

Splats'in First Nation
(Splats'in First Nation)
Interim Agreement on Forest & Range Opportunities
(the "Agreement")

Between:
The Splats'in First Nation

As represented by
Councillor George William
(Splats'in First Nation)

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 Splats'in First Nation has a sacred relationship to the land that is important to its culture, language and the maintenance of its community, governance and economy.**
- E. The Splats'in First Nation 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 Splats'in First Nation's Traditional Territory.**
- G. References in this Agreement to Crown Lands are without prejudice to the Splats'in 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 Splats'in First Nation on forest and/or range resource development activities proposed within the Splats'in First Nation's Traditional Territory that may lead to the infringement of the Splats'in First Nation's Aboriginal Interests.**
- I The Splats'in First Nation 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 Splats'in First Nation's Traditional Territory, that may lead to an infringement of the Splats'in First Nation's Aboriginal Interests.**
- J British Columbia and the Splats'in First Nation wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.**
- K The Parties acknowledge that the Splats'in First Nation have an on-going desire to conduct sustainable forest/land management and harvesting using an area-based tenure within their Traditional Territory.**

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 Splats'in First Nation'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 Splats'in First Nation's Traditional Territory.**

- 1.3 **“Aboriginal Interests” means asserted and/or proven aboriginal rights and/or aboriginal title, in the context of pertinent and applicable legal decisions describing the nature of the recognition and affirmation afforded those at common law and under Section 35 of the Constitution Act, 1982. “Cultural component of Aboriginal Interests” means the integral cultural values and traditional practices of Splats’in, consistent with the definition of “Aboriginal Interests” in this Agreement, which they see or view as being Yucwmen lucucw (“caretakers of the land”).**
- 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 (AAC) determinations 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 to 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 Tree Farm Licence; and,**
 - **The establishment of an interpretive forest site, recreation site and/or 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 Splats'in First Nation’s asserted Traditional Territory as shown on bold black on the map attached in Appendix A.**

- 1.8 **“Licensee” means a holder of a Forest Tenure or Range Tenure.**
- 1.9 **“Interim Accommodation” means the accommodation provided in this Agreement, of the potential infringements of the economic component of the Splats'in First Nation’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 Splats'in First Nation through economic diversification.**
- 2.2 **Provide interim payment and other economic benefits to the Splats'in First Nation through a forest tenure opportunity and/or economic benefits related to forestry received by British Columbia from forest resource development activities.**
- 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 Splats'in First Nation during the term of this Agreement, while longer term interests are addressed through other agreements or processes.**

3.0 Economic Benefits to the Splats'in First Nation

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Splats'in First Nation:

3.1 Forest Tenure

- 3.1.1 **After the execution of this Agreement and, if applicable, once volume becomes available through the timber reallocation process, the Minister will invite the Splats'in First Nation or such legal entity as the Splats'in First Nation has appointed as its representative to hold the licence to apply under section 47.3 of the Forest Act for a non-replaceable licence (the**

“Okanagan licence opportunity”) for up to 21,210 cubic meters annually in the Okanagan Timber Supply Area the volume for which is comprised of Forest Revitalization take back; and a non-replaceable forest licence (“Arrow undercut licence opportunity”) in accordance with Section 47.3 of the Forest Act to harvest up to a total of 85,050 cubic metres over a 5-year term in the Arrow Timber Supply Area.

- 3.1.2 For greater certainty, the maximum volume that may be available under the licences referred to in Section 3.1.1 will be up to 191,100 cubic meters over 5 years.**
- 3.1.3 The Parties will strive to ensure that the assigned operating area for the Licences in the Okanagan and Arrow Timber Supply Areas have 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 Splats'in First Nation making an application for the Licences, the Parties will work together to identify the location of operating areas for the licences, which to the extent that it is operationally feasible will be within the Splats'in First Nation's Traditional Territory; and**
- 3.1.4 The licences entered into as a result of an invitation under Section 3.1.1 will be for a term of 5 years.**
- 3.1.5 If the intended holder of the licence(s) is a legal entity other than the Splats'in First Nation, the Splats'in First Nation must supply the Government of British Columbia with the supporting documentation stating that, the intended holder has been validly appointed by the Splats'in First Nation as its representative. Refer to Appendix B.**
- 3.1.6 If the licences or either of them remains in effect beyond the term of this Agreement, the licences or either of them will continue to be considered by the Parties to be Interim Accommodation until the licence(s) expires or is/are terminated.**
- 3.1.7 The Minister may invite the Splats'in First Nation to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.**
- 3.1.8 The Government of British Columbia does not guarantee the financial outcomes of any Forest and/or Range Tenures made available to Splats'in First Nation pursuant to this Agreement.**

3.2 Interim Payment

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Splats'in First Nation approximately \$354,372 annually for purposes described in Section 3.0. Payments will be made quarterly.**
- 3.2.2 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. ¼) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect.**
- 3.3.4 Upon signing of this Agreement, the Splats'in First Nation 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.**
- 3.3.5 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 Splats'in First Nation 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 Splats'in First Nation 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 Splats'in First Nation agrees that British Columbia will have provided Interim Accommodation with respect to the economic component of potential infringements of the Splats'in First Nation's Aboriginal Interests as an interim measure.**
- 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 Splats'in First Nation has agreed to accept.**

- 4.4 The Parties agree to develop consultation processes to address both Operational and Administrative Decisions or Plans which may affect the Splats'in First Nation Aboriginal Interests within their Traditional Territory.**
- 4.5 Where Splats'in First Nation 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 Splats'in First Nation 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 Splats'in First Nation.**
- 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 5 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:**
 - 6.3.1 The expiry of its term;**
 - 6.3.2 90 days notice by one Party to the other Party; or,**
 - 6.3.3 The 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 Notwithstanding section 6.4, British Columbia may terminate the Agreement when there is a challenge on the basis that the Economic Benefits set out in section 3 are not adequate or sufficient Interim Accommodation.**

6.6 Prior to termination under section 6.5, the Parties agree to meet and endeavour to resolve the dispute.

6.7 If notice to terminate this Agreement is provided by either party pursuant to Section 6.3.2, the Government of British Columbia agrees that the Ministry of Forests and Range will not seek to accelerate decisions that are contemplated by the terms of this Agreement solely for the purposes of trying to ensure that such decisions are made before the termination of this Agreement.

7.0 Renewal of the Agreement

7.1 Prior to this Agreement terminating in accordance with Section 6.3.1, if the terms and conditions of this Agreement are being met, British Columbia and the Splats'in First Nation will seek the necessary authorities and approvals to renew this Agreement.

7.2 Any subsequent forestry agreement between British Columbia and the Splats'in First Nation 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.

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

Chief Wayne Christian

Splats'in First Nation

Address: Box P.O. BOX 460, ENDERBY, B.C. VOE 1V0

Telephone:(250) 838-6496

Facsimile: (250) 838-2131

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 in current or future court actions.

11.5 Nothing in this Agreement, including the recitals, defines or confirms the specific nature, scope, location or geographic extent of Aboriginal Interests of the Splats'in First Nation.

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 Splats'in First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement.**
- 11.8 This Agreement and any decisions and or Licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.**
- 11.9 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.**
- 11.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.**
- 11.11 The applicable laws of British Columbia and Canada shall govern this Agreement.**
- 11.12 British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Splats'in First Nation.**
- 11.13 This Agreement is not intended to limit any obligation of Licensees or other third parties to the Splats'in First Nation.**
- 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 Splats'in First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.**
- 11.16 Nothing in this Agreement shall be interpreted in a manner that precludes the Splats'in First Nation from seeking to prove any Aboriginal Interest of Splats'in First Nation in court.**

12.0 Giving Effect to the New Relationship

- 12.1 Notwithstanding this agreement, the Parties 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 Splats'in First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Splats'in First Nation'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 Splats'in First Nation and resourcing for British Columbia to develop and implement new frameworks for shared land and resource decision making and other components listed above; and**


- f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Splat's in First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above.

Signed on behalf of:

Splat's in First Nation

Date:

May 13/06



 Councilor George William




 Witness of Splat's in First Nation signature

Signed on behalf of:


Government of British Columbia

Date:

June 6/06



 Rich Coleman
 Minister of Forests and Range



 Witness of Minister's signature

SPALLUMCHEEN BAND COUNCIL MEETING: MAY 5, 2006 - PAGE 8

MOTION: May 5, 2006

SIGNING AUTHORITY FOR FOREST RANGE OPPORTUNITIES AGREEMENT

Councillor Jean Brown motioned to appoint George Wilton as the Councillor responsible for Economic Development and to have signing authority for the "Forest Range Opportunities" on behalf of Chief and Council of the Spallumcheen Band.

Councillor Marilyn Kjelgren seconded the motion. All in favor: **RETHA CHAIRMAN**

Councillor Agnes Felix is absent from the motion.

APPENDIX A
Map of Splats'in First Nation Asserted Traditional Territory

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. Splats'in First Nation)

Splats'in First Nation

OR

B) Full legal name, or name of legal entity, appointed by the First Nation, to hold the licence (i.e. Smith Logging Ltd. Or John Joe Smith)

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- (i) Copy attached of the band council resolution appointing that legal entity or person to be their representative; and
 - (ii) 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).