

**Quatsino Forest Agreement
(the “Agreement”)**

**Between:
Quatsino**

As represented by
Chief Councillor Tom Nelson and Hereditary Chief Patrick Charlie
Quatsino Band Council
(the “Quatsino”)

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 Quatsino has Aboriginal Interests within their Traditional Territory.
- The Quatsino hold that the historic and contemporary uses and stewardship of land and resources by the Quatsino are integral to the maintenance of the Quatsino 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 this development within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable Interim Accommodation with the Quatsino on forest resource development activities proposed within the Quatsino Traditional Territory that may lead to the infringement of the Quatsino’s Aboriginal Interests.
- The Quatsino agrees to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest resource development activities proposed within the Quatsino Traditional Territory, that may lead to an infringement of Quatsino’s Aboriginal Interests.

- The Parties have an interest in seeking workable Interim Accommodation of Quatsino's Aboriginal Interests where forest development activities are proposed within the Quatsino Traditional Territory that may lead to the infringement of Quatsino's Aboriginal Interests.
- The Government of British Columbia and the Quatsino wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.
- This Agreement does not exclude the Quatsino from accessing other forestry economic opportunities or benefits that may be available from time to time.

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 one or more of the following decisions made by a person under the Forest Act.
 - Decisions that set or vary Allowable Annual Cut (AAC) for a Timber Supply Area or a forest tenure;
 - The issuance, subdivision or amendment of a forest tenure;
 - The replacement of forest tenures;
 - The transfer or change of control of forest tenures, including any associated reductions in AAC with respect to forest tenures, and exchange of rights between or among tenure holders;
 - The disposition of timber volumes arising from undercut decisions on a forest tenure;
 - AAC apportionment and reallocation decisions;
 - Timber Sale Licence conversion to other forms of tenure;
 - Timber Licence term extensions; and,
 - The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.
- 1.3 "Economic component of Aboriginal Interests" means the financial or commercial aspects of Aboriginal Interests related to forest resources.
- 1.4 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the Forest Act.

- 1.5 “Interim Accommodation” means accommodation of the potential infringements of Quatsino’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 the holder of a Forest Tenure.
- 1.7 “Operational Plan” means a Forest Development Plan, or a Forest Stewardship Plan that has an effect in Quatsino’s Traditional Territory.
- 1.8 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan, or a Forest Stewardship Plan that has an effect in Quatsino’s Traditional Territory.
- 1.9 “Response Period” means a period of 60 days from initiation of the processes set out in Sections 4 and 5 of this Agreement, where the initiation date is the date on which Quatsino is notified of an Administrative decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which Quatsino receives the plan to be reviewed. . Where Quatsino requests additional time for a response, the Response Period may be adjusted at any time by mutual agreement of the Parties.
- 1.10 “Traditional Territory” means the Quatsino asserted traditional territory as shown on bold black on the map attached in Appendix A.

2.0 Purpose

The purposes of this Agreement are to:

- 2.1 Increase the Quatsino’s participation in the forest sector.
- 2.2 Provide economic benefits to the Quatsino through a forest tenure opportunity and the sharing of revenues received by the Government of British Columbia from forest resource development.
- 2.3 Address consultation requirements and provide a workable Interim Accommodation, in respect of any potential infringements of the Economic component of Quatsino’s Aboriginal Interests, with regard to Administrative Decisions and/or Operational Decisions relating to forest resource development within the Quatsino’s Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest resource development on Crown lands within the Quatsino Traditional Territory during the term of this Agreement,

while longer-term interests are addressed through other agreements or processes.

3.0 Economic Benefits to Quatsino

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

3.1 Forest Tenure

3.1.1 After the execution of this agreement by the Parties, the Minister will invite Quatsino to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "licence") for up to 9212 cubic meters annually in the Kingcome Timber Supply Area for a total of 46,060 m3.

3.1.2 After the execution of this agreement by the Parties and after the Minister has determined that sufficient volume of timber is available for disposition to the Quatsino as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite Quatsino to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "licence") for up to 11,578 cubic meters annually in Tree Farm Licence 6 for a total volume of 57,890 m3.

3.1.3 For greater certainty, the maximum volume that may be available under the licence referred to in Section 3.1.1 and 3.1.2 will be up to 103,950 cubic meters over 5 years.

3.1.4 An invitation to apply for a licence (an "invitation") and any licence entered into as a result of an invitation will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.

3.1.5 An invitation:

3.1.5.1 will be subject to a condition that prior to Quatsino making an application for the licence, the Quatsino must contact and provide input to Ministry of Forests personnel to assist the Ministry of Forests to identify the location of an operating area for the licence(s)

within the Kingcome Timber Supply Area and Tree Farm Licence 6, which to the extent that it is operationally feasible will be within the Quatsino Traditional Territory; and

3.1.5.2 will contain terms and conditions required by the Minister.

3.1.6 A licence entered into as a result of an invitation

3.1.6.1 will be for a term of no longer than 5 years, as determined by the Minister;

3.1.6.2 will contain other terms and conditions required by law, including the condition that Quatsino must comply with this agreement; and,

3.1.6.3 will include other terms and conditions as may be required by the regional manager including a term that Quatsino may not divide, subdivide, transfer, or otherwise dispose of the licence or an interest in the licence except in accordance with Section 54(4) of the *Forest Act*.

3.1.7 Subject to:

3.1.7.1 The Government of British Columbia and Quatsino entering into another interim measures agreement providing for an invitation to apply for a licence; and,

3.1.7.2 the Minister determining that there is sufficient volume of timber available for disposition to Quatsino,

the Minister may invite Quatsino to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.2 Revenue Sharing

3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Quatsino \$192,120 annually for purposes described in Section 3.0.

- 3.2.2 The funding commitment set out in section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e. $\frac{1}{4}$) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.4 Upon signing of this Agreement, the Quatsino will be paid the full revenues for the quarter in which the Agreement is signed, with subsequent payments being made at the end of each quarter.
- 3.2.5 Quatsino will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.2.6 Upon request, Quatsino will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.
- 3.2.7 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and Quatsino has agreed to accept as an interim measure for the term of this Agreement.

4.0 Consultation and Accommodation Regarding Operational Plans

- 4.1 The Government of British Columbia agrees to consult with Quatsino on Operational Plans that may potentially infringe Quatsino's Aboriginal Interests within the Traditional Territory, except for any Economic component of those interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, Quatsino agrees that the Government of British Columbia has fulfilled its duties to consult and to seek workable Interim Accommodation with respect to the Economic component of potential infringements of Quatsino's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest development activities that may be carried out under an Operational Plan in Quatsino's Traditional Territory.
- 4.3 Quatsino agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest development within the

Traditional Territory provided to them by the Government of British Columbia, and by Licensees.

- 4.4 In reviewing and responding to an Operational Plan submitted to them, Quatsino will, within the Response Period, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may result from the forestry development activities within the Traditional Territory, other than the Economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.5 Upon receiving the response from Quatsino as specified in Section 4.4, the Government of British Columbia and/or the Licensee will seek to accommodate regarding any site specific operational impacts on Quatsino's Aboriginal Interests that may occur as a result of proposed forest development activities within the Traditional Territory, other than the Economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0. For the purposes of this section "accommodate" means modifications made to operational plans that may include, but not limited to, spatial or temporal changes, different harvesting systems and similar changes.
- 4.6 If no response is received from Quatsino within the Response Period, then the Government of British Columbia may assume that Quatsino 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.
- 4.7 Prior to the decision, the Quatsino will be provided with the licensee and/or the Ministry of Forests response addressing the First Nation's asserted aboriginal interests raised through the operational planning consultation process.
- 4.8 In making a final decision on an Operational Plan, the Government of British Columbia decision maker will fully consider information he/she receives from Quatsino, whether received directly or through a Licensee, and will consider whether concerns identified by Quatsino have been addressed.
- 4.9 The Government of British Columbia will provide the Quatsino with a copy of the approval letter for all operational plans.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to Quatsino on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of Quatsino or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Quatsino an updated list.
- 5.2 The Government of British Columbia will meet with Quatsino at mutually agreed times throughout the year to provide an opportunity for Quatsino to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.
- 5.3 The Government of British Columbia will ensure the opportunity for the Quatsino to participate, as set out in Section 5.4, in Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Kingcome TSA and TFL 6.
- 5.4 Quatsino agrees to fully participate, within the Response Period, in Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 5.5 If after considering the concerns and comments of Quatsino, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Quatsino's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.
- 5.6 The Government of British Columbia will provide a response to Quatsino as to how their concerns raised in Section 5.2 have been addressed.
- 5.7 Quatsino agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an workable Interim Accommodation with respect to the Economic component of potential infringements of Quatsino's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.

- 5.8 Quatsino further agrees that, in consideration of Sections 5.1 to 5.7 of this Agreement, 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 of their Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the Economic component of Quatsino's Aboriginal Interests.
- 5.9 Any Administrative Decision made by the Minister of Forests shall not be interpreted as concurrence by the Quatsino unless expressly stated.

6.0 Stability for Land and Resource Use

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

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and Quatsino 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.
- 7.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and Quatsino.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation 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 the Parties; or,
 - 8.2.3 the mutual agreement of the Parties; or
 - 8.2.4 the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 9.0; or,
 - 8.2.5 at the option of Quatsino in the event that the Government of British Columbia fails to deliver any economic benefits pursuant to Section 3.0 of this Agreement; or.
 - 8.2.6 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.
- 8.3 If this Agreement is terminated in accordance with Section 8.2.5, the Minister may terminate the economic benefits under this Agreement.

9.0 Suspension or Cancellation of Economic Benefits by the Minister

- 9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that Quatsino is 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 Quatsino of any alleged contravention of this Agreement that may lead Quatsino being determined to not be in compliance with this Agreement.
- 9.3 If, during the term of this Agreement, Quatsino challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to
- 9.3.1 provide adequate consultation, to substantially address Quatsino's concerns and to provide an workable Interim Accommodation in

respect of any potential infringements of Quatsino'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 Quatsino's Aboriginal Interests with regard to Operational Decisions 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.

- 9.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

10.0 Renewal of the Agreement

- 10.1 Prior to this Agreement terminating in accordance with Section 8.2, and subject to Section 3.2.7, if the terms and conditions of this Agreement are being met, the Government of British Columbia and Quatsino will seek the necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and Quatsino may provide for an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

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 consider amendments to this Agreement.

12.0 Entire Agreement

- 12.1 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 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. 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 the Agreement.

British Columbia

Deputy Minister
Ministry of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-3656
Facsimile (250) 953-3687

Quatsino

Chief and Council
Quatsino
P.O. Box 100
305 Quattishe Road
Coal Harbour, B.C. V0N 1K0
Telephone: (250) 949-6245
Facsimile: (250) 949-6249

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 recognise, define, amend, affirm, deny or limit any priorities afforded to

aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.

- 14.3 This Agreement is separate from and will not prejudice or be considered to be a part of any treaty that the Quatsino may enter into at a future date.
- 14.4 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.5 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 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 Quatsino. 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 Quatsino.
- 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 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.9 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 14.10 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.

14.11 This Agreement and any licence issued as contemplated by this Agreement do not change or affect the positions either Party has or may have, regarding jurisdiction and authorities.

Signed on behalf of:

Quatsino First Nation

Date: 06/28/04

Tom Nelson
Chief Councillor Tom Nelson

[Signature]
Witness

Patrick Charlie
Hereditary Chief Patrick Charlie

[Signature]
Witness

Signed on behalf of:

Government of British Columbia

Date: July 14, 2004

[Signature]
Michael de Jong
Minister of Forests

Louise Denis
Witness

Appendix A

THE ASSERTED TRADITIONAL TERRITORY OF THE QUATSINO

