

**Lower Nicola Indian Band  
Interim Agreement on Forest & Range Opportunities  
(the "Agreement")**

**Between:  
The Lower Nicola Indian Band**

As Represented by  
Chief and Council  
(the "Lower Nicola Indian Band")

**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 Lower Nicola Indian Band has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.
- E. The Lower Nicola Indian Band has Aboriginal Interests within its Traditional Territory.
- F. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development within the Traditional Territory.

- G. References in this Agreement to Crown Lands are without prejudice to the Lower Nicola Indian Band's Aboriginal title and/or rights claims over those lands.
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Lower Nicola Indian Band on forest and/or range resource development activities proposed within the Lower Nicola Indian Band Traditional Territory that may lead to an infringement of the Lower Nicola Indian Band's Aboriginal Interests.
- I. The Lower Nicola Indian Band intends to participate in any consultation with British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Lower Nicola Indian Band's Traditional Territory that may lead to an infringement of the Lower Nicola Indian Band's Aboriginal Interests.
- J. British Columbia and the Lower Nicola Indian Band wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. 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 Lower Nicola Indian Band's Traditional Territory.
- 1.2. "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan that has a potential effect in the Lower Nicola Indian Band'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 or a Range Tenure;
- The adjustment of Animal Unit Months in a Range Tenure;
- The extension of the term of, or replacement of a Forest and/or Range 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* as per 12 (1).
- 1.6. "Range Tenure" means an agreement granting rights over Crown range as described in provincial legislation.
- 1.7. "Traditional Territory" means the Lower Nicola Indian Band's Asserted Traditional Territory as shown on bold black on the map attached in Appendix A.
- 1.8. "Licensee" means a holder of a Forest Tenure or a Range Tenure.
- 1.9. "Interim Accommodation" means an accommodation provided in this Agreement, of the potential infringements of the economic component of the Lower Nicola Indian Band'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. 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 Lower Nicola Indian Band through economic diversification.
- 2.2. Provide interim payment and other economic benefits to the Lower Nicola Indian Band through a forest tenure opportunity and/ or 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 Traditional Territory of the Lower Nicola Indian Band during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

## 3. Economic Benefits to the Lower Nicola Indian Band

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Lower Nicola Indian Band:

### 3.1. Forest Tenure

- 3.1.1. For the purposes of the provisions of section 3.1, Licence includes a non replaceable Forest Licence.
- 3.1.2. After the execution of this Agreement, the Minister will invite the Lower Nicola Indian Band, or such legal entity as the Lower Nicola Indian Band has appointed as its representative to hold the licence to apply under the *Forest Act* for a non replaceable forest licence (the "Licence") on a non-competitive basis for up to 51,372 cubic meters (28,540m<sup>3</sup> Bill 28 volume and 22,832m<sup>3</sup> MPB volume) annually in the Merritt Timber Supply Area(s).
- 3.1.3. For greater certainty, the maximum volume that may be available under the Licence referred to in Section 3.1 will be up to 256,860m<sup>3</sup> cubic meters over five years.

- 3.1.4. The Parties will strive to ensure that the assigned operating area for the Licence in the Merritt Timber Supply Area has 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 Lower Nicola Indian Band making an application for the Licence, the Parties will work together to identify the location of an operating area for the Licence, which to the extent that it is operationally feasible will be within the Traditional Territory.
- 3.1.5. Licence entered into as a result of an invitation under section 3.1 will be for a term of five years.
- 3.1.6. If the Licence remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be an Interim Accommodation until the Licence expires or is terminated.
- 3.1.7. The Minister may invite the Lower Nicola Indian Band to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

### 3.2. Range Tenure

If Crown range vacancy is available for disposition to the Lower Nicola Indian Band, then subject to the *Range Act*, the Cascades District Manager may be directed to enter into a Range Permit, within Lower Nicola Indian Band Traditional Territory to the Lower Nicola Indian Band for up to 500 Animal Unit Months (AUMs).

### 3.3 Interim Payment

- 3.3.1 During the term of this Agreement, British Columbia will make an interim payment to the Lower Nicola Indian Band of approximately \$475,670.00 annually.
- 3.3.2 The funding commitment set out in section 3.3.1 is subject to the availability of annual appropriations for that purpose by British Columbia.
- 3.3.3 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.

- 3.3.4 Upon signing of this Agreement, the Lower Nicola Indian Band will be paid the full revenues (four full quarter payments) for one year (\$475,670.00). Subsequent payments will be made at the end of each quarter starting March 31, 2008.
- 3.3.5 In the circumstances that the Lower Nicola Indian Band provides notice under section 6 to terminate the agreement, and the termination date is after March 31, 2008 but prior to April 1, 2009, the Lower Nicola Indian Band agrees to reimburse British Columbia an amount equivalent to the total of the payment they have received under section 3.3.4 minus the amount calculated under section 3.3.6 for the period of time between March 1, 2008 and the date that the agreement is terminated.
- 3.3.6 For the purposes of determining the amount that the Lower Nicola Indian Band will reimburse to British Columbia under section 3.3.5, the amount will be determined by calculating the number of calendar days between January 1, 2008 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 Lower Nicola Indian Band under section 3.3.4.
- 3.3.7 British Columbia will not seek to direct or influence the expenditure of the funds provided to the Lower Nicola Indian Band.
- 3.3.8 The interim payment set out in this Agreement reflects an amount that British Columbia, through the Minister of Forests and Range is willing to pay as an interim measure.

#### **4. Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans**

- 4.1. The Lower Nicola Indian Band 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 Lower Nicola Indian Band'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 Lower Nicola Indian Band agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Lower Nicola Indian Band's Aboriginal Interests as an interim measure as a result of forest and range 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 Lower Nicola Indian Band 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 Lower Nicola Indian Band's Aboriginal Interests as a result of forest and range activities occurring within their Traditional Territory.
- 4.5. Nothing in this Agreement restricts the ability of Lower Nicola Indian Band to seek additional accommodation for impacts on its Aboriginal Interests from forest resources development within its Traditional Territory.
- 4.6. The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational Plans, which may affect the Lower Nicola Indian Band's Aboriginal Interests within their Traditional Territory. Appendix B provides a consultation process framework that will be followed in the event that the Parties cannot jointly agree on a consultation protocol.
- 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 Lower Nicola Indian Band 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 Lower Nicola Indian Band 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. Dispute Resolution**

- 5.1. If a dispute arises between British Columbia and the Lower Nicola Indian Band 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 Lower Nicola Indian Band.
- 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. Term and Termination**

- 6.1. The term of this Agreement is five 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. 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 Lower Nicola Indian Band 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 Lower Nicola Indian Band 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. 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 Lower Nicola Indian Band may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

## 9. 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. 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

### **Lower Nicola Indian Band**

Lower Nicola Indian Band  
181 Nawishaskin Lane - Shulus  
Merritt, BC  
V1K 1N2  
Telephone: (250) 378 5157  
Facsimile: (250) 378 6188

## 11. 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 Lower Nicola Indian Band has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Lower Nicola Indian Band 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 Lower Nicola Indian Band.
- 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 Lower Nicola Indian Band 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 Lower Nicola Indian Band.
- 11.13. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Lower Nicola Indian Band.
- 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 Lower Nicola Indian Band from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.

## **12. Giving Effect to the New Relationship**

- 12.1. Notwithstanding this agreement, the Parties will, at the request of the Lower Nicola Indian Band, 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 Lower Nicola Indian Band's land use planning at all spatial scales and for reconciliation of Crown and the Lower Nicola Indian Band'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 Lower Nicola Indian Band and resourcing for British Columbia to develop and implement new frameworks for shared land and resource decision making and other components listed above;
  - (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Lower Nicola Indian Band to be reserved from resource development pending the

outcome of negotiation of agreements referred to in a-e above;  
and


- (g) Mountain Pine Beetle infestation in Lower Nicola Indian Band's Traditional Territory

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:

**Lower Nicola Indian Band**

Chief  Date: 26 Mar 08

Councillor  Councillor Clyde Sam

Councillor  Councillor \_\_\_\_\_


Councillor  Councillor 

Councillor \_\_\_\_\_

\_\_\_\_\_  
Witness of Lower Nicola Indian Band signatures

Signed on behalf of:

**Government of British Columbia** Date: APR 28 2008



Rich Coleman  
Minister of Forests and Range

  
Witness of Minister signature

December 17, 2007

**APPENDIX A**  
**Map of Lower Nicola Indian Band Asserted Traditional Territory**

December 17, 2007

## **Appendix B Consultation Framework**

The following consultation framework will be applied to the extent possible to decisions and processes that were initiated prior to, and are underway at the time of, signing this agreement.

The Parties will establish a Joint Consultation Committee (the "Committee") which will be comprised of representatives of Lower Nicola Indian Band and a matching number of representatives from the Ministry of Forests and Range, including representatives from both the Cascades Forest District as well as the Southern Interior Forest Region, depending on the nature of the issues to be addressed at any given meeting. The purpose of the Committee is to improve understanding on the part of both Lower Nicola Indian Band and British Columbia as to the nature of Lower Nicola Indian Band's concerns with respect to impacts of forestry and range decisions and operations on Lower Nicola Indian Band Aboriginal Interests and the opportunities for British Columbia to address these concerns.

**The duties of the Committee shall be:**

- 1) To develop, update and amend as needed, mutually agreed, detailed consultation processes for specific categories of decisions.**
  - a) As part of developing and maintaining detailed consultation processes, British Columbia will provide to Lower Nicola Indian Band a draft consultation matrix on an annual basis listing all proposed Administrative and Operations Decisions and who the decision makers are for each forestry and/or range decision that will have an effect in Lower Nicola Indian Band's Traditional Territory and/or Shared Area.
  - b) With the understanding that it is important for Lower Nicola Indian Band to be aware of and have an opportunity to participate in all decisions, but that different decisions may require different consultation approaches, on an annual basis the Committee will jointly review the list of decisions and agree on consultation approaches, including the level of consultation, for each decision. The table below is a starting point for defining the necessary details for each type of decision and identifying special cases which need specific consultation approaches.
  - c) The Committee will extend an invitation to the other Governmental land use agencies to sit on the Committee where and when appropriate, as the Parties agree.

- d) To address unforeseen and emergent issues, either upon the request of Lower Nicola Indian Band or when British Columbia becomes aware of other proposed Decisions, British Columbia will provide to Lower Nicola Indian Band an updated list of decisions and the parties will discuss how to adapt an existing consultation approach to the new situation and/or develop a new consultation approach appropriate to the new situation.

1. Planning- FN involvement

2. Available on Request

3. Notification

4. Expedited process

5. Normal Consultation:

6. Deep consultation

#### Description and intent of consultation spectrum levels

Level	Description	Comment on Intent
1) <b>Planning referral:</b> prior to formal consultation process	Referral to Lower Nicola Indian Band during planning to provide opportunity to incorporate aboriginal interests <i>prior</i> to submitting plan/request to Statutory Decision Maker	3 <sup>rd</sup> party volunteer effort
2) <b>Available on request</b> (low level notification)	Type of notification whereby British Columbia notifies Lower Nicola Indian Band they will not be sending out information about very low impact decisions.	Intent is to notify (or negotiate) on an annual basis which decisions fall in this category. Lower Nicola Indian Band can request more detail if they wish
3) <b>Notification</b>	Notify Lower Nicola Indian Band in writing about an upcoming decision and provide overview information. Would be an opportunity for comment	Intent is to provide base level information and time to comment. Limited follow-up.
4) <b>Expedited Consultation</b> process.	Where there is an imminent threat to the public (i.e. wild fire) or a resource value (mountain pine beetle) an expedited consultation process is undertaken. Full process on a short timeline (e.g. 10 days for suppression harvesting of beetle attacked trees)	A justification for shortening the period would be given by describing the imminent threat.
5) <b>Normal course</b> Consultation (standard response period)	Follow policy on "normal" track for consultation. Resolve issues where possible and make decision in a timely manner	Intent to follow this course in most circumstances of low to medium probability of impact.
6) <b>Deep Consultation</b>	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where appropriate.	Follow provincial guidelines on consultation and accommodation. Would involve meaningful discussion in respect of appropriate accommodation. Probably undertake a strength of claim analysis.