

**Lax Kw'alaams Indian Band  
Forestry/Range Interim Measures Agreement  
(the "Agreement")**

**Between:**

***Lax Kw'alaams Indian Band and Allied Tsimshian Tribes Association***

As represented by  
Gary Reece  
Chief Councillor  
Lax Kw'alaams Band Council  
And  
James Bryant  
Allied Tsimshian Tribes Association

**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:**

- The *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* have asserted aboriginal rights and title ("aboriginal interests") within their asserted traditional territory as shown in bold black on the map attached in Appendix A.
- The *Lax Kw'alaams Indian Band* is the legally-recognized entity pursuant to the Indian Act that represents the financial and legal interests of its members. The *Allied Tsimshian Tribes Association* represents the cultural and traditional interests of nine traditional tribes whose members constitute the members of the *Lax Kw'alaams Indian Band*. The *Allied Tsimshian Tribes* have directed that the *Lax Kw'alaams Indian Band* is the proper legal entity which will administer benefits under this agreement.
- The Government of British Columbia and *Lax Kw'alaams Indian Band* have interests in relation to forest resource development and related economic benefits arising from this development within *the Lax Kw'alaams Indian Band Traditional Territory*.

- The Government of British Columbia wishes to consult with the *Lax Kw'alaams Indian Band* on forest resource development activities proposed within the *Lax Kw'alaams Indian Band* Traditional Territory.
- *Lax Kw'alaams Indian Band* wishes to participate in consultation initiated by the Government of British Columbia or the holder of an agreement entered into under the *Forest Act* or *Range Act* in relation to forest resource development activities proposed within the *Lax Kw'alaams Indian Band* Traditional Territory, that may lead to the infringement of *Lax Kw'alaams Indian Band* aboriginal interests.
- The *Lax Kw'alaams Indian Band* and British Columbia have an interest in seeking workable interim accommodations of *Lax Kw'alaams* interests as a result of forest development activities proposed within the *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* Traditional Territory that may lead to the infringement of *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* aboriginal interests.
- This agreement is not intended to change or affect the positions either Party has, or may have, regarding their jurisdictions and authorities.
- This agreement does not exclude the *Lax Kw'alaams Indian Band* from accessing other forestry economic opportunities or benefits which may be available from time to time.
- The Government of British Columbia and the *Lax Kw'alaams Indian Band* 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 Plan" means a Forest Development Plan, a Forest Stewardship Plan or Range Plan as defined in provincial legislation describing forest practices and all forest or range development activities that are carried out pursuant to those plans in the Traditional Territory, including all roads and site plans.
- 1.2 "Administrative Decision" means a decision made by a Ministry of Forests statutory decision maker related to forest resource development, or forest tenure administration 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 and apportionment decisions;
  - 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;
  - 1.2.6 reallocation decisions under the *Forestry Revitalization Act*; and;
  - 1.2.7 the issuance, disposition or subdivision of a Forest Tenure.
- 1.3 "Forest Tenure" means an agreement issued under the Forest or Range Act.
- 1.4 "Forestry decision" means an Operational Plan or Administrative Decision.
- 1.5 "Aboriginal Interests" means asserted aboriginal rights and/or aboriginal title.
- 1.6 "Traditional Territory" means the *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* asserted traditional territory as shown on bold black on the map attached in Appendix A.

- 1.7 “Economic component of aboriginal interests” as used in this agreement is intended to refer to the financial or commercial aspects rather than the cultural component of aboriginal interests which includes measures to protect cultural values and the opportunity to undertake traditional practices of aboriginal peoples in the forest.

## **2.0 Purpose:**

- 2.1 The purpose of this Agreement is to:

- 2.1.1 implement the order of the British Columbia Supreme Court, as set out in the judgement of Tysoe, J. in *Yal et al v. Minister of Forests, Skeena Cellulose Inc. and NWBC Timber and Pulp Ltd.* 2002 BCSC 1701;
- 2.1.2 set out measures to address *Lax Kw’alaams Indian Band* and *Allied Tsimshian Tribes* aboriginal interests regarding forestry decisions within the *Lax Kw’alaams Indian Band* and *Allied Tsimshian Tribes* traditional territory during the term of this Agreement;
- 2.1.3 assist in the revitalization of the forest economy in northwest British Columbia by providing opportunities for increased participation in the forest economy and a period of stability to forest and range resource development and operations within the *Lax Kw’alaams Indian Band* and *Allied Tsimshian Tribes* Traditional Territory over the term of this Agreement while longer term interests are addressed through other agreements or processes.

## **3.0 Economic Benefits to Lax Kw’alaams Indian Band**

### **3.1 Invitation to apply for a licence**

- 3.1.1 The Government of British Columbia will provide forest tenure to the *Lax Kw’alaams Indian Band* to address workable interim accommodation of *Lax Kw’alaams* economic interests during the term of this Agreement related to forestry decisions to be made over the term of this Agreement.

- 3.1.2 Upon execution of this agreement by the Parties, the Minister will invite the *Lax Kw'alaams Indian Band* to apply for a non-replaceable forest licence, or similar form of agreement, under the *Forest Act* to harvest a total of up to 135,000 cubic meters from undercut in the Kalum Forest District over a two to five year term. The Lax Kw'alaams will choose the length of that term, in consultation with Kalum Forest District staff.
- 3.1.3 Upon execution of this Agreement by the parties and as soon as sufficient volume of timber is available for disposition as a result of the implementation of the timber reallocation process on the Coast as provided in the Forestry Revitalization Act SBC 2003 c.17, the Minister will invite the *Lax Kw'alaams Indian Band* to apply for a forest licence in the North Coast Timber Supply Area under the *Forest Act* to harvest an additional volume such that the total volume available over the 5 year term of this Agreement under both the Kalum and North Coast licences is 650,000 cubic metres.
- 3.1.4 The invitation to apply and any licence(s) entered into as a result of the invitation to apply under this agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.
- 3.1.5 The invitation to apply under this agreement will contain terms and conditions required by the Minister of Forests, including the requirement that *the Lax Kw'alaams Indian Band* submit, with its application for the licence, a business plan that is acceptable to the Minister.
- 3.1.6 Upon execution of this Agreement, British Columbia will provide *Lax Kw'alaams Indian Band* with \$40,000 under the Economic Measures Fund (through an Economic Measures Agreement with *Lax Kw'alaams Band Council*) for the development of a tenure business plan.
- 3.1.7 Any licence entered into as a result of the invitation to apply under this Agreement will:
- 3.1.7.1 be for a term of no longer than 5 years as determined by the Minister,
  - 3.1.7.2 not be transferable or divisible without the consent of the Minister,

3.1.7.3 not be replaceable as defined in the *Forest Act*, but the licence will contain a renewal provision by which the Minister may invite a new licence upon expiry of the licence referred to in 3.1.2, at no lesser Allowable Annual Cut save for any proportional adjustment required in the event of any reduction in the AAC of the North Coast Timber Supply Area. The renewal is subject to:

- (i) the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* having substantially performed their obligations under this Agreement;
- (ii) the licence holder having substantially performed its obligations under the licence referred to in 3.1.2; and
- (iii) the renewal or replacement of this agreement by the Parties.

3.1.7.4 contain other terms and conditions required by law, including the condition that the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* must comply with this agreement, and,

3.1.7.5 include other terms and conditions related to administration of the licence as may be required by the regional manager.

3.1.8 The Parties will agree to the operating area prior to making application for the non-replaceable forest licence.

3.1.9 The operating area will be within *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* Traditional Territory in the North Coast Timber Supply Area.

3.1.10 The Parties will strive to ensure that the assigned operating areas for the licence in the North Coast Timber Supply Area has a representative timber profile and logging chance relative to other licensees and B. C. Timber Sales taking into account the quality of timber, access and commercial viability.

## **3.2 Revenue Sharing**

3.2.1 The Government of British Columbia will provide a revenue sharing economic benefit to the *Lax Kw'alaams Indian Band* totaling \$1,370,000 annually to address workable interim accommodation of *Lax Kw'alaams* economic interests during

the term of this Agreement related to logging and forestry impacts from forestry decisions to be made over the term of this Agreement.

3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount will be used for each fiscal quarter or part of that this Agreement is in effect. Payments will be made quarterly.

3.2.3 Subject to the Parties entering into this Agreement by September 15, 2003, the effective date for calculating the Lax Kw'alaams share of forestry revenues will be April 1, 2003.

3.2.4 Revenue sharing economic benefit payments will be subject to annual appropriations for that purpose by the Province.

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

- 4.1 The Government of British Columbia will consult with the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* in a timely manner on all Operational Plans that will potentially infringe *Lax Kw'alaams Indian Band's and Allied Tsimshian Tribe's* aboriginal interests within the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* Traditional Territory.
- 4.2 The *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* will fully participate in a timely manner in the review of all Operational Plans submitted to them within the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* Traditional Territory by the Ministry of Forests, and by the holder of an agreement entered into under the *Forest Act* or *Range Act*.
- 4.3 In reviewing and responding to an operational plan submitted to them, *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* will, in a timely manner, provide the applicable party with all reasonably available information about their aboriginal interests potentially affected by the development activities proposed in the operational plan other than the economic component of those interests addressed in paragraphs 3.1 and 3.2.
- 4.4 For the purposes of this section "timely manner" is defined as 60 days.
- 4.5 For the purposes of this section "workable accommodation" means modifications made to "Operational Plans" in response to concerns

raised by the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* and may include spatial or temporal changes, different harvesting systems and similar changes but does not include any measures with respect to the economic component of Aboriginal Interests.

- 4.6 British Columbia will seek workable accommodation with the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* where Lax Kw'alaams aboriginal interests are likely to be infringed as a result of Operational Plans within the Traditional Territory of *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* for the term of the Agreement.
- 4.7 Upon executing this Agreement, the parties will initiate discussions toward a protocol that sets out basic responsibilities and timeframes for an efficient and effective consultation process for future forestry operational plans and such a protocol, when agreed to by the parties, may serve to vary or amend section 4.4.

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

- 5.1 *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* agree that the Government of British Columbia has fulfilled its duties to consult and seek workable interim accommodation with *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* with respect to the economic component of potential infringements of aboriginal interests from logging operations and related activities authorized by or resulting from the following Administrative Decisions during the term of this Agreement
- the Minister of Forests' consent to the transfer of shares of Skeena Cellulose Inc. to NWBC Timber and Pulp Ltd.;
  - the Regional Manager's decision respecting cut control penalties (AAC reductions) for New Skeena's Forest Products' forest tenures (TFL 1, FL A16835);
  - the Minister of Forests' decision respecting disposition of undercut volumes associated with New Skeena Forest Products' forest tenures (TFL 1, FL A16835);
  - the Minister of Forests' consent to the replacement of TFL 1 as required under the *Forest Act*; and, the Regional Managers' consent to the replacement of forest licence A16835;



- and any Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement related to the Traditional Territory of the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes*.
- 5.2 The Government of British Columbia has no duty to consult further in respect of the Administrative Decisions described in section 5.1 during the term of this Agreement
- 5.3 The Government of British Columbia will include the *Lax Kw'alaams Indian Band* in Timber Supply Review processes for the North Coast Timber Supply Area, Kalum Timber Supply Area and Tree Farm Licence 1.
- 5.4 The *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* agree to participate in a timely manner in the Timber Supply Review processes and will provide all reasonably available information about their aboriginal interests potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act* within *Lax Kw'alaams Indian Band's and Allied Tsimshian Tribes* Traditional Territory for the term of the Agreement.
- 5.5 For the purposes of this section "timely manner" is defined as 60 days.
- 5.6 Nothing in this Agreement shall be interpreted to authorize any infringement which may occur following the termination of this Agreement.

## **6 Land and Resource Stability**

- 6.1 If, during the term of this Agreement, *the Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* challenge, by way of legal proceedings or otherwise, the sufficiency or appropriateness of the benefits set out in this Agreement as substantially addressing and providing workable accommodation of the economic component of Lax Kw'alaams aboriginal interests with regard to Administrative Decisions and Operational Plans, the Province may suspend or terminate this Agreement.

## **7.0 Dispute Resolution**

- 7.1 If a dispute arises between the Government of British Columbia and the *Lax Kw'alaams Indian Band and Allied Tsimshian Tribes* regarding the interpretation of a provision of this agreement, or the obligation of a party under this agreement, the parties or their duly

appointed representatives will meet as soon as is practicable to resolve the dispute.

- 7.2 The *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* will not support, condone or encourage any acts of unlawful interference of *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* members with activities related to timber harvesting or other forestry and range economic activities covered by this Agreement, and will use their best efforts to assist the Government of British Columbia to resolve promptly any disputes that may arise in the event that such acts of interference by *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* members occur.

## **8.0 Term**

- 8.1 This Agreement will take effect on the date that the Parties have executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or
  - 8.2.2 the coming into effect of a treaty; or,
  - 8.2.3 the ratification of a treaty agreement in principle; or,
  - 8.2.4 the mutual agreement of the parties;
  - 8.2.5 at the option of the Lax Kw'alaams, in the event that the Government of British Columbia fails to deliver the revenue sharing pursuant to s. 3.2 or the Minister fails to grant the licences pursuant to s. 3.1, or the economic benefits are otherwise withdrawn, suspended or cancelled.

## **9.0 Suspension or Cancellation of Economic Benefits**

- 9.0 Without limiting the actions that may be taken by the Minister or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend the revenue sharing economic benefit and, in accordance with the terms of the non-replaceable forest licence entered into as a result of the invitation to apply under this agreement, may suspend or terminate the non-replaceable forest licence or alternate form of agreement if the

Minister determines that the *Lax Kw'alaams Indian Band* or Allied Tsimshian Tribes are not in substantial compliance with this agreement.

## **10.0 Renewal of the Agreement**

- 10.1 If the terms and conditions of this Agreement are being met, and if the Agreement has not been superceded by a treaty or other process, the Parties will enter into negotiations for a renewal of this Agreement prior to its expiry.
- 10.2 Any subsequent forestry/range interim measures agreement between British Columbia and *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* may include a forest tenure and such other terms, conditions and revenue sharing economic benefits as agreed by the Parties.
- 10.3 The revenue sharing set out in this agreement reflects an amount that the Government of British Columbia is willing to pay as an interim measure and the *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* have agreed to accept as an interim measures only for the term of this Agreement.
- 10.4 The Parties agree to work in good faith to reach a full reconciliation of the *Lax Kw'alaams Indian Band* and *Allied Tsimshian Tribes* and the Government of British Columbia's interests in the asserted Traditional Territory.
- 10.5 The Parties acknowledge that the *Lax Kw'alaams* have an on-going desire to conduct sustainable forest management and harvesting using an area-based tenure within their Traditional Territory.

## **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.

## **12.0 Notice**

12.1 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.

12.2 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.

12.3 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) 953-3687

### **Lax Kw'alaams Indian Band**

Chief Councillor,  
Lax Kw'alaams Band Council  
206 Shashaak Street  
Port Simpson, BC  
V0V 1H0  
Telephone: (250) 625 3293  
Facsimile: (250) 625 3246

## **Allied Tsimshian Tribes Association**

James Bryant  
Allied Tsimshian Tribes Association  
c/o Lax Kw'alaams Indian Band  
206 Shashaak Street  
Port Simpson, B.C.  
V0V 1H0

### **13.0 Miscellaneous**

- 13.1 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.
- 13.2 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 recognize, affirm, or deny the existence of aboriginal rights, including aboriginal title, or treaty rights.
- 13.3 This Agreement will not limit the positions that a Party may take in future negotiations or court actions other than as set out in paragraph 6.
- 13.4 This Agreement shall not be interpreted as addressing any infringements other than infringements that may result during the term of this Agreement from decisions contemplated by this Agreement.
- 13.5 This Agreement does not address or affect in any manner whatsoever any claims by the *Lax Kw'alaams Indian Band* and the *Allied Tsimshian Tribes* arising from past interference with its Aboriginal Interests.
- 13.6 The parties differ on the question of the existence or extent of any duty or duties of consultation and/or accommodation owed by forest licensees to the *Lax Kw'alaams Indian Band* and the *Allied Tsimshian Tribes*. 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 forest licensees or other third parties to the *Lax Kw'alaams Indian Band* and *Allied*

*Tsimshian Tribes* or whether this Agreement serves to fulfill or obviate any such duty or duties.

- 13.7 Any reference to a statute in this agreement includes all regulations made under that statute and any amendments or replacement of that statute.
- 13.8 There will be no presumption that any ambiguity in any of the terms of this agreement should be interpreted in favour of either party.
- 13.9 The applicable laws of British Columbia and Canada shall govern this agreement.

Signed on behalf of:  
Lax Kw'alaams Indian Band

Date: Oct 10/03

Barry Luer  
Chief Councillor

[Signature]  
Witness

Signed on behalf of:  
Allied Tsimshian Tribes Association

Date: Oct 10/03

James Bryant  
Chief Councillor

[Signature]  
Witness

John [Signature]  
Ginaxangiik Tribe  
Howard [Signature]  
Git'tsiis Tribe

Jack White  
Gitandoah Tribe

Ronald Wesley <sup>Marvin Wesley</sup>  
Gitwilgiots Tribe

Randy Burdownd  
Gitlan Tribe

Wulfred Sakey  
Monique Ryan <sup>Diiks-marett Debi</sup>  
Gispaxloa's Tribe

Victoria Reeco <sup>Terri W. Kim</sup>  
Gitnadoiks Tribe

E. Mele Alepsee  
Gitlutzau Tribe

[Signature]  
Gitzaxlaal Tribe

Signed on behalf of:  
Government of British Columbia

Date: Sept. 25, 2003

[Signature]  
Minister of Forests

[Signature]

**APPENDIX "A"**

**THE ASSERTED TRADITIONAL TERRITORY  
OF THE LAX KW'ALAAMS INDIAN BAND and ALLIED TSIMSHIAN  
TRIBES ASSOCIATION**