

**Xats'ull First Nation (Soda Creek Band)
Interim Agreement on Forest & Range Opportunities
(the "Agreement")**

**Between:
The Xats'ull First Nation (Soda Creek Band)**

As represented by
Chief and Council of
the "Xats'ull First Nation" ("Soda Creek 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 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 Xats'ull First Nation (Soda Creek Band) has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.
- E. The Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation's Aboriginal title and/or rights claims over those lands.
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Xats'ull First Nation (Soda Creek Band) on forest and/or range resource development activities proposed within the Xats'ull First Nation (Soda Creek Band) Traditional Territory that may lead to the infringement of the Xats'ull First Nation's (Soda Creek Band's) Aboriginal Interests.
- I. The Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation's (Soda Creek Band's) Traditional Territory, that may lead to an infringement of the Xats'ull First Nation's (Soda Creek Band's) Aboriginal Interests.
- J. British Columbia and the Xats'ull First Nation (Soda Creek Band) wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.
- K. Xats'ull First Nation intend to negotiate a Land Use Plan with the Integrated Land Management Branch. Upon receiving the final Xats'ull First Nation Land Use Plan, the MoFR statutory decision makers will consider the information presented in the Land Use Plan while making decisions.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 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 Xats'ull First Nation's (Soda Creek 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 Xats'ull First Nation's (Soda Creek 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 a 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.*
- 1.6 "Range Tenure" means an agreement granting rights over Crown range as defined in the *Range Act.*
- 1.7 "Traditional Territory" means the Xats'ull First Nation's (Soda Creek Band's) 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 Xats'ull First Nation's (Soda Creek 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.

2.0 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 Xats'ull First Nation (Soda Creek Band's) through economic diversification.
- 2.2 Provide interim payment and other economic benefits to the Xats'ull First Nation (Soda Creek Band's) 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 Xats'ull First Nation (Soda Creek Band) during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

3.0 Economic Benefits to the Xats'ull First Nation (Soda Creek Band)

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Xats'ull First Nation (Soda Creek 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, a Forestry Licence to Cut, a Woodlot Licence or other forms of agreement as agreed to by the Parties.
- 3.1.2 After the execution of this Agreement, and if applicable, once volume becomes available through the timber reallocation process, the Minister will invite the Xats'ull First Nation

(Soda Creek Band), or such legal entity as the Xats'ull First Nation (Soda Creek 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 18,026 cubic meters annually in the Williams Lake Timber Supply Area.

- 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 90,130 cubic meters over five years.
- 3.1.4 The Parties will strive to ensure that the assigned operating area for the Licence in the Williams Lake 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 Xats'ull First Nation 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 A 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 Interim Accommodation until the Licence expires or is terminated.
- 3.1.7 The Minister may invite the Xats'ull First Nation (Soda Creek 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

- 3.2.1 The Parties will make reasonable efforts upon signing this Agreement to assess and clarify current range use by Xats'ull First Nation members, and to assess potential range use opportunities.
- 3.2.2 If as a result of the work carried out under section 3.2.1, a Crown range vacancy is available for disposition to Xats'ull First Nation, then subject to the *Range Act*, the Central Forest District Manager or the Quesnel Forest District

Manager may be directed to enter into a Grazing Permit with the Xats'ull First Nation, and within Xats'ull First Nation's Traditional Territory.

3.3 Interim Payment

- 3.3.1 During the term of this Agreement, British Columbia will make an interim payment to the Xats'ull First Nation (Soda Creek Band) of approximately \$166,911 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. Payments will be made quarterly.
- 3.3.4 Upon signing of this Agreement, the Xats'ull First Nation (Soda Creek Band) will be paid the full revenues for the quarter in which the Agreement is signed (e.g. if this Agreement is signed at the end of the quarter, the FN would receive payment for that entire quarter), with subsequent payments being made at the end of each quarter.
- 3.3.5 British Columbia will not seek to direct or influence the expenditure of the funds provided to the First Nation.

4.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 4.1 The Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation's (Soda Creek 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 Xats'ull First Nation (Soda Creek Band) agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Xats'ull First Nation's (Soda Creek 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 Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation's (Soda Creek 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 Xats'ull First Nation (Soda Creek Band) to seek additional accommodation for impacts on its Aboriginal Interests from forest and range resource 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 Xats'ull First Nation's (Soda Creek Band's) Aboriginal Interests within their Traditional Territory.
- 4.7 In developing such consultation processes, the Parties further agree to address consultation on Administrative Decisions, Operational Decisions and Operational Plans through participation of the Xats'ull First Nation (Soda Creek 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. To initiate these consultation process negotiations, Xats'ull First Nation (Soda Creek Band) has put forward for consideration by British Columbia the *Northern Secwepemc te Qelmuw Consultation and Accommodation Guidelines June 2003 First Edition*. The Xats'ull First Nation would like to participate in the Cariboo Managers Committee (made up of representatives from the Integrated Land Management Bureau and the Ministeries of Forests and Range; Energy, Mines and Petroleum; Transportation; Agriculture; Tourism; Sports and Arts and Environment). The CMC is in the process of

drafting terms of reference to determine how the Xats'ull First Nation, and other interested First Nations, may be involved in the CMC.

- 4.9 Where Xats'ull First Nation (Soda Creek Band) is a member of a larger Tribal Nation, this Agreement does not limit the obligation of British Columbia to fulfil its consultation obligations with the Tribal Nation.

5.0 Dispute Resolution

- 5.1 If a dispute arises between British Columbia and the Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation (Soda Creek 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.

6.0 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.

7.0 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 Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation (Soda Creek 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.

8.0 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 Xats'ull First Nation (Soda Creek Band) may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

9.0 Entire Agreement

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

10.0 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

Xats'ull First Nation (Soda Creek Band)
Chief and Council
Xats'ull First Nation
3405 Mountain House Road
Williams Lake, BC
V2G 5L5
Telephone: 989-2323
Facsimile: 989-2300

11.0 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 Xats'ull First Nation (Soda Creek Band) has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation (Soda Creek 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 or BCTS to enter into mutually-beneficial interim agreements with the Xats'ull First Nation (Soda Creek Band).
- 11.13 This Agreement is not intended to limit any obligation of forest licensees or other third parties to the Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation (Soda Creek Band) from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.

12.0 Giving Effect to the New Relationship

12.1 Notwithstanding this agreement, the Parties will, at the request of the Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation's (Soda Creek Band's) land use planning at all spatial scales and for reconciliation of Crown and the Xats'ull First Nation's (Soda Creek 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 Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation (Soda Creek 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 Xats'ull First Nation's (Soda Creek 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:

Xats'ull (Soda Creek Band)

Date: Dec. 8/06



Chief Dorothy Phillips




Councillor Cheryl Chapman



Councillor David Pop

Councillor Teena Sellars




Witness of Xats'ull First Nation (Soda Creek Band) signatures

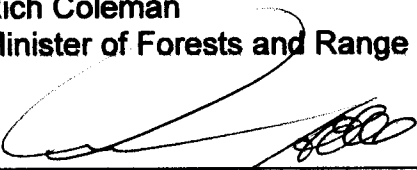
Signed on behalf of:

Government of British Columbia

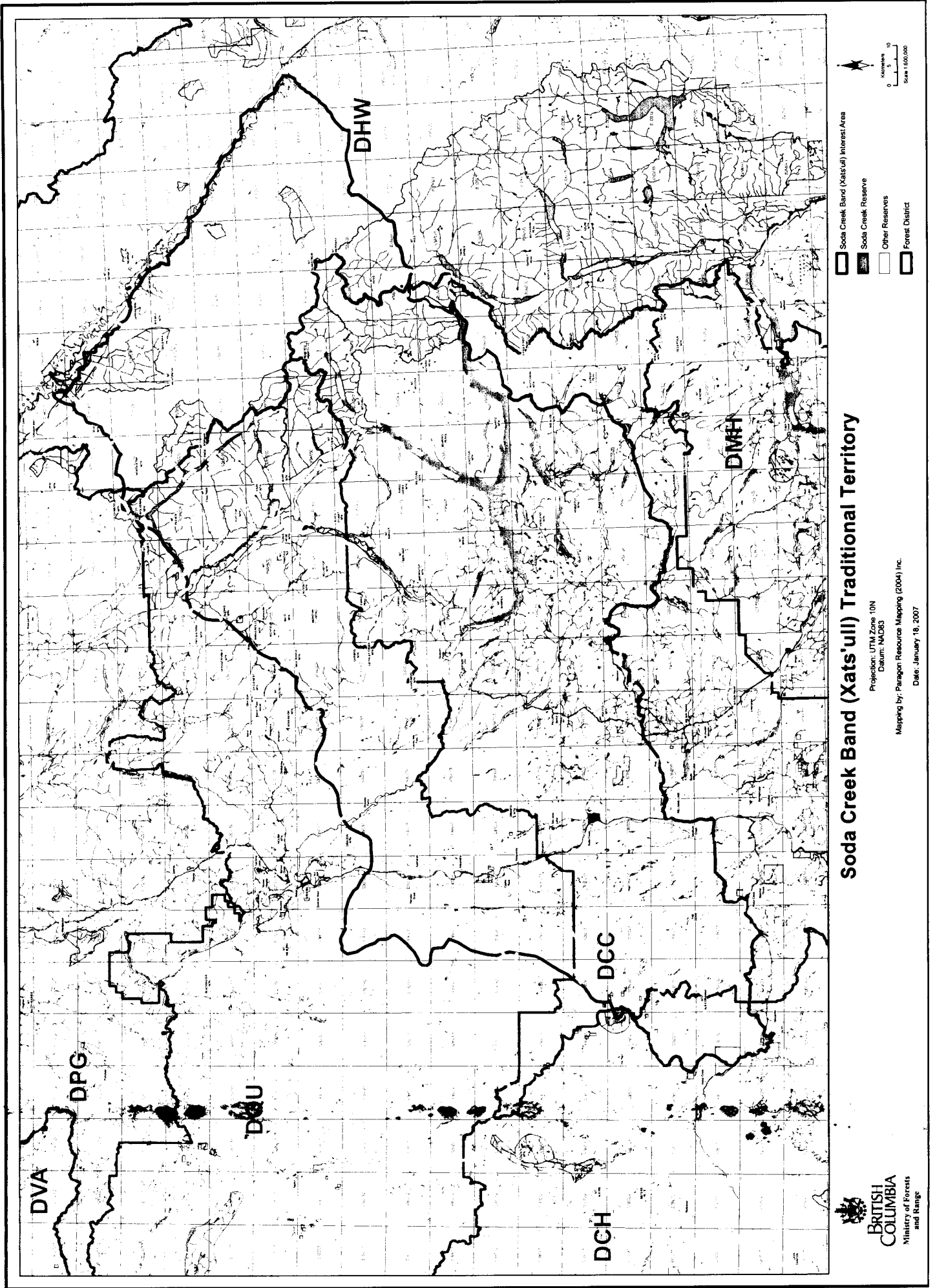
Date: March 6/07



Rich Coleman
Minister of Forests and Range



Witness of Minister signature



UP

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APPENDIX B

Description and Documentation pertaining to the Intended Holder of the licence

Please complete part A or B, whichever is appropriate, and attach appropriate documentation:

A) Applicant for the license (i.e. Xats'ull First Nation) (Soda Creek Band)

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OR

B) Full legal name, or name of legal entity, appointed by the First Nation, to hold

Xats'ull Enterprises Ltd.

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- Copy attached of the band council resolution appointing that legal entity or person to be their representative; and
- Copy of documentation verifying that the legal entity is validly registered to do business in the Province of British Columbia (copies of the corporate seal, shareholder listings, and listings of directors/officers).

NUMBER: 447181



**CERTIFICATE
OF
CHANGE OF NAME**
COMPANY ACT

CANADA
PROVINCE OF BRITISH COLUMBIA

I Hereby Certify that

447181 B.C. LTD.

has this day changed its name to

XAT'SULL LOGGING LTD.

*Issued under my hand at Victoria, British Columbia
on March 23, 1995*

A handwritten signature in cursive script, reading "J. Powell".

JOHN S. POWELL
Registrar of Companies

