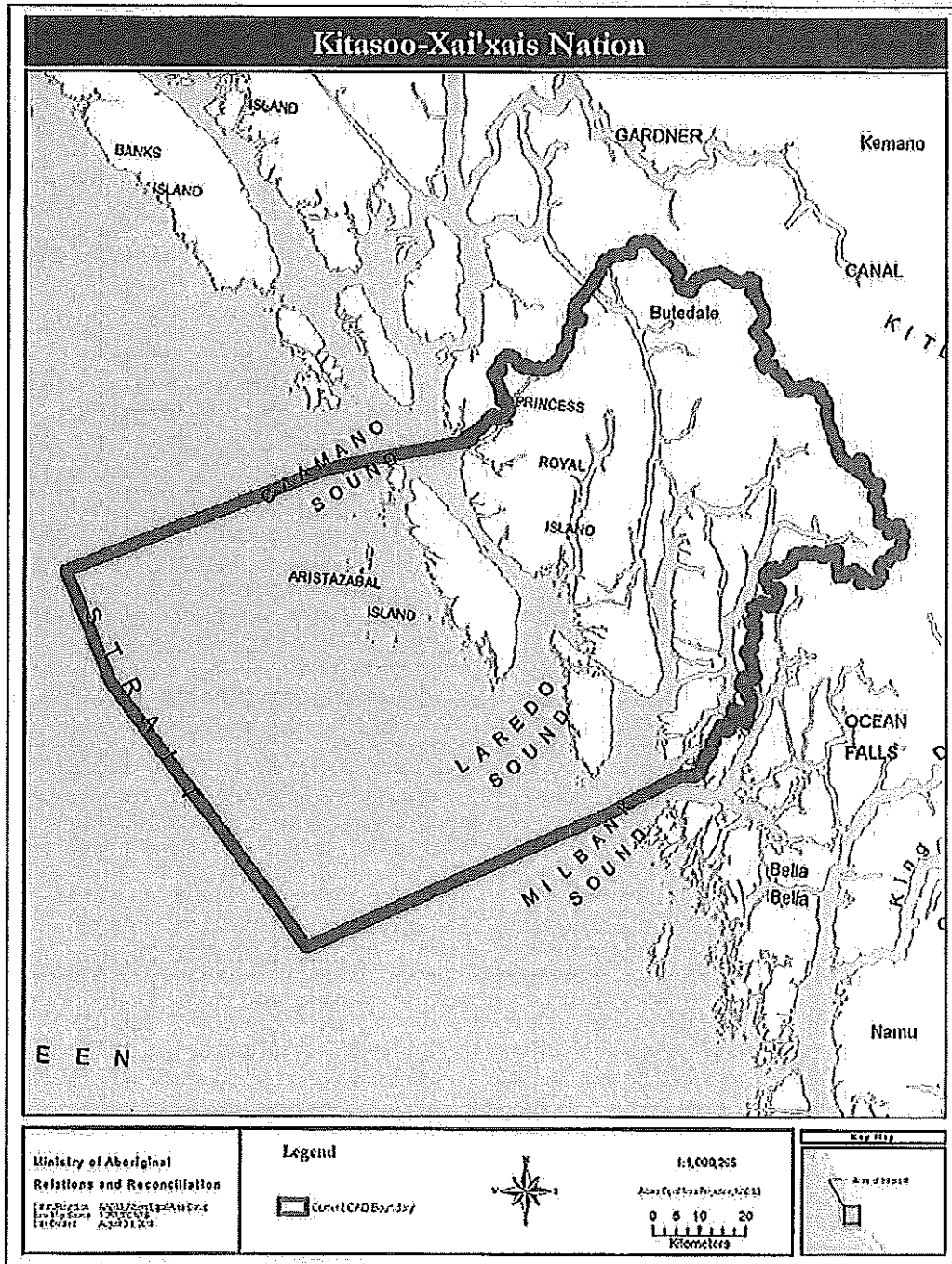

Steve Thomson
Minister of Forests, Lands and Natural Resource Operations


Witness of Minister Signature

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APPENDIX A

Map of Kitasoo/Xai'xais First Nation Traditional Territory



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APPENDIX B

Licence Area Map for Non-Replaceable Forest Opportunity(s)

