

Shishálh Interim Forestry Agreement
(the "Agreement")

Between:

Shishálh Nation (also known as the Sechelt Indian Band)

As represented by
Chief Garry Feschuk
(the Shishálh)

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 Shishálh have Aboriginal Interests within their Traditional Territory.
- The Shishálh hold that the historic and contemporary uses and stewardship of land and resources by the Shishálh are integral to the maintenance of the Shishálh society, governance and economy within the Traditional Territory.
- The Parties wish to enter into an interim 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 Shishálh on forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of the Shishálh's Aboriginal Interests.
- The Shishálh intend 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 Shishálh's Aboriginal Interests.

- The Parties have an interest in seeking workable interim accommodations of Shishálh's Aboriginal Interests where forest development activities are proposed within the Traditional Territory that may lead to the potential infringement of Shishálh's Aboriginal Interests.

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 right and/or aboriginal title
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:
 - 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 issuance, consolidation, subdivision or amendment of a forest tenure;
 - 1.2.3 the replacement or extension of forest tenures;
 - 1.2.4 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;
 - 1.2.5 the disposition of timber volumes arising from undercut decisions on a forest tenure;
 - 1.2.6 the conversion of a Timber Sale Licence or Timber Licence to another form of tenure;
 - 1.2.7 the issuance of a Special Use Permit; and,
 - 1.2.8 the establishment of an interpretative forest site, recreation site and/or recreation trail.

- 1.3 "Economic component of aboriginal interests" means the financial or commercial aspects of Aboriginal Interests.
- 1.4 "Forest Tenure" means an agreement entered into under the *Forest Act*.
- 1.5 "Infringement of Aboriginal Interests" means potential or actual infringement of Aboriginal Interests.
- 1.6 "Licensee" means a holder of Forest Tenure.
- 1.7 "Operational Decision" means a decision that is made by a statutory decision maker with respect to the approval of a Forest Development Plan, a Forest Stewardship Plan or a Woodlot Licence Plan that has an effect in the Shishálh First Nation's Traditional Territory.
- 1.8 "Operational Plan" means a Forest Development Plan, a Forest Stewardship Plan or a Woodlot Licence Plan that has an effect in the 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 the Shishálh is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operation Plan reviews, the date on which the Shishálh receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.
- 1.10 "Shishálh Interim Forestry Agreement" means an "Interim Measures Agreement" under section 47.3 of the *Forest Act*.
- 1.11 "Traditional Territory" means the Shishálh First Nation asserted traditional territory as shown on bold black on the map attached in Appendix A.
- 1.12 "Workable Interim Accommodation" means accommodation of the potential infringement of Shishálh Aboriginal Interests, as set out in this Agreement, arising from or as a result of forest development, planning and activities. The Shishálh and the Government of B.C. recognize that this agreement is not intended to address the full reconciliation of Shishálh interests which will be addressed through a land claim settlement or other processes.

2.0 Purpose:

- 2.1 The purposes of this Agreement are to:
- 2.1.1 increase the Shishálh's participation in the forest sector;
 - 2.1.2 provide economic benefits to the Shishálh 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 the Parties' consultation requirements and processes and to provide a workable interim accommodation, as set out in this Agreement, in respect of any infringements of Shishálh's Aboriginal Interests that result from Administrative or Operational Decisions relating to forest resource development within the Traditional Territory during the term of this Agreement;
 - 2.1.4 provide the Parties with a period of stability for 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.

3.0 Economic Benefits to Shishálh

During the term of this Agreement, the Government of British Columbia will provide the following economic benefits to the Shishálh to address a workable interim accommodation, as set out in this Agreement, of any infringements of the economic component of Shishálh'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, and as soon as a sufficient volume of timber is available for disposition as a result of the timber reallocation process, as provided in the *Forestry Revitalization Act*, the Minister of Forests will invite the Shishálh to apply for a non-replaceable tenure in accordance with Section 47.3 of the *Forest Act* to harvest a volume of 32,540 cubic meters annually over a 5 year term, for the purposes described in Section 3.0.

- 3.1.2 In addition to the volume in 3.1.1 and after execution of this Agreement the Minister will invite the Shishálh to apply for a non-replaceable forestry licence to cut in accordance with Section 47.3 of the *Forest Act* to harvest a total of up to 18,300 cubic metres over the term of this agreement for the cultural economic purposes of the Shishálh in Block 1 of Tree Farm Licence 39. For greater certainty the maximum timber volume that may be available under the licences referred to in Section 3.1.1 and 3.1.2 will be up to 181,000 cubic metres. The invitation(s) to apply for one or more licences under this Agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.
- 3.1.3 An invitation will be subject to a condition that prior to the Shishálh making an application for the licence, the Shishálh must contact and work together with the Ministry of Forests staff to identify the location of an appropriate operating area for the licence, which unless otherwise agreed to by the parties, will be within the Traditional Territory. The parties acknowledge that "re-charting" of other operators may be necessary for the identification of an operating area and that the operating area will be at least the average timber profile of the Timber Supply area.
- 3.1.4 A licence entered into as a result of an invitation made pursuant to this Agreement:
- 3.1.4.1 will be for a term of no longer than 5 years, as determined by the Minister;
 - 3.1.4.2 will contain terms and conditions required by law, including the condition that the Shishálh must comply with this agreement; and,
 - 3.1.4.3 will include other terms and conditions as may be required by the regional manager including a term that the Shishálh may not divide, subdivide, transfer, or otherwise dispose of the licence or an interest in the licence.

- 3.1.5 The term of the license shall commence on the date of issue of the license. As such the license may extend beyond the period of this agreement.
- 3.1.6 Nothing in this agreement excludes the Shishálh from accessing other forestry economic opportunities, which may be available from time to time.
- 3.1.7 The Government of British Columbia and the Shishálh will meet from time to time to identify and review forestry business opportunities that may be available to the Shishálh.
- 3.1.8 The Minister may invite the Shishálh to apply for a subsequent licence under the Forest Act for a term that would commence after the expiry of this Agreement and subsequent to:
- 3.1.8.1 The government of British Columbia and Shishálh entering into another Interim Measures Agreement providing for an invitation to apply for a licence, and
 - 3.1.8.2 The Minister determines that there is sufficient volume of timber available for disposition to the Shishálh.

3.2 Revenue Sharing

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to the Shishálh \$539,920 annually for purposes described in Section 3.0 paid on a quarterly basis.
- 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 thereof that the Agreement is in effect.
- 3.2.3 For the purposes of determining payment as specified in Section 3.2.2, this Agreement shall be deemed to have been in effect on April 1, 2004.
- 3.2.4 The funding commitment in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia. The Government of British Columbia acknowledges it has an appropriation for \$30 million in 2004/2005; \$40 million in 2005/2006 and \$50 million in 2006/2007 to fund revenue sharing commitments

through Forest and Range Agreements with eligible First Nations throughout the Province.

- 3.2.5 The Shishálh 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, the Shishálh will provide an audit extract of the revenue sharing expenditures to the Government of British Columbia.

4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Government of British Columbia agrees to consult with the Shishálh in a timely manner on Operational Plans that may potentially infringe Shishálh's Aboriginal Interests within the Traditional Territory, except for any economic component of those interests or rights provided for under Section 3.0 of this Agreement.
- 4.2 While this Agreement is in effect, the Shishálh 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 infringements of the Shishálh's Aboriginal Interests in the context of Operational Plan Decisions that the Government of British Columbia will make and the forest development activities that occur as a result of those decisions.
- 4.3 The Shishálh 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.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, the Shishálh will, within 60 days, provide the Government of British Columbia and the licensee with all reasonably available information sufficient to identify any potential impacts to their Aboriginal Interests that may result from the forestry development activities, other than the economic component of those interests or rights addressed under Section 3.0 that may result from the forestry development. Where reasonable under the circumstances the response may indicate that further time is required to

adequately respond to the issues raised by the Operational Plan. Provision of this information shall be for the purpose of enabling the parties to achieve the purposes of this Agreement.

4.5 Upon receiving the response from the Shishálh as specified in Section 4.4, the Ministry of Forests will discuss with the Shishálh and seek to accommodate in a timely manner Shishálh concerns about any identified site specific operational impacts on the Shishálh's Aboriginal Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests or rights addressed in Section 3.0.

4.6 If no response is received from the Shishálh within 60 days of the plan being provided to them as specified in Section 4.4, then the Government of British Columbia may assume that the Shishálh do not intend to respond or participate in the consultation process in respect of the Operational Plan and proceed to make a final decision to approve an Operational Plan.

4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Shishálh, whether received directly or through a Licensee, and will consider whether the concerns identified by the Shishálh have been addressed.

4.8 The Government of British Columbia will provide the Shishálh with a copy of its final decision on an Operational Plan at the same time it is provided to the Licensee. Within 60 days of making a final decision, the Government of British Columbia will also inform the Shishálh of the ways in which the Shishálh's concerns have been considered and sought to be addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

5.1 The Government of British Columbia will provide to the Shishálh on an annual basis a list of all proposed Administrative Decisions anticipated within the year, and either upon the request of Shishálh or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Shishálh an updated list.

- 5.2 The Government of British Columbia will meet with the Shishálh at mutually agreed times throughout the year to provide an opportunity for the Shishálh 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, in a timely manner, provide a response to Shishálh as to how their concerns raised in Section 5.2 have been sought to be addressed.
- 5.4 The Government of British Columbia will include the Shishálh in Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the Forest Act for the Sunshine Coast Timber Supply Area and Tree Farm Licence No. 39.
- 5.5 The Shishálh 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 concerns and comments of the Shishálh, the statutory decision maker, is of the opinion that an Administrative Decision creates a potential infringement beyond the economic component of Shishálh'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 Shishálh 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 consult and to seek interim workable accommodation with respect to the economic component of infringements of Shishálh'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 Shishálh 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 infringements beyond the economic component of Shishálh'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 Shishálh unless expressly stated.

6.0 Stability within Shishálh Traditional Territory

- 6.1 The Shishálh will respond immediately to any discussions initiated by the Government of British Columbia and work cooperatively to assist in resolving any issues that may arise where acts of unlawful interference by Shishálh members with provincially authorised activities related to 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 the Shishálh regarding the interpretation and application 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 issue will be raised to more senior levels of the Government of British Columbia and the Shishálh.
- 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 Shishálh, the Government of British Columbia and the Government of 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 If notice to terminate this Agreement is provided by either party pursuant to 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 made before the termination of this Agreement, but that the Minister may cancel the benefits under section 3 of this Agreement once the Agreement terminates.

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 Shishalh 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 Shishálh of any alleged contravention of this Agreement that may lead the Shishálh to not being in compliance with this Agreement and will provide the Shishálh with an opportunity that is reasonable in the circumstances to remedy the non-compliance.

9.3 If during the term of this Agreement, the Shishálh 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 Shishálh's concerns and to provide a workable accommodation in respect of any potential infringements of the Shishálh'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 Shishálh'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 Shishálh will consider whether to seek their necessary authorities and approvals to renew this Agreement.

10.2 Any subsequent forestry agreement between the Government of British Columbia and the Shishálh 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 During any subsequent negotiation leading to a renewed Agreement, the Minister may take into consideration in a new invitation to apply for a Forest Tenure, whether the Shishálh were able to harvest all timber available to them under the original licence.

10.4 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 the Shishálh 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

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 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) 387-3656
Facsimile (250) 953-3687

Shishalh

Chief Garry Feschuk
Shishálh Nation
Box 740
Sechelt, B.C. V0N 3A0
Telephone: (604) 885-2273
Facsimile: (604) 885-3490

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 the existence of 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 Shishálh 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 Shishálh. 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 in 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 Shishálh.

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:

Shisháhl First Nation

Chief Garry Feschuk
Chief Garry Feschuk

Date: June 30th /04

Rochelle Baptiste
Witness

Signed on behalf of:

Government of British Columbia

Michael de Jong
Michael de Jong
Minister of Forests






Date: July 24, 2004

Louise Denis
Witness

APPENDIX "A" THE ASSERTED TRADITIONAL TERRITORY OF THE SHISHALH NATION

Sechelt Indian Band
Traditional Territory



-  Lakes.shp
-  Strm42.shp
-  Trad_boundary.shp
-  Shore
-  Islands

