

FOREST TENURE OPPORTUNITY "A&B" AGREEMENT

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OCT 15 2012

KAMLOOPS FOREST DISTRICT

Forest Tenure Opportunity Agreement
(the "Agreement")

Between:

Tk'emlúps te Secwépemc

As represented by
Chief and Council

and

Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Forests, Lands, and Natural Resource Operations
("British Columbia")

(collectively the "Parties")

WHEREAS:

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Tk'EMLUPSEMC have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist Tk'emlúps te Secwépemc in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to poverty among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Tk'emlúps te Secwépemc has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve Tk'emlúps te Secwépemc community's well-being.
- E. Tk'emlúps te Secwépemc has Aboriginal Interests within its Traditional Territory.

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This Agreement is intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the Traditional Territory of Tk'emlúps te Secwépemc which will enhance the ability of the forest industry to exercise timber harvesting in a timely, economic, and environmentally sustainable manner while longer term interests of Tk'emlúps te Secwépemc are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1. "Aboriginal Interests" means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2. "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.3. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in section 12(1) of the *Forest Act*.
- 1.4. "Licence" means a forest licence or a forestry licence to cut as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a forest tenure.
- 1.6. "Licence Area" means an area defined by agreement between the licensee and British Columbia, over which the licensee will have the right to apply for cutting authorities to a specified level of harvest of Crown timber as defined in the *Forest Act*.
- 1.7. "Operating Area" means an area, informally agreed to between licensees who each hold rights to harvest Crown timber within the same Timber Supply Area, in which each licensee will operate in a manner so as to avoid conflict with the other and to assist in meeting each other's needs.
- 1.8. "Representative" carries the same meaning as it is given in the *Forest Act*.
- 1.9. "Traditional Territory" means Tk'emlúps te Secwépemc's claimed or asserted Traditional Territory as shown on bold black on the map attached in Appendix A.

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Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 1.10. Provide an opportunity for Tk'emlúps te Secwépemc to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Tk'emlúps te Secwépemc in achieving progress towards closing socio-economic gaps between the members of Tk'emlúps te Secwépemc and non-Aboriginal people in British Columbia.
- 1.11. Promote and increase Tk'emlúps te Secwépemc's participation in the forest sector by offering a forest tenure opportunity(s).
- 1.12. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Tk'emlúps te Secwépemc's Aboriginal Interests.

2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Provide an opportunity for Tk'emlúps te Secwépemc to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Tk'emlúps te Secwépemc in achieving progress towards closing socio-economic gaps between the members of Tk'emlúps te Secwépemc and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Tk'emlúps te Secwépemc's participation in the forest sector by offering a forest tenure opportunity(s).
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Tk'emlúps te Secwépemc's Aboriginal Interests.

3. Forest Tenure Opportunity

- 3.1. After execution of this Agreement, the District Manager or Regional Executive Director will invite Tk'emlúps te Secwépemc, or its Representative to apply for a non-replaceable forest licence A88773 (the “Licence”) on a non-competitive basis for up to 69,000 cubic meters annually of mountain pine beetle attacked timber, for a term of 10 years in the Kamloops Timber Supply Area(s). The maximum volume available for this licence is 690,000
- 3.2. The appointment of a Representative for the purpose of holding the Licence(s) must be made in accordance with the *Forest Act*.
- 3.3. The Licence Area for the Licence referenced in section 3.1 will be located in the Kamloops Timber Supply Area and is outlined on the map attached to this Agreement as Appendix B.
- 3.4. The Licence under section 3.1 of this Agreement will:

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- 3.4.1. be a non-replaceable forest licence as defined under the *Forest Act*;
 - 3.4.2. include other terms and conditions required by law including the condition that Tk'emlúps te Secwépemc must comply with this Agreement; and,
 - 3.4.3. include other terms and conditions as may be required by the Regional Executive Director.
- 3.5. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licence referred to in section 3.1.
 - 3.6. During the term of this Agreement and notwithstanding section 3.5, Tk'emlúps te Secwépemc agrees that British Columbia has provided to Tk'emlúps te Secwépemc an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Tk'emlúps te Secwépemc's Aboriginal Interests, in the form of the Licence provided for under this Agreement.
 - 3.7. If the Licence entered into under this Agreement remain(s) in effect beyond the term of this Agreement, the Licence(s) will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.6 until the Licence expires or is terminated.
 - 3.8. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

4. Reporting of Tenure Information

- 4.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may require certain information from Tk'emlúps te Secwépemc on what measurable benefits the Tk'emlúps te Secwépemc community has been able to achieve as a result of this Agreement.
- 4.2. Tk'emlúps te Secwépemc agrees to cooperate with British Columbia in providing the information in a format acceptable to both Parties and in a manner that maintains the confidentiality of that information in accordance with applicable statutory requirements.

5. Tk'emlúps te Secwépemc Traditional Territory

- 5.1. British Columbia will use the map of Tk'emlúps te Secwépemc's Traditional Territory used in the Tk'emlúps te Secwépemc's Forestry Consultation and Revenue Sharing Agreement dated March 21, 2012 which map will be set out in this Agreement as Appendix A, unless this is the first such agreement between British

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Columbia and Tk'emlúps te Secwépemc in which event the Tk'emlúps te Secwépemc will provide a hard copy map of its Traditional Territory and a digital copy of the Traditional Territory boundary conforming to current government mapping standards, which hard copy will be set out in this Agreement as Appendix A.

6. Economic and Operational Stability within Tk'emlúps te Secwépemc Traditional Territory

- 6.1. Tk'emlúps te Secwépemc agrees to respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Tk'emlúps te Secwépemc with provincially authorized forest activities and will work cooperatively with British Columbia to assist in resolving any such matters.

7. Term and Termination

- 7.1. The term of this Agreement is 10 years.
- 7.2. This Agreement will take effect on the date on which the last Party has executed it.
- 7.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - 7.3.1. expiry of its term;
 - 7.3.2. 90 days notice by either Party to the other Party; or
 - 7.3.3. mutual agreement of the Parties.
- 7.4. This Agreement may be terminated by British Columbia if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the *Forest Act*.
- 7.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 7.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

8. Dispute Resolution

- 8.1. If a dispute arises between British Columbia and Tk'emlúps te Secwépemc regarding the interpretation of a provision of this Agreement, the Parties or Representatives will meet as soon as is practicable to attempt to resolve the interpretation dispute.
- 8.2. 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 Tk'emlúps te Secwépemc.

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- 8.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation dispute.

9. Renewal of the Agreement

- 9.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met and if each party has received such authorizations as it may require to either renew this Agreement or negotiate a new Agreement, British Columbia and Tk'emlúps te Secwépemc will, negotiate a renewal of this Agreement or, where applicable, negotiate a new agreement.

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10. Amendment of Agreement

- 10.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 10.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

11. Suspension or Cancellation by the Minister

- 11.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the Licence entered into as a result of this Agreement, if the Minister or a person authorized by the Minister determines that Tk'emlúps te Secwépemc is not in compliance with this Agreement.
- 11.2. If this Agreement is terminated in accordance with section 7.3.2 or 7.3.3, the Minister may cancel the Licence issued pursuant to this Agreement.
- 11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to Tk'emlúps te Secwépemc of any alleged contravention of this Agreement that may lead to Tk'emlúps te Secwépemc not being in compliance with this Agreement.

12. Entire Agreement

- 12.1. This Agreement, and any amendment to it, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

13. 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 set out 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. on that day.

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- 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	First Nation
Deputy Minister	Chief Shane Gottfriedson
Ministry of Forests, Lands, and Natural Resource Operations	Tk'emlúps te Secwépemc
P.O. Box 9525 STN PROV GOVT	200 - 355 Yellowhead Hwy
Victoria B.C. V8W 9C3	Kamloops, BC V2H 1H1
Telephone: (250) 356-5012	Telephone: (250) 828-9700
Facsimile: (250) 953-3687	Facsimile:(250) 372-8833

- 13.4. 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 facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Tk'emlúps te Secwépemc's Representative in respect of any licences entered into as a result of this Agreement.

14. Miscellaneous

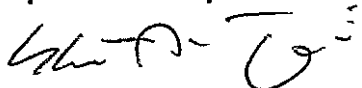
- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. British Columbia acknowledges and enters into this Agreement on the basis that Tk'emlúps te Secwépemc has Aboriginal Interests within its Traditional Territory but that the specific nature, scope and geographic extent of Tk'emlúps te Secwépemc's Aboriginal Interests have not yet been determined, and further that broader processes engaged in to bring about reconciliation will eventually result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of Tk'emlúps te Secwépemc.


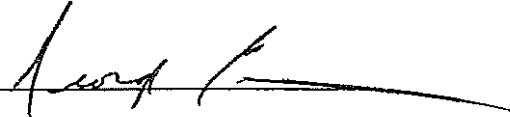
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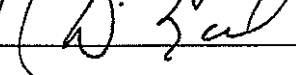
- 14.4. This Agreement does not exclude Tk'emlúps te Secwépemc from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.5. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 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.
- 14.6. This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 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. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 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 laws of British Columbia will govern this Agreement.
- 14.11. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to Tk'emlúps te Secwépemc.
- 14.12. The appendices to this Agreement form part of the Agreement.


Signed on behalf of:

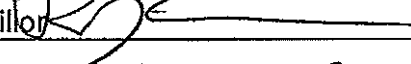
Tk'emlúps te Secwépemc

Chief  Date: Oct 15/12

Councillor  Councillor 

Councillor  Councillor _____

Councillor _____ Councillor 

Councillor 



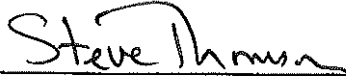
Witness of Tk'emlúps te Secwépemc signatures

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Signed on behalf of:

British Columbia

Date: March 27, 2013



Steve Thomson
Minister of Forests, Lands, and Natural
Resource Operations

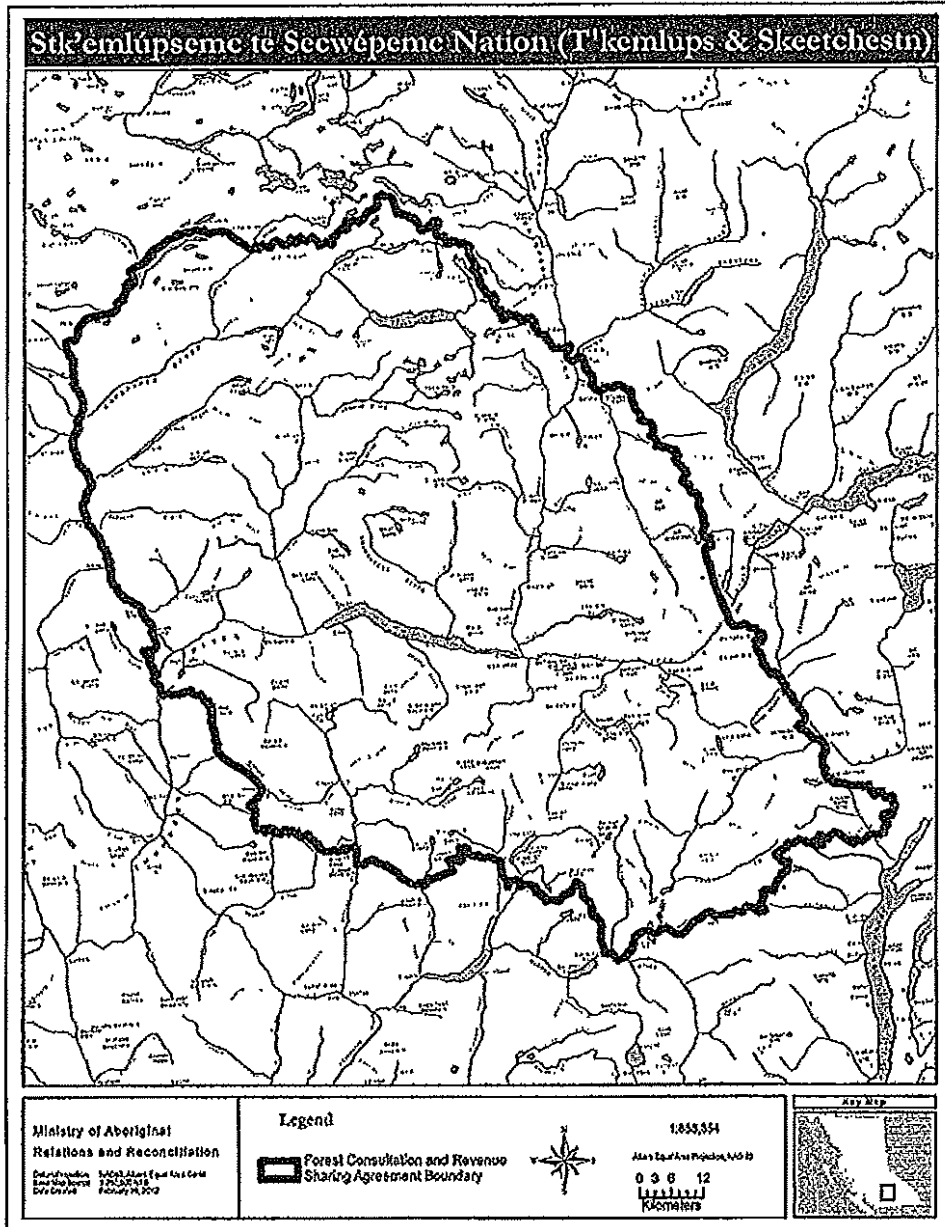


Witness of Minister signature

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APPENDIX A

Map of Tk'emlups te Secwepemc Traditional Territory
(the Stk'emlupsemc te Secwepemc Nation)



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APPENDIX B – Licence Area Map

