

KTUNAXA NATION COUNCIL
Interim Agreement on Forest & Range Opportunities
(the "Agreement")

Between:
The Ktunaxa Nation Council

As represented by
Chief Sophie Pierre, St. Mary's Band and Council
Chief Mary Mahseelah, Tobacco Plains Band and Council
Chief Mary Jimmy, Akisq'nuk First Nation and Council
Chief Christopher Luke, Lower Kootenay Indian Band and Council, each of which Band
is a Party to this Agreement but which are collectively represented by the Ktunaxa
Nation Council
(the "Ktunaxa Nation Council")

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 Ktunaxa Nation Council, being an organization representing the Bands above-written that are Parties to this Agreement, also represents that the member Bands have a relationship to the land that is important to their**

culture and the maintenance of their communities, governance and economies.

- E. The Ktunaxa Nation Council also represents that the Bands above-written have Aboriginal Interests within the 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 Ktunaxa Nation Council member Bands' Aboriginal title and/or rights claims over those lands.**
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Ktunaxa Nation Council, as representative of the member Bands above-written, on forest and/or range resource development activities proposed within the Ktunaxa Nation Council Traditional Territory that may lead to the infringement of the Ktunaxa Nation Council member Bands' Aboriginal Interests.**
- I. The Ktunaxa Nation Council 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 Ktunaxa Nation Council's Traditional Territory, that may lead to an infringement of the Ktunaxa Nation Council's Aboriginal Interests.**
- J. British Columbia and the Ktunaxa Nation Council wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.**
- K. Lower Kootenay Indian Band and British Columbia, pursuant to Section 8.2.3 of the Lower Kootenay Indian Band Forest and Range Agreement dated December 2005, hereby on the date of execution of this Agreement terminate that Agreement and transfer the economic benefits contained in that Agreement to this Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities.**

Therefore the Parties agree as follows:

1.0 Definitions

For the purposes of this Agreement, the following definitions apply:

- 1.1 “Aboriginal Interests” means aboriginal rights and/or aboriginal title.**
- 1.2 “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 or Tree Farm Licence;**
 - **and,**
 - **The establishment of an interpretive forest site, recreation site and/or recreation trail.**
- 1.3 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.**
- 1.4 “Interim Accommodation” means the accommodation provided in this Agreement, of the potential infringements of the economic component of the Ktunaxa Nation Council member Bands’ 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.**
- 1.5 “Licensee” means a holder of a Forest Tenure or a Range Tenure.**

- 1.6 **“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 Ktunaxa Nation Council’s Traditional Territory.**
- 1.7 **“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 Ktunaxa Nation Council’s Traditional Territory.**
- 1.8 **“Range Tenure” means an agreement granting rights over Crown range as defined in the *Range Act*.**
- 1.9 **“Traditional Territory” means the territory asserted by the Ktunaxa Nation Council on behalf of the above-written member Bands as shown on bold black on the map attached in Appendix A.**

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 Ktunaxa Nation Council member Bands through economic diversification.**
- 2.2 **Provide interim payment and other economic benefits to the Ktunaxa Nation Council member Bands 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 during the term of this Agreement, while longer term interests are addressed through other agreements or processes.**

3.0 Economic Benefits to the Ktunaxa Nation Council

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Ktunaxa Nation Council, on behalf of the member Bands above-written:

- 3.1 **Forest Tenure**

After the execution of this Agreement and, if applicable, once volume becomes available through the timber reallocation process, the Minister will invite the Ktunaxa Nation Council, or such legal entity as the Ktunaxa Nation Council and its member Bands has appointed as its representative to hold the licence to apply under the *Forest Act* for non-replaceable licences (the “Invermere Licence”) on a non-competitive basis for up to 7,488 cubic meters annually in the Invermere Timber Supply Area and (the “Cranbrook Licence”) on a non-competitive basis for up to 14,556 cubic meters annually in the Cranbrook Timber Supply Area. The Parties acknowledge that Lower Kootenay Indian Band has already received a non-replaceable licence (the “Kootenay Lake Licence”) on a non-competitive basis for up to 6,135 cubic meters annually in the Kootenay Lake Timber Supply Area through a previous Forest and Range Agreement (“the Lower Kootenay Indian Band Forest and Range Agreement” dated December 2005, that is terminated by this Agreement) which licence now becomes part of, and continues to be authorized by, this Agreement.

3.1.1 The Minister will invite the Ktunaxa Nation Council, or such legal entity as the Ktunaxa Nation Council and its member Bands has appointed as its representative to apply for non-replaceable licences (the “Invermere opportunities Licence”) for up to 17,385 cubic meters annually in the Invermere Timber Supply Area and (the “Cranbrook opportunities Licence”) for up to 250 cubic meters annually in the Cranbrook Timber Supply Area. The Parties acknowledge that Lower Kootenay Indian Band has already received a non-replaceable licence (the “Kootenay Lake undercut licence opportunity”) for up to 4,908 cubic meters annually in the Kootenay Lake Timber Supply Area.

3.1.2 If the Invermere Licence and the Invermere opportunities Licence are both entered into, the Parties may agree to consolidate these two licences into one licence, in accordance with the *Forest Act*. If the Cranbrook Licence and the Cranbrook opportunities Licence are both entered into, the Parties may agree to consolidate these two licences into one licence, in accordance with the *Forest Act*. If the Kootenay Lake Licence opportunity and the Kootenay Lake undercut licence opportunity are both entered into, the Parties may agree to consolidate these two licences into one licence, in accordance with the *Forest Act*.

3.1.3 For greater certainty, the maximum volume that may be available under the Licences referred to in Sections 3.1 and 3.1.1 for the Invermere Timber Supply Area will be up to 124,365 cubic

meters over 5 years, for the Cranbrook Timber Supply Area will be up to 74,030 cubic meters over 5 years and for the Kootenay Lake Timber Supply Area will be up to 55,215 cubic meters over 5 years. If the intended holder of any of the licences is a legal entity other than Ktunaxa Nation Council, this Agreement must include supporting documentation, as specified within Appendix B of this Agreement, stating that the intended holder has been validly appointed by the Ktunaxa Nation Council as its representative.

3.1.4 The Parties will strive to ensure that the assigned operating area for the Licences in the Invermere, Cranbrook or Kootenay Lake 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 Ktunaxa Nation Council, or such legal entity as the Ktunaxa Nation Council and its member Bands has appointed as its representative, making an application for any of the Licences, the Parties will work together to identify the location of an operating area for the Licences, which to the extent that it is operationally feasible will be within the Traditional Territory; and

3.1.5 Licences entered into as a result of invitations under section 3.1 and 3.1.1 will be for a term of 5 years.

3.1.6 If any 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 Ktunaxa Nation Council to apply for a subsequent Licence(s) under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.2 Range Tenure

If Crown range vacancy is available for disposition to Ktunaxa Nation Council, then subject to the *Range Act*, the District Manager may be directed to enter into a Range Permit, within Ktunaxa Nation Council Traditional Territory with the Ktunaxa Nation Council.

3.3 Interim Payment

3.3.1 During the term of this Agreement, British Columbia will make interim payments to the above-written member Bands of the

Ktunaxa Nation Council of approximately \$469,655 annually. This amount is based on \$124,807 for Akisq'nuk First Nation, \$159,893 for St. Mary's Band, \$82,703 for Tobacco Plains Band and \$102,252 for Lower Kootenay Indian Band. Payments will be made quarterly to each Band.

- 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. 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 Ktunaxa Nation Council 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 Bands.**

4.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 4.1 The Ktunaxa Nation Council is entitled to full consultation with respect to all potential infringements of their member Bands' Aboriginal Interests arising from any Operational or Administrative Decisions or Plans affecting the Ktunaxa Nation Council member Bands' 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 Ktunaxa Nation Council agrees that British Columbia will have provided Interim Accommodation with respect to the economic component of potential infringements of the Ktunaxa Nation Council member Bands' 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 Ktunaxa Nation Council 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 Ktunaxa Nation Council member Bands' Aboriginal Interests within their Traditional Territory.**

5.0 Dispute Resolution

- 5.1 If a dispute arises between British Columbia and the Ktunaxa Nation Council or its member Bands 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 Ktunaxa Nation Council.**
- 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.**

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 Ktunaxa Nation Council will seek the necessary authorities and approvals to renew this Agreement.**
- 7.2 Any subsequent forestry agreement between British Columbia and the Ktunaxa Nation Council 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 Ktunaxa Nation Council 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

Ktunaxa Nation Council

Rosemary Nicolas, CEO
Ktunaxa Nation Council
7469 Mission Road
Cranbrook, B.C. V1C 7E5
Telephone: (250) 489-2464
Facsimile: (250) 489-5760

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 Nothing in this Agreement, including the recitals, defines or confirms the specific nature, scope, location or geographic extent of Aboriginal Interests of the Ktunaxa Nation Council or its member Bands.**
- 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 Ktunaxa Nation Council or its member Bands regarding infringement of its member Bands' 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 Ktunaxa Nation Council and/or its member Bands.**
- 11.13 This Agreement is not intended to limit any obligation of Licensees or other third parties to the Ktunaxa Nation Council or its member Bands.**
- 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 Ktunaxa Nation Council or its member Bands 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 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 Ktunaxa Nation Council's land use planning at all spatial scales and for reconciliation of Crown and the Ktunaxa Nation Council'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 Ktunaxa Nation Council 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 Ktunaxa Nation Council to be**

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reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above.


Signed on behalf of:


Ktunaxa Nation Council


Rosemary Nicholas, Chief Executive Officer
Ktunaxa Nation Council

Date: March 3/06


Witness of Ktunaxa Nation Council signature



Chief Sophie Pierre
St. Mary's Band
Date: March 31/06


Chief Mary Jimmy
Akiaq'nuk First Nation
Date: March 31, 2006


Witness of St. Mary's Band signature


Witness of Akiaq'nuk First Nation signature

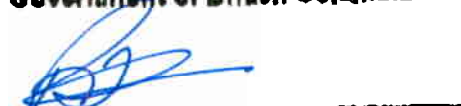

Chief Mary Mahseeiah
Tobacco Plains Band
Date: March 31-06


Chief Christopher Luke
Lower Kootenay Indian Band
Date: March 31, 2006


Witness of Tobacco Plains Band signature


Witness of Lower Kootenay Indian Band signature

Signed on behalf of:
Government of British Columbia


Rich Coleman
Minister of Forests and Range

Date: June 6/06


Witness of Minister's signature

APPENDIX A
Map of Asserted Traditional Territory by Ktunaxa Nation Council on behalf of the
Member Bands Above-written

Yaqaḥ Hankatiḥiḥki na ḥamak

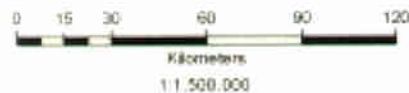
Base Map of the Ktunaxa Nation Statement of Intent Area



Ktunaxa Kinbasket Treaty Council

Legend

- Ktunaxa Statement of Intent Area
- Native Reserves
- Municipalities
- Provincial and Federal Parks
- Major Highways



**APPENDIX B
DESCRIPTION AND DOCUMENTATION PERTAINING TO THE
INTENDED HOLDER OF THE LICENCES**

_____ Timber Supply Area

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

A.) Applicant for the license (i.e. Ktunaxa Nation Council)

Or

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

-
- (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).**

**APPENDIX B
DESCRIPTION AND DOCUMENTATION PERTAINING TO THE
INTENDED HOLDER OF THE LICENCES**

Kootenay Lake Timber Supply Area

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

A.) Applicant for the license (i.e. Ktunaxa Nation Council)

Or

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

Lower Kootenay Development Corporation

- (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).**

**APPENDIX B
DESCRIPTION AND DOCUMENTATION PERTAINING TO THE
INTENDED HOLDER OF THE LICENCES**

Cranbrook Timber Supply Area

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

C.) Applicant for the license (i.e. Ktunaxa Nation Council)

Or

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

Ktunaxa Kinbasket Development Corporation

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

**APPENDIX B
DESCRIPTION AND DOCUMENTATION PERTAINING TO THE
INTENDED HOLDER OF THE LICENCES**

Invermere Timber Supply Area

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

E.) Applicant for the license (i.e. Ktunaxa Nation Council)

Or

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

Ktunaxa Kinbasket Development Corporation

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