

Interim Measures Agreement

Between:

The Kaska Dena Council, as represented by the Chair, (hereinafter referred to as Kaska Dena Council)

The Dease River Band Council, as represented by the Chief

The Daylu Dena First First Nation, as represented by the Deputy Chief

The Kwadacha Band, as represented by the Chief
(hereinafter all four parties are collectively referred to as the Kaska Dena)

And:

Her Majesty the Queen in Right of the Province British Columbia, as represented by the Attorney General and Minister Responsible for Treaty Negotiations and the Minister of Forests and Minister of Sustainable Resource Management (hereinafter referred to as the "Province")

(collectively the "Parties")

Whereas:

- A. The Kaska Dena Council asserts that the Kaska Dena enjoy aboriginal rights, titles and interests in and to the Kaska Traditional Territory in British Columbia, that those rights, titles and interests are protected by ss. 25 and 35 of the *Constitution Act, 1982* and ss. 91(24) and 109 of the *Constitution Act, 1867*, and further asserts that until such time as it has entered into a treaty or land claims agreement, the Province has no lawful authority to alienate interests in the forest resources in that Traditional Territory.
- B. The Parties are engaged in negotiations towards a treaty under the British Columbia treaty process and wish to enter into this agreement to establish certain interim measures in relation to forestry matters in the Traditional Territory as contemplated under recommendation #16 of the British Columbia Task Force Report.
- C. The Province desires to ensure that there is Consultation with the Kaska Dena in respect of forestry and land use planning activities in the Traditional Territory in British Columbia.
- D. The Province and the Kaska Dena have agreed to address the matter of interim measures on a government to government basis.
- E. The Parties are committed to promoting the principles of sustainable forestry practices and ensuring compliance with the *Forest Practices Code of British Columbia Act*.
- F. The Ministry of Forests has specific responsibilities under the *Ministry of Forests Act* to implement resource management through the *Forest Act*, *Forest Practices Code of British Columbia Act* and the *Range Act*.
- G. The Ministry of Sustainable Resource Management has specific responsibilities for strategic planning, including responsibilities under the *Forest Practices Code of British Columbia Act* with regards to higher level planning.
- H. The Parties wish to balance timber harvesting and forest management practices with the asserted rights and interests of the Kaska Dena in relation to the Traditional Territory.

THEREFORE the Parties agree with each other as follows:

1. Definitions

1.1 For the purposes of this Agreement, the following words have the following meaning:

- 1.1.1 “Consult” or “Consultation” between the Kaska Dena and the - Province means that before a decision is made on a matter relating to this Agreement, the Party making the decision will provide the other Party with:
 - 1.1.1.1 reasonable notice of the matter to be decided, including information sufficient in form and detail to ensure that the other Party understands the matter, in order to assess it and prepare a meaningful response;
 - 1.1.1.2 a reasonable period of time to consider the matter having regard to:
 - 1.1.1.2.1 the nature and complexity of the matter to be decided;
 - 1.1.1.2.2 the need for the other Party to consult with their respective communities or constituencies, when necessary; and,
 - 1.1.1.2.3 timelines prescribed by applicable legislation.
 - 1.1.1.3 full and fair consideration by the Party obliged to consult as set out in this provision, of any concerns or recommendations presented.
- 1.1.2 "Higher level plan" means an objective for a resource management zone, and for a landscape unit or sensitive area, and recreation site, recreation trail or interpretative forest site;
- 1.1.3 "Traditional Territory" means that portion of British Columbia as generally illustrated on the map attached to this Agreement as Appendix A, asserted to be the traditional territory of Kaska Dena, a copy of which is filed with the BC Treaty Commission;
- 1.1.4 “Operational plan” means a forest development plan and range use plan.
- 1.1.5 “Strategic planning” is the responsibility of the Ministry of Sustainable Resource Management and means a process that looks ahead to the long term and results in land use allocation and/or resource management direction covering relatively large areas (e.g. watershed). Resulting products may include zoning with associated objectives and/or strategies.

2. Purpose of Agreement

2.1 The Parties enter into this Agreement for the following purposes:

- 2.1.1 to provide a framework and develop a set of procedures regarding the exchange of information on cultural activities, cultural heritage resources and planned forest management activities within the Traditional Territory;
- 2.1.2 to advance the Kaska Dena's involvement in resource and land use planning and management within the Traditional Territory;
- 2.1.3 to identify and facilitate opportunities that will enhance the participation of the Kaska Dena in the forest sector through economic development, training and employment;

- 2.1.4 to foster a co-operative and mutually supportive working relationship and ensure continued communication, and Consultation between the Province and the Kaska Dena;
- 2.1.5 to promote stability for forest industrial operations within the Kaska Dena Traditional Territory;
- 2.1.6 to facilitate timely decision making by the Province on forest management planning processes;
- 2.1.7 to assist the Province to Consult with the Kaska Dena in respect of the matters set out in section 8; and,
- 2.1.8 to assist the Parties to meet the objectives of Task Force recommendation No. 16, as it relates to forestry activities for which the Province has responsibility in the Traditional Territory.

3. Scope

- 3.1 This Agreement applies throughout the Traditional Territory.
- 3.2 In the event that the Parties agree to any treaty-related measures in writing in respect of the Traditional Territory, the terms of such treaty related measures will take precedence where they conflict with the terms of this Agreement.

4. Interpretation

- 4.1 This Agreement is not intended to define, create, recognize, deny or amend:
 - 4.1.1 any aboriginal or treaty rights or interests; or
 - 4.1.2 the legal status of lands and resources or the existing authorities of the Parties.
- 4.2 This Agreement is not intended to be a treaty or land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, or otherwise.
- 4.3 Except in proceedings directly related to the enforcement of this Agreement, the negotiations leading to its creation, its terms and its implementation are not admissions of fact or liability and are without prejudice to any legal positions of the Parties in any court proceeding or process or the negotiation of a treaty among the Parties.
- 4.4 Nothing in this Agreement shall require the Province or its representatives to act in a manner contrary to its jurisdiction as defined by legislation in effect from time to time.
- 4.5 Any cultural heritage information, including information that is of traditional, social, spiritual or cultural importance, provided to the Province by the Kaska Dena is provided and received in confidence, subject to the provisions of legislation such as the *Freedom of Information and Protection of Privacy Act* and the *Heritage Conservation Act*, where applicable.
- 4.6 The map attached to this Agreement as Appendix A is used only to define the territorial scope of the application of this Agreement. It is not to be construed as a final and definitive assertion by the Kaska Dena of the extent of its Traditional Territory. Nor will the use of this map for purposes of this Agreement be construed as an acceptance by the Province of British Columbia that the map defines the extent of the Traditional Territory of the Kaska Dena.
- 4.7 The Parties acknowledge that there may be changes to forest policy and legislation and that these changes may affect this Agreement.

- 4.8 The Province will inform Kaska Dena Council of any proposed changes to provincial forestry legislation, when this information is publicly available, and the Parties will discuss amending this Agreement to address such legislative changes. The forgoing discussion shall take place at the Forest Resource Council having regard for the spirit and intent of the Agreement.
- 4.9 If the Parties are unable to reach agreement on the amendment of this Agreement either party may refer the matter to the dispute resolution process outlined in Section 11. Any amendments agreed to by the Parties will be completed prior to the effective date of the proposed legislation.

5. Continuation of the Forest Resource Council

- 5.1 Upon execution of this Agreement, the Parties shall continue to meet as a Forest Resource Council (FRC).
- 5.2 The membership of the FRC shall consist of up to six community representatives and up to six Provincial representatives, including representatives from the Ministry of Forests and Ministry of Sustainable Resource Management
- 5.3 By agreement of the Parties, the membership of the FRC may be expanded or reduced, on a temporary basis for the duration of the Agreement, to enable it to more efficiently and effectively discharge its responsibilities under this Agreement.
- 5.4 The Kaska Dena shall meet with the Ministry of Forests representatives of the FRC twice a year to discuss forest operational issues and with the Ministry of Sustainable Resource Management once a year to discuss strategic planning issues, or as agreed to by the Parties. All Parties shall meet once a year for an Annual General Meeting.
- 5.5 The Chair shall alternate for each FRC meeting between the Province and the Kaska Dena. The Chair shall ensure that minutes of the meeting shall be documented and distributed among the Parties.
- 5.6 Decisions and recommendations of the FRC shall be made by consensus. Where consensus cannot be reached, the matter will be dealt with in accordance with the dispute resolution provisions contained in section 11.2 of this Agreement.

6. Purpose of the Forest Resource Council

- 6.1 The purpose of the FRC will be to act as a principal forum of Consultation between the Province and the respective Kaska Dena communities on forest management issues.

7. Role and Responsibilities of the Parties

- 7.1 In respect of the FRC, the Ministry of Forests is responsible for the following:
 - 7.1.1 providing timely notice to the FRC in writing of forest management planning described in section 8.1 and 8.3 being contemplated;
 - 7.1.2 ensuring that the FRC is provided copies of operational plans; and,
 - 7.1.3 ensuring that the FRC is provided with clarifications as required.

7.2 In respect of the FRC, the Ministry of Sustainable Resource Management is responsible for the following:

- 7.2.1 Providing timely notice to the FRC in writing of strategic plans, including higher level plans described in section 8.2;
- 7.2.2 Ensuring that the FRC is provided copies of strategic plans; and,
- 7.2.3 Ensuring that the FRC is provided with clarifications as required.

7.3 In respect of the FRC, the Kaska Dena are responsible for the following:

- 7.3.1 ensuring to the extent reasonably possible that all Kaska Dena who are potentially affected by forest resource management and operational and strategic planning processes have the earliest opportunity to review and comment on the activities. Written documentation of such comments for use in communication and Consultation with the Province will be kept. If clarification is required, the Kaska Dena will advise the Province;
- 7.3.2 identifying cultural heritage resources and cultural activities that may be impacted by forest development activities and/or strategic planning; and
- 7.3.3 identifying any other rights and interests asserted by the Kaska Dena, which may be impacted by forest development activities and/or strategic planning.

8. Consultation

8.1 The Consultation in the Province's forest management planning and decision-making processes will apply to those operational plans that are the responsibility of the Ministry of Forests, as defined by the *Forest Practices Code of British Columbia Act*, which would include, but not necessarily be limited to:

- 8.1.1 Forest Development Plans; and
- 8.1.2 Range Use Plans.

It is anticipated that the length of time for the FRC to make recommendations to the Province will generally be 60 days following receipt of the agreed upon documentation by the FRC.

8.2 The Consultation in the Province's forest strategic planning processes will apply to those strategic plans that are the responsibility of the Ministry of Sustainable Resource Management which would include, but not necessarily be limited to:

- 8.2.1 Land and Resource Management Plans;
- 8.2.3 Higher Level Plans; and,
- 8.2.5 Sustainable Resource Management Plans;

or parts of the aforementioned plans.

As each of the plans listed in this section 8.2 differ significantly from each other, the appropriate method of Consultation to achieve the objectives set out in section 8.4 will be determined by the FRC.

8.3 The Consultation will apply to other forest management activities that are the responsibility of the Ministry of

Forests and that may potentially impact the Kaska Dena communities, which would include, but not necessarily be limited to:

- 8.3.1 Timber Supply Review and Allowable Annual Cut Determination;
- 8.3.2 The disposition of timber in the form of a major licence;
- 8.3.3 Permits not covered by section 8.1;
- 8.3.4 Licenses to Cut; and
- 8.3.5 Some administrative matters, such as the replacement of tenures.

As each of the activities listed in this section 8.3 differ significantly from each other, the appropriate method of Consultation to achieve the objectives set out in section 8.4 will be determined by the FRC.

8.4 The objectives of the Consultation are as follows:

- 8.4.1 to promote to the greatest extent possible, sustainable forest management practices that incorporate the values, customs, and practices of the Kaska Dena;
 - 8.4.2 to provide an opportunity for the Kaska Dena to provide input in the exchange of relevant information on forest management, operational planning, certain administrative matters, and strategic planning and decision-making processes;
 - 8.4.3 to help identify cultural heritage resources and appropriate management strategies that will help prevent their unnecessary disturbance or destruction by forestry activities;
 - 8.4.4 to help prevent the unjustifiable infringement of the Kaska Dena's asserted aboriginal rights, titles, and interests;
 - 8.4.5 to assist the Province to conduct Consultation with the Kaska Dena;
 - 8.4.6 to address and help to resolve the legitimate concerns of the Kaska Dena in respect of matters addressed in this Agreement;
 - 8.4.7 to make recommendations to the Kaska Dena with respect to applicable plans or decisions; and,
 - 8.4.8 to make recommendations to the statutory decision makers with respect to applicable plans or decisions.
- 8.5 Where recommendations are made by the FRC in respect of the matters referred to in sections 8.1, 8.2 and 8.3 that are not acted upon by the statutory decision maker, the decision maker shall provide the members of the FRC with a written statement describing the rationale for the decision.
- 8.6 The FRC shall implement the work plan set out in Economic Measure Agreement attached as Appendix B in consultation with the Kaska Dena communities or the Kaska Dena Council, as appropriate, that are potentially affected by forest management planning and decision making processes being contemplated.
- 8.7 The FRC must determine and agree upon the appropriate method of Consultation for activities set out in section 8.2 and 8.3. If the FRC is not able to achieve a consensus as to the appropriate method, the FRC may refer the matter to dispute resolution under section 11.2.

8.8 In the case of responding to emergency situations under section 42 of the *Forest Practices Code Act of British Columbia Act*, the Province will attempt to involve the Kaska Dena communities affected prior to the decision. In the event this is not possible, information shall be provided as soon as possible following the decision.

9. Economic, Training and Employment Opportunities

- 9.1 The Economic Measure Agreement (EMA) between the KDC and the Province will provide Kaska Dena with economic, training and employment opportunities over a three-year period. See Appendix B for a copy of the EMA.
- 9.2 The Parties have agreed to a work plan for the purpose of developing forest tenure opportunities for the Kaska Dena in the Mackenzie Forest District and/or Cassiar Forest District under sections 43.5 and 47.3 of the *Forest Act*. The Parties acknowledge that under the work plan the Kaska Dena will submit a business plan and reach agreement with the Ministry of Forests on other matters, including potential partnerships with industry, that may be necessary to create these tenure opportunities. Once agreement is reached, the Parties will enter into a further interim measures agreement which will outline the applicable terms and conditions of any tenure opportunities including those that may be available under sections 43.5 or 47.3 of the *Forest Act*.
- 9.3 The Province will help find sponsorship and provide exposure to various forest activities for a Kaska Dena individual pursuing Professional Forester registration.
- 9.4. The Province will explore and identify opportunities to hire one Kaska Dena summer student in each forest district within the Traditional Territory.

10. Funding

- 10.1 The Economic Measure Agreement (EMA) between the KDC and the Province will provide Kaska Dena with annual funding for implementation of this Interim Measures Agreement for the term of the EMA. See Appendix B for a copy of the EMA.

11. Dispute Resolution

- 11.1 The Parties acknowledge that, from time to time, disputes among the Parties concerning the interpretation or implementation of this agreement may arise which require immediate resolution. For such dispute the Parties shall:
- 11.1.1 consider jointly appointing a representative of each of the Province and KDC or an independent facilitator, mediator or arbitrator to assist the Parties to resolve the matter in dispute; and,
 - 11.1.2 if after 7 days the matter still remains unresolved, then the Parties shall provide each other with written reasons for the different positions on the matter in dispute. These written reasons will be available to public.
- 11.2 The Parties acknowledge that, from time to time, the FRC may not be able to achieve consensus on a particular issue. For such matters the FRC will:
- 11.2.1 refer the matter to the Parties for resolution; and,

- 11.2.2 if 7 days after being referred under Section 11.2.1 the matter remains unresolved, then the Parties shall provide separate written recommendations to the statutory decision makers, provided that copies of all such recommendations shall be also provided to the Chair of the KDC and the Minister of Forests and/or Minister of Sustainable Resource Management, as appropriate.
- 11.3 In the event that the members of the FRC provides separate written recommendations as contemplated in subsection 11.2.2, then the decision maker shall provide written reasons to the members of the FRC for his or her decision on the matter at issue.
- 11.4 Any costs required to implement subsections 11.1 or 11.2 shall be shared equally among the Parties.
- 11.5 Nothing in this Agreement will preclude either party from referring a matter in dispute at any time, to any court of competent jurisdiction, or tribunal which has authority over the matter in dispute, or any aspect of it.

12. Term

- 12.1 This Agreement will terminate on the first to occur of the following:
 - 12.1.1 subject to section 12.2, the termination of the Economic Measure Agreement attached as Appendix B;
 - 12.1.2 30 days notice in writing by either Party to the other; or
 - 12.1.3 the effective date of a treaty among the Kaska Dena Council, the Province and Canada.
- 12.2 Prior to the expiry of this Agreement under section 12.1.1, the Parties will review the effectiveness of this Agreement and may extend its term, upon terms and conditions to which the Parties agree.

13. General Provisions

- 13.1 This Agreement may be executed in one or more counterparts and 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.

This Agreement was executed by the duly authorized representatives of the Parties as of the _____ day of March 2003.

The Kaska Dena Council

Per:

David Porter, Chair

The Dease River Band Council

Per:

Chief Frank Dennis

The Kwadacha Band

Per:

Chief Emil McCook

The Daylu Dena First Nation

Per:

Deputy Chief George Miller

Her Majesty the Queen in right of the
Province of British Columbia

Per:

The Honourable Mike de Jong
Minister of Forests

Per:

The Honourable Stan Hagen
Minister of Sustainable Resource Management

Per:

The Honourable Geoff Plant
Attorney General and Minister Responsible for Treaty Negotiations