

Wuikinuxv Forestry Agreement
(the "Agreement")

Between:

Wuikinuxv First Nation

As represented by

Chief Councillor
Wuikinuxv Band Council
(Also known as Oweekeno Band Council)
(the "Wuikinuxv")

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 Wuikinuxv have Aboriginal Interests within their Traditional Territory.
- The Wuikinuxv hold that the historic and contemporary uses and stewardship of land and resources by the Wuikinuxv are integral to the maintenance of the Wuikinuxv society, governance and economy within the Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development and related economic benefits arising from forest resources within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and/or seek workable interim accommodation with the Wuikinuxv on forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of the Wuikinuxv's Aboriginal Interests.
- The Wuikinuxv agree to participate in consultation initiated by the Government of British Columbia in relation to forest resource development

activities proposed within the Traditional Territory that may lead to the potential infringement of Wuikinuxv's Aboriginal Interests.

- The Parties have an interest in seeking workable interim accommodations of Wuikinuxv's Aboriginal Interests where forest development activities are proposed within the Traditional Territory that may lead to the potential infringement of Wuikinuxv's Aboriginal Interests.
- The Parties acknowledge that ecosystem based forest management principles as described in Appendix 1 to the *General Protocol Agreement on Land Use Planning and Interim Measures* and any further implementation planning undertaken from time to time and approved in land use plans, will be carried out within the Traditional Territory.

Therefore the Parties agree as follows:

1.0 Definitions:

For the purposes of this Agreement, the following definitions apply:

- 1.1 "Aboriginal Interests" means asserted aboriginal rights and/or aboriginal title.
- 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;
 - 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 between or among tenure holders;
 - 1.2.6 the issuance or subdivision of a Forest Tenure;
 - 1.2.7 the conversion of Timber Sale Licences to other forms of tenure;
 - 1.2.8 Timber Licence term extensions; and,
 - 1.2.9 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.

- 1.3 “Economic component of aboriginal interests” as used in this agreement is intended to refer to the financial or commercial aspects of Aboriginal Interests.
- 1.4 “Forest Tenure” means an agreement issued under the *Forest Act*.
- 1.5 “Interim Accommodation” means accommodation of the potential infringement of Wuikinuxv’s Aboriginal Interests arising from or a result of forest development, prior to the full reconciliation of these interests through a land claim settlement.
- 1.6 “Licensee” means a holder of a Forest Tenure under the *Forest Act*.
- 1.7 “Operational Plan” means a Forest Development Plan or a Forest Stewardship Plan as defined in provincial legislation respecting forest practices and forest development activities that are carried out pursuant to those plans and road and site plans.
- 1.8 “Traditional Territory” means the Wuikinuxv First Nation asserted traditional territory as shown on bold black on the map attached in Appendix A.

2.0 Purpose:

- 2.1 The purposes of this Agreement are to:
 - 2.1.1 increase the Wuikinuxv’s participation in the forest sector;
 - 2.1.2 provide economic benefits to the Wuikinuxv through a Forest Tenure opportunity and the sharing of revenues received by the Government of British Columbia from forest resource development;
 - 2.1.3 address consultation requirements and provide a workable interim accommodation, in respect of any potential infringements of the economic component of Wuikinuxv’s Aboriginal Interests with regard to Administrative Decisions and Operational Plans relating to forest resource development within the Traditional Territory during the term of this Agreement;
 - 2.1.4 provide a period of stability to forest resource development on Crown lands within the Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or processes;

2.1.5 further the *General Agreement on Land Use Planning and Interim Measures* signed on April 4, 2001 by the First Nations of the Turning Point initiative and the Crown which identified the need to develop forestry interim measures.

3.0 Economic Benefits to Wuikinuxv

During the term of this Agreement, the Government of British Columbia will provide the following economic benefits to the Wuikinuxv to address a workable interim accommodation of any potential infringements of the economic component of Wuikinuxv's Aboriginal Interests with regard to Administrative Decisions and Operational Plans relating to forest resource development within the Traditional Territory.

3.1 Forest Tenure

3.1.1 After the execution of this Agreement by the Parties, the Minister of Forests will invite the Wuikinuxv to apply for a non-replaceable tenure in accordance with Section 47.3 of the *Forest Act* to harvest a total of up to 20,000 cubic meters over a 5 year term in the Midcoast Timber Supply Area.

3.1.2 As soon as sufficient volume of timber is available for disposition as a result of the timber reallocation process in the Coast Forest Region, as provided in the *Forestry Revitalization Act*, the Minister of Forests will invite the Wuikinuxv to apply for a non-replaceable tenure in accordance with Section 47.3 of the *Forest Act* to harvest a total volume of up to 40,000 cubic meters over a 5 year term.

3.1.3 For greater certainty, the maximum volume that may be available under the licences referred to in Sections 3.1.1 and 3.1.2 will be up to 60,000 cubic meters.

3.1.4 The invitation to apply for a licence and any licence 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 Wuikinuxv submit, with its application for the licence, a business plan that is acceptable to the Minister.

- 3.1.6 After execution of this Agreement, the Government of British Columbia will provide the Wuikinuxv with \$25,000 under the Economic Measures Fund (through an Economic Measures Agreement with the Wuikinuxv Band) to assist in the development of a business plan for the licence.
- 3.1.7 The licences 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 replaceable licences as defined under the Forest Act;
 - 3.1.7.3 contain other terms and conditions required by law, including the condition that the Wuikinuxv must comply with this Agreement; and,
 - 3.1.7.4 include other terms and conditions as may be required by the regional manager.
- 3.1.8 Prior to the Wuikinuxv making application for a licence or licences under Section 3.1.1 and 3.1.2, the Parties will work together to identify the operating areas for the licence(s). The operating areas will be within the Traditional Territory.
- 3.1.9 Provided this Agreement remains in place, a subsequent licence opportunity may be invited under the *Forest Act* upon the expiry of the licences entered into pursuant to this Agreement, as set out in Section 10.0 of this Agreement.
- 3.1.10 The Government of British Columbia and the Wuikinuxv will establish a working group to identify potential forestry business opportunities that may be available to the Wuikinuxv, outside the scope of this agreement. The work of this committee will conclude by March 31, 2004.

3.2 Revenue Sharing

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to the Wuikinuxv \$125,000 annually for purposes described in Section 3.0.
- 3.2.2 By March 31, 2004, the Government of British Columbia will provide a one-time funding amount of \$125,000 and the Wuikinuxv accepts this funding in lieu of receiving any

quarterly payments from the Government of British Columbia in the fiscal year 2004/2005.

- 3.2.3 The Parties further agree that the funding noted under Section 3.2.2 will be referenced and considered to be an economic benefit for the purposes described in Section 3.0, that addresses an interim workable accommodation in respect of any potential infringements of the economic component of Wuikinuxv's Aboriginal Interests.
- 3.2.4 In the circumstances that Wuikinuxv provides notice under Section 8.2.3 to terminate the agreement, and the termination date is after March 31, 2004 but prior to April 1, 2005, Wuikinuxv agrees to reimburse the Government of British Columbia an amount equivalent to the total of the payment that they have received under Section 3.2.2 minus the amount calculated under Section 3.2.5 for the period of time between April 1, 2004 and the date that the agreement is terminated.
- 3.2.5 For the purposes of determining the amount that Wuikinuxv will reimburse to the Government of British Columbia under Section 3.2.4, the amount will be determined by calculating the number of days between April 1, 2004 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 Wuikinuxv under Section 3.2.2.
- 3.2.6 For the purposes of determining payment as specified in Section 3.2.1 of amounts for partial years, one-fourth (i.e. 1/4) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.7 For the purposes of determining payment as specified in Section 3.2.1, this Agreement shall be deemed to have been in effect on October 1, 2003.
- 3.2.8 The funding commitment in Section 3.2.1 and 3.2.2 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.9 The Wuikinuxv will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.

3.2.10 Upon request, the Wuikinuxv will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Parties acknowledge that approved land use plans will be developed from a government to government negotiation with the Wuikinuxv under the *General Protocol Agreement on Land use Planning and Interim Measures* and will be guided by the principles of ecosystem-based management.
- 4.2 The Parties acknowledge that Operational Plans will be consistent with approved land use plans when higher-level plan objectives have been established.
- 4.3 The Government of British Columbia commits to consult with the Wuikinuxv in a timely manner on Operational Plans that may potentially infringe the Wuikinuxv's Aboriginal Interests, except for any economic component of those interests provided for under Section 3.0 of this Agreement, within the Traditional Territory.
- 4.4 During the term of this Agreement, the Wuikinuxv agree that the Government of British Columbia has fulfilled its duties to consult and seek interim workable accommodation with respect to the economic component of potential infringements of the Wuikinuxv's Aboriginal Interests in the context of Operational Plan decisions that the Government of British Columbia will make and the development activities that occurs as a result of those decisions.
- 4.5 The Wuikinuxv will fully participate in a timely manner in the review of all Operational Plans within the Traditional Territory provided to them by the Government of British Columbia, and by the Licensee.
- 4.6 In reviewing and responding to an Operational Plan submitted to them, the Wuikinuxv will, within 60 days, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests, other than the economic component of those interests addressed under Section 3.0, that may result from the forestry development activities.
- 4.7 Upon receiving the response from Wuikinuxv as specified in Section 4.6, the Ministry of Forests and/or the Licensee will discuss and attempt to resolve, in a timely manner, with the Wuikinuxv any site specific operational impacts on the Wuikinuxv's Aboriginal

Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests addressed in Section 3.0.

- 4.8 If no response is received from the Wuikinuxv within 60 days of the plan being provided to them as specified in Section 4.6, then the Government of British Columbia may assume that the Wuikinuxv does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.9 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Wuikinuxv, whether received directly or through a Licensee, and will consider whether the concerns identified by the Wuikinuxv have been addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to the Wuikinuxv on an annual basis a list of all proposed Administrative Decisions anticipated within the year, and either upon the request of Wuikinuxv or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Wuikinuxv an updated list.
- 5.2 The Government of British Columbia will meet with the Wuikinuxv at mutually agreed times throughout the year to provide an opportunity for the Wuikinuxv to provide their concerns and comments on the Administrative Decisions to representatives of the Government of British Columbia.
- 5.3 The Government of British Columbia will provide a response to Wuikinuxv as to how their concerns raised in Section 5.2 have been addressed.
- 5.4 The Government of British Columbia will include the Wuikinuxv in Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the Forest Act for the Mid-Coast Timber Supply Area and Tree Farm License #39.
- 5.5 The Wuikinuxv commit to fully participate, in a timely manner, in the Timber Supply Review processes and also 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 the Traditional Territory.

- 5.6 The Parties acknowledge that the Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 5.7 If after considering the strength of Wuikinuxv's prima facie evidence, the statutory decision maker, is of the opinion that an Administrative Decision creates a potential infringement beyond the economic component of Wuikinuxv's Aboriginal Interests, then the statutory decision maker, will either address the Aboriginal Interest in the Administrative decision, or through the process in Section 4.0 of this Agreement.
- 5.8 The Wuikinuxv agree that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 of this Agreement, that the Government of British Columbia has fulfilled its duties to seek workable interim accommodation with respect to the economic component of potential infringements of Wuikinuxv's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.
- 5.9 The Wuikinuxv agree that in consideration of Sections 5.1 to 5.7 of this Agreement that the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and workable interim accommodation process with respect to potential infringements beyond the economic component of Wuikinuxv's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.
- 5.10 Any Administrative Decision made by the Ministry of Forests shall not be interpreted as concurrence by the Wuikinuxv unless expressly stated.

6.0 Stability within Wuikinuxv Traditional Territory

- 6.1 The Wuikinuxv will respond immediately to any discussions initiated by the Government of British Columbia and work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Wuikinuxv members with provincially authorised activities related to timber harvesting or other forestry economic activities occur.

- 6.2 The Wuikinuxv will support forest resource development in the Traditional Territory if government to government discussions regarding the Central Coast Land and Resource Management Plan conclude that forest land within the Traditional Territory is to remain or be included in the timber harvesting land base.

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and the Wuikinuxv 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 attempt to resolve the dispute.
- 7.2 If the Parties are unable to resolve differences at the appropriate level, the issue will be raised to more senior levels of the Government of British Columbia and the Wuikinuxv.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the issue.

8.0 Term

- 8.1 This Agreement will take effect on the date on which the last Party has 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 between Wuikinuxv, British Columbia and Canada; or,
 - 8.2.3 written notice of withdrawal to the Agreement by either Party which will take effect 90 days following receipt of the notice by the other Party; or,
 - 8.2.4 the mutual agreement of the Parties; or
 - 8.2.5 the Government of British Columbia cancels economic benefits under this Agreement pursuant to Section 9.0.
- 8.3 In the event that notice to terminate this Agreement is provided by either party under Section 8.2.3, the Government of British

Columbia agrees that the Ministry of Forests will not seek to accelerate decisions that are contemplated by the terms of this Agreement solely for the purpose of trying to ensure that such decisions are taken prior to the termination date.

9.0 Suspension or cancellation of economic benefits by the Minister

- 9.1 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 or cancel payments and the licences entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that the Wuikinuxv are not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to the Wuikinuxv of any alleged contravention of this Agreement that may lead the Wuikinuxv to not being in compliance with this Agreement.
- 9.3 If during the term of this Agreement, the Wuikinuxv challenges, or supports a challenge of an Administrative Decision, and/or Operational Plan, by way of legal proceedings or otherwise on the basis that the economic benefits set out in Section 3.0, and the consultation/accommodation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:
- 9.3.1 substantially address the Wuikinuxv's concerns and to provide a workable accommodation in respect of any potential infringements of the Wuikinuxv's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory; or
 - 9.3.2 substantially address the economic component of the Wuikinuxv's Aboriginal Interests with regard to Operational Plans relating to forest resource development within the Traditional Territory;

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.

10.0 Renewal of the Agreement

- 10.1 Prior to this Agreement terminating in accordance with Section 8.2.1 and if the terms and conditions of this Agreement are being met, the Government of British Columbia and the Wuikinuxv will seek their necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and the Wuikinuxv may provide for an opportunity to acquire a Forest Tenure, and/or other economic benefits and other terms and conditions that are agreed to 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 Wuikinuxv have agreed to accept as an interim measure only for the term of this Agreement.

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.
- 11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and to consider amendments to this Agreement.

12.0 Entire Agreement

This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.

13.0 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 in this section of this 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.

If received after 4:00 p.m., it will be deemed to have been received on the next business day.

- 13.3 The address of either Party may be changed by notice in the manner set out in this section of this 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) 387-7065

Wuikinuxv

Chief Councillor,
Wuikinuxv First Nation
P.O. Bag 3500
Port Hardy, BC V0N 2P0
Telephone: (250) 949 8625
Facsimile: (250) 949 7105

14.0 Miscellaneous

- 14.1 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.
- 14.2 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 define, amend, recognise, affirm, or deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.
- 14.3 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.4 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. Nothing in this Agreement shall be interpreted to

authorize or justify 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.

- 14.5 This Agreement does not address or affect any claims by the Wuikinuxv arising from past interference with its Aboriginal Interests or any future treaty settlement related to an aboriginal right and title claim.
- 14.6 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 Wuikinuxv. 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 Wuikinuxv.
- 14.7 This Agreement and any licenses issued as contemplated by this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 14.8 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.
- 14.9 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 applicable laws of British Columbia and Canada shall govern this Agreement.

14.11 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.

Signed on behalf of:

Wuikinuxv First Nation



**Alex Chartrand
Chief Councillor**

Date: Jan 21/2004



Witness



**Andrew Johnson
Councillor**



**Rose Johnson
Councillor**

Signed on behalf of:

Government of British Columbia




**Michael de Jong
Minister of Forests**

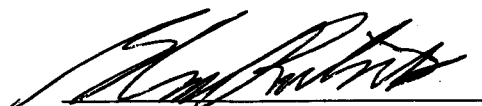
Date: FEB 5 / 04



Witness



**Gordon Campbell
Premier**



Witness

APPENDIX "A"

**THE ASSERTED TRADITIONAL TERRITORY
OF THE WUIKINUXV FIRST NATION**

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