

March 27, 2009 Version

**Tsilhqot'in Nation
Interim Agreement on Forest & Range Opportunities
(the "Agreement")**

**Between:
The Tsilhqot'in Nation**

**As Represented by
Chief and Council of
(the "Esdilagh (Alexandria)
T'esqox (Toosey)
Tsi Del Del (Alexis Creek)
Yunesit'in (Stone)**

Xeni Gwet'in First Nations Government")

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 the 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 Tsilhqot'in Nation has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.**
- E. The Tsilhqot'in Nation has never ceded, surrendered, or relinquished their Aboriginal rights, including title, within the Agreement Area.**

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- F. The Tsilhqot'in Nation has Aboriginal Interests within the Agreement Area.
- G. This Agreement does not apply to areas where the Tsilhqot'in Nation has proven Aboriginal rights and where the British Columbia Supreme Court has offered its opinion on the existence of aboriginal title.
- H. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development within the Agreement Area.
- I. References in this Agreement to Crown Lands are without prejudice to the Tsilhqot'in Nation's Aboriginal title and/or rights claims over those lands.
- J. British Columbia intends to consult and to seek an Interim Accommodation with the Tsilhqot'in Nation on forest and/or range resource development activities proposed within the Tsilhqot'in Nation Agreement Area that may lead to an infringement of the Tsilhqot'in Nation's Aboriginal Interests.
- K. The Tsilhqot'in 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 Tsilhqot'in Nation's Agreement Area that may lead to an infringement of the Tsilhqot'in Nation's Aboriginal Interests.
- L. British Columbia and the Tsilhqot'in Nation wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.

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 Tsilhqot'in Nation's Agreement Area.
- 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 Tsilhqot'in Nation's Agreement Area.
- 1.3. "Aboriginal Interests" means aboriginal rights and/or aboriginal title.

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- 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 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* as per 12 (1).
- 1.6. "Range Tenure" means an agreement granting rights over Crown range as described in provincial legislation.
- 1.7. "Agreement Area" means the Tsilhqot'in Nation's Agreement Area 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 Tsilhqot'in 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

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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 Tsilhqot'in Nation through economic diversification.
- 2.2. Provide interim payment and other economic benefits to the Tsilhqot'in Nation 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 Agreement Area of the Tsilhqot'in Nation during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

3.0 Non-Timber Forest Products

Upon signing this agreement the Parties agree to explore opportunities to undertake a pilot project relating to the management and stewardship of non-timber forest products within the Agreement Area. The Parties may enter into separate agreements specific to opportunities for stewardship of non-timber forest products.

4.0 Economic Benefits to the Tsilhqot'in Nation

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

4.1. Forest Tenure

- 4.1.1 For the purposes of the provisions of section 4.1, 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.

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- 4.1.2 After the execution of this Agreement, and if applicable, once volume becomes available through the timber reallocation process, the Minister will invite the Tsilhqot'in Nation, or such legal entity as the Tsilhqot'in Nation has appointed as its representative to hold the licence to apply under the *Forest Act* for a non-replacement forest licence (the "Licence") on a non-competitive basis for up to 94 800 cubic meters:

?Esdilagh (Alexandria)	8 000
Tl'esqox (Toosey)	14 200
Tsi Del Del (Alexis Creek)	31 200
Yunesit'in (Stone)	20 000
Xeni Gwet'in First Nations Government	21 400

for a total annual amount 94 800

annually in the Williams Lake and Quesnel Timber Supply Area(s).

- 4.1.3 For greater certainty, the maximum volume that may be available under the Licence referred to in Section 4.1 will be up to 474 000 cubic meters over 5 years.

?Esdilagh (Alexandria)	40 000
Tl'esqox (Toosey)	71 000
Tsi Del Del (Alexis Creek)	156 000
Yunesit'in (Stone)	100 000
Xeni Gwet'in First Nations Government	107 000

for a total annual amount 474 000

- 4.1.4 The Parties will strive to ensure that the assigned operating area for the Licence in the Williams Lake and Quesnel Timber Supply Areas 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 Tsilhqot'in 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 Agreement Area.

- 4.1.5 Licence entered into as a result of an invitation under section 4.1 will be for a term of 5 years.

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4.1.6 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.

4.1.7 The Minister may invite the Tsilhqot'in Nation to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

4.2. Range Tenure

If Crown range vacancy is available for disposition to the Tsilhqot'in Nation, then subject to the *Range Act*, the Chilcotin, Central Cariboo and/or Quesnel District Manager may be directed to enter into a Range Permit, within Tsilhqot'in Nation Agreement Area to the Tsilhqot'in Nation for up to 6 000 Animal Unit Months (AUMs) (500 AUMs for each individual Tsilhqot'in Community "Esdilagh (Alexandria); T'esqox (Toosey); Tsi Del Del (Alexis Creek); Yunesit'in (Stone) and the Xeni Gwet'in First Nations Government.

4.3. Interim Payment

4.3.1 During the term of this Agreement, British Columbia will make an interim payment to the Tsilhqot'in Nation of approximately \$871,142 annually.

?Esdilagh (Alexandria)	\$ 74 182
T'esqox (Toosey)	\$131 323
Tsi Del Del (Alexis Creek)	\$288 710
Yunesit'in (Stone)	\$179 441
Xeni Gwet'in First Nations Government	\$197 486

for a total annual amount of \$871 142

4.3.2 The funding commitment in section 4.3.1 is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

4.3.3 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.

4.3.4 Upon signing of this Agreement, the Tsilhqot'in Nation will be paid the full revenues for the quarter in which the Agreement

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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.

4.3.5 British Columbia will not seek to direct or influence the expenditure of the funds provided to the First Nation.

5.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 5.1. The Tsilhqot'in 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 Tsilhqot'in Nation's Aboriginal Interests, regardless of benefits provided under this Agreement.
- 5.2. 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 Tsilhqot'in Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Tsilhqot'in Nation's Aboriginal Interests as an interim measure as a result of forest and range activities occurring within their Agreement Area.
- 5.3. 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 Tsilhqot'in Nation has agreed to accept.
- 5.4. 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 Tsilhqot'in Nation's Aboriginal Interests as a result of forest and range activities occurring within their Agreement Area.
- 5.5. Nothing in this Agreement restricts the ability of Tsilhqot'in Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resources development within its Agreement Area.
- 5.6. The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational

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Plans, which may affect the Tsilhqot'in Nation's Aboriginal Interests within their Agreement Area.

- 5.7. In developing such consultation processes, the Parties further agree to address consultation on Administration Decisions, Operational Decisions and Operational Plans through participation of the Tsilhqot'in Nation in strategic level planning and policy development processes.
- 5.8. 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.

6.0 Dispute Resolution

- 6.1. If a dispute arises between British Columbia and the Tsilhqot'in 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.
- 6.2. 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 Tsilhqot'in Nation.
- 6.3. 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.

7.0 Term and Termination

- 7.1. The term of this Agreement is 5 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: expiry of its term; 90 days notice; or mutual agreement of the parties.

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- 7.4. 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.
- 7.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under Section 7.3, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

8.0 Renewal of the Agreement

- 8.1. 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 Tsilhqot'in Nation 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.
- 8.2. Any subsequent forestry agreement between British Columbia and the Tsilhqot'in 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.

9.0 Amendment of Agreement

- 9.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 9.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.
- 9.3. 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 Tsilhqot'in Nation may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

10.0 Entire Agreement

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

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11.0 Notice

- 11.1. 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.
- 11.2. 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.
- 11.3. 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) 366-5012
Facsimile: (250) 953-3687

Tsilhqot'in Nation

Tsilhqot'in Nation
Address: 253 - 4th Avenue
Williams Lake, British Columbia
V2G 4T4

Telephone: (250) 392-3918
Facsimile: (250) 398-5798

12.0 Miscellaneous

- 12.1. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 12.2. 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.

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- 12.3. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 12.4. This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
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- 12.5. This Agreement is without prejudice to the Tsilhqot'in Nation's Aboriginal rights and title, and their right to full consultation and accommodation, as appropriate, for any infringements of those rights, except as provided in this Agreement or as necessary to carry out the terms of this Agreement.
- 12.6. The Province acknowledges and enters into this Agreement on the basis that the Tsilhqot'in Nation has Aboriginal interests within the Agreement Area and further the specific nature, scope or geographic extent of those Aboriginal interests of the Tsilhqot'in Nation 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 those Aboriginal interests or the treaty interests of the Tsilhqot'in Nation.
- 12.7. 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.
- 12.8. This Agreement does not address or affect any claims by the Tsilhqot'in Nation regarding infringement of its Aboriginal interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement.
- 12.9. 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.
- 12.10. 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.
- 12.11. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 12.12. The applicable laws of British Columbia and Canada shall govern this Agreement.

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12.13. British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Tsilhqot'in Nation.

12.14. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Tsilhqot'in Nation.

12.15. 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.

~~12.16. This Agreement does not exclude the Tsilhqot'in Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.~~

13.0 Giving Effect to the New Relationship

13.1. Notwithstanding this agreement, the Parties will, at the request of the Tsilhqot'in Nation, 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 Tsilhqot'in Nation's land use planning at all spatial scales and for reconciliation of Crown and the Tsilhqot'in 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 Tsilhqot'in Nation 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 Tsilhqot'in Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above; and

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(g) Mountain Pine Beetle infestation in Tsilhqot'in Nation's Agreement Area

13.2. 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:

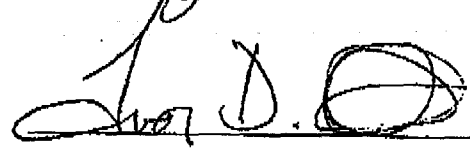
Date: MARCH 30, 2009

Tsilhqot'in Nation

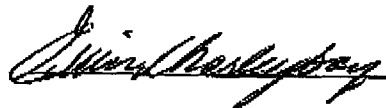
Chief Marilyn Baptiste
Xeni Gwet'in First Nations Government



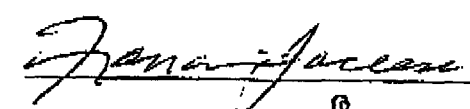
Chief Ivor D. Myers
Yunesit'in - Stone First Nation



Chief Ervin Charleyboy
Tsi Del Del - Alexis Creek First Nation

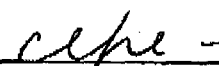


Chief Francis Lacey
T'esqox -- Toosey First Nation



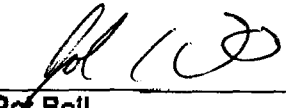
Chief Bernie Elkins
?Esdilagh -- Alexandria First Nation



 - CRYSTAL VERHAEGHE, INTERIM DIRECTOR
Witness of Tsilhqot'in Nation signatures

Signed on behalf of:
Government of British Columbia

Date: April 9
MARCH 30, 2009


Pat Beil
Minister of Forests and Range


Witness of Minister signature

