

ATMOSPHERIC BENEFIT SHARING AGREEMENT

THIS AGREEMENT made the 28 day of September, 2011

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Aboriginal Relations and Reconciliation

("British Columbia")

AND

Nuxalk Nation

Wuikinuxv Nation

Metlakatla First Nation

Kitasoo Indian Band

Heiltsuk Nation

Gitga'at First Nation

Each a "First Nation" and collectively the "Central and North Coast First Nations"

Collectively all the "Parties"

WHEREAS:

- A. On February 7, 2006, the Gitga'at, Heiltsuk, Kitasoo, Metlakatla, Wuikinuxv, Nuxalk First Nations and British Columbia announced the Central and North Coast Land Use Vision which included a commitment to fully implement Ecosystem Based Management (EBM) by March 31, 2009;
- B. In December 2006 leadership of the Central and North Coast First Nations passed a resolution to explore and work to realize revenues and other benefits related to the increased carbon sequestration that would occur as a result of EBM implementation;

- C. By 2008, the Gitga'at, Heiltsuk, Kitasoo, Metlakatla, Wuikinuxv, Nuxalk First Nations and British Columbia had entered into Land and Resource Protocols and/or Strategic Land Use Planning Agreements which established further commitments to develop and implement EBM in the Project Area;
- D. To fully implement EBM in the Central and North Coast Region and pursuant to discussions between the Parties, by March 27, 2009 British Columbia had established;
- a) Order in Council No. 2/2009, the *Central and North Coast Biodiversity, Mining and Tourism Area Order*, pursuant to the *Environment and Land Use Act*,
 - b) the Protected Areas in the North and Central Coast pursuant to the *Protected Areas of British Columbia Act*, and
 - c) land use objectives for the North and Central Coast that define objectives, strategies and practices for the management of forest resources in accordance with ecosystem based management pursuant to Section 93.4 of the *Land Act* and the *Land Use Objectives Regulation*;
- E. The Parties are of the view that the aforementioned actions have and will continue to increase the amount of carbon sequestration and reduce carbon emissions that occurs on forested land in the Project Area and such increases will result in greenhouse gas reductions that are capable of being recognized as carbon emission offsets;
- F. In December 2010, British Columbia and the Central and North Coast First Nations entered into a Reconciliation Protocol;
- G. The Parties utilized a spatial timber supply model to assess the timber supply implications of implementing EBM in the Project Area;
- H. Based on the spatial timber supply model, the Parties have developed an appropriate and credible model for estimating the forest carbon offsets in the Project Area; and
- I. The Parties now wish to establish the specific arrangements which will enable the Central and North Coast First Nations to utilize atmospheric benefits to achieve progress toward socioeconomic objectives and satisfy the terms of the Reconciliation Protocol.

Now therefore in consideration of the premises and the covenants and agreements set out below, the parties agree as follows:

1.0 DEFINITIONS

In this Agreement:

“Atmospheric Benefits” means the enhancement of carbon gas removal and the reduction of carbon gas emission resulting from the effect of the actions described in preamble D and F and estimated in the Forest Carbon Model;

“Available Central and North Coast Atmospheric Benefits” means 78% of the annual quantum of Central and North Coast Atmospheric Benefits;

“Central and North Coast Atmospheric Benefits” means incremental tonnes of atmospheric CO₂ sequestered per calendar year measured using the Forest Carbon Model applied to the Project Area;

“Distributed Atmospheric Benefits” means the Atmospheric Benefits available for sale by the Central and North Coast First Nations in accordance with section 3.2 of this Agreement;

“EBM” means Ecosystem Based Management the adaptive, systematic approach to managing human activities that seeks to ensure the coexistence of healthy, fully functioning ecosystems and human communities;

“Forest Carbon Model” means the methods applied to estimate atmospheric benefits, attached as Appendix 2;

“Project Area” means the Central Coast and North Coast shown as the Project Area on the map attached as Appendix 1;

“Protected Areas” means the areas shown as Provincial Protected Areas on the map attached as Appendix 1;

“Reconciliation Protocol” means the protocol signed by the Parties on December 10, 2009 and amended on December 7, 2010; and

“Term” means the period of time this Agreement is in effect in accordance with section 6.1;

2.0 PURPOSE OF AGREEMENT

- 2.1 This Agreement defines negotiated understanding between the Parties regarding offsets sharing agreements as outlined in Schedule C of the Reconciliation Protocol.
- 2.2 Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that no provision of this Agreement shall prejudice, limit, or derogate from any Aboriginal title, treaty or other Aboriginal rights. Further, nothing in this Agreement is intended to create or modify any Aboriginal title, treaty or other Aboriginal rights.

3.0 ATMOSPHERIC BENEFITS

- 3.1 As a consequence of this Agreement, the Parties agree that the Central and North Coast First Nations have ownership and the right to sell the Distributed Atmospheric Benefits in accordance with the terms of this Agreement.
- 3.2 During the Term, the Parties agree to the following distribution of Available Central and North Coast Atmospheric Benefits to the Central and North Coast First Nations:
 - a) as of the effective date of this Agreement, 77% of the 2009 and 2010 Available Central and North Coast Atmospheric Benefits;
 - b) subject to section 6.6, commencing on April 1, 2012 and on April 1st in each fiscal year thereafter, 50% of the annually calculated Available Central and North Coast Atmospheric Benefits for the previous calendar year; and
 - c) subject to section 6.6, any additional percentage of the Available Central and North Coast Atmospheric Benefits as agreed upon by the Parties under sections 3.3 or 7.2.
- 3.3 The Parties will make best efforts by September 26, 2011 to assess the "second priority" costs referred to in section 3.c.ii of Schedule C of the Reconciliation Protocol, for the calendar years 2009 to 2015, and amend, as necessary, subsection 3.2 c) of this Agreement to achieve consistency with the terms of section 3.c of Schedule C of the Reconciliation Protocol.
- 3.4 British Columbia will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in, nor will it assist or support a third party in any such claim to any Distributed Atmospheric Benefits.
- 3.5 The Parties acknowledge this Agreement fully satisfies the commitment to provide the first priority allocation specified in section 3.c.i of Schedule C of the Coastal Reconciliation Protocol for calendar years 2009 through 2015.

4.0 CARBON OFFSET PROJECT DEVELOPMENT, OPERATION AND INFORMATION

- 4.1 The Parties agree to maintain and update the spatial timber supply model, or any successor model agreed to by the Parties, on an as required basis to incorporate the latest growth and yield, forest inventory and timber supply analysis data available to British Columbia.
- 4.2 The Parties agree to use the Forest Carbon Model to determine the Atmospheric Benefits in the Project Area.
- 4.3 The Parties will promptly provide to each other documentation provided to or received from third parties in connection with the validation and verification of the Atmospheric Benefits.
- 4.4 The Parties do not make any representation or warranty regarding the qualification or eligibility of the Distributed Atmospheric Benefits under any program or market relating to carbon offsets, or the marketability or value of the Distributed Atmospheric Benefit.
- 4.5 The Parties will make all reasonable efforts to work with each other and designated representatives to achieve the validation, verification and registration of the Distributed Atmospheric Benefits under recognized forest carbon offset programs.
- 4.6 Except as otherwise agreed by the Parties, no Party to this Agreement will take steps to validate, verify or register Atmospheric Benefits without the prior written agreement of the other Parties.
- 4.7 This Agreement does not change or affect the positions the Parties have, or may have, regarding their jurisdictions, responsibilities or decision making authority, nor is it to be interpreted in a manner that would unlawfully interfere with that decision making authority.
- 4.8 Except with respect to representations, commitments, covenants or obligations made by British Columbia under this Agreement, each First Nation shall indemnify and save harmless British Columbia and its servants, employees, agents, contractors and licensees from any and all liabilities, damages, costs (including legal fees on a solicitor and own client basis), claims, suits or actions arising from any use made by the First Nation of the Distributed Atmospheric Benefits, including the sale, trade, registration or other dealing with the Distributed Atmospheric Benefits in any way, with any person.

5.0 COMMUNICATIONS AND INFORMATION EXCHANGE

- 5.1 The Central and North Coast First Nations and British Columbia will provide to each other notice of intention to make written public communications relating to this Agreement or Distributed Atmospheric Benefits and provide the other party with an opportunity to review and comment on the communications.
- 5.2 To support ongoing validation and verification of the Distributed Atmospheric Benefits, British Columbia will provide to Central and North Coast First Nations on an as required basis, the forest land inventory, harvest disturbance, harvest volume and natural disturbance data and related technical support documents that is available to British Columbia.
- 5.3 Within 60 days of the effective date of this Agreement, the Central and North Coast First Nations will prepare a Statement of Reconciliation Protocol Priorities (Appendix 3) that identifies the outcomes that the Central and North Coast First Nations will seek to achieve in relation to the objectives set out in the Reconciliation Protocol or other agreements between the Parties with some or all of the funds from the sale of Distributed Atmospheric Benefits through the end of calendar year 2015.
- 5.4 On or before June 15, 2015, and every five years thereafter, the Central and North Coast First Nations or its agent will prepare a further Statement of Reconciliation Protocol Priorities that identifies the outcomes that the Central and North Coast First Nations will seek to achieve in relation to the objectives set out in the Reconciliation Protocol or other agreements between the Parties with some or all of the funds from the sale of Distributed Atmospheric Benefits over the next five year period.
- 5.5 The Statement of Reconciliation Protocol Priorities and the reports referred to in 5.3 and 5.4 will be made publicly available by the Central and North Coast First Nations in a manner that can reasonably be expected to bring the Statement of Reconciliation Priorities and reports to the attention of its members and British Columbia.

6.0 TERM AND TERMINATION

- 6.1 This Agreement is in effect from the date that British Columbia and each First Nation has signed and continues until March 31, 2025 unless terminated under section 6.2.

- 6.2 British Columbia may terminate this Agreement in relation to any First Nation that ceases to be a party to the Reconciliation Protocol, specifically commitments in section 5 of the Governance Framework and section 6 of the Shared Decision Making in the Reconciliation Protocol.
- 6.3 British Columbia must provide the Central and North Coast First Nations 30 days written notice of intention to terminate under subsection 6.2, including confirmation of the effective date of the termination.
- 6.4 The termination of this Agreement or a withdrawal by a First Nation does not affect the Central and North Coast First Nations' ownership and right to sell Distributed Atmospheric Benefits for the calendar years prior to the termination date or the effective date of withdrawal.
- 6.5 A First Nation may withdraw from this Agreement by providing the other Parties 30 days written notice of intention to withdraw, effective the last day of that calendar year.
- 6.6 If a First Nation withdraws or its participation is terminated, the remaining Parties will reduce the percentage referenced in the definition of Available Central and North Coast Atmospheric Benefits and the percentage of additional Available Central and North Coast Atmospheric Benefits under subsection 3.2 (c) in accordance with the allocation framework agreed to by the Parties.

7.0 REVIEW AND AMENDMENT

- 7.1 This Agreement may be amended from time to time only with the written consent of all the Parties to the agreement at the time of the amendment.
- 7.2 Commencing not later than June 15, 2015, and every fifth anniversary thereafter, the Parties will make best efforts to negotiate and reach agreement on a distribution under section 3.2(c) of Available Central and North Coast Atmospheric Benefits for calendar years after 2015 consistent with the terms of Schedule C of the Reconciliation Protocol.
- 7.3 In support of the negotiation under subsection 7.2, the Parties will consider relevant and reasonably available information including but not limited to:
- a) a summary of the total tonnes of Distributed Atmospheric Benefits sold;
 - b) gross revenues received by Central and North Coast First Nations from the sale of Distributed Atmospheric Benefits, to be provided on a confidential basis; and

c) the expected market price of Distributed Atmospheric Benefits.

7.4 At British Columbia's request, the Central and North Coast First Nations will provide in a timely manner:

- a) a summary of the annual total tonnes of Distributed Atmospheric Benefits sold and gross revenues received for the previous calendar year by the Central and North Coast First Nations from the sales of Distributed Atmospheric Benefits, to be provided to British Columbia on a confidential basis; and
- b) a financial statement confirming the use of proceeds from the sale of Distributed Atmospheric Benefits are consistent with the goals and intended outcomes of the Reconciliation Protocol that is attested to by a designated representative of the Central and North Coast First Nations. For greater certainty, the financial statement is limited only to Distributed Atmospheric Benefits provided to Central and North Coast First Nations under sections 3.c.i and 3.c.ii of Schedule C of the Coastal Reconciliation Protocol as agreed to by the Parties.

7.5 The Central and North Coast First Nations agree that British Columbia and other First Nations asserting aboriginal rights and title within the Project Area may enter into a reconciliation agreement that includes the sharing of Atmospheric Benefits and, subject to the agreement of the Parties, those first nations may become a party to this Agreement.

7.6 This Agreement is not a treaty or a lands claims agreement, and does not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

8.0 FURTHER ASSURANCES

8.1 The parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

9.0 APPROPRIATION

9.1 Notwithstanding any other provision of this Agreement, any distribution under section 3.2 is subject to:

- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when any such distribution is required, to make that distribution; and

- b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such distribution.

10.0 INTERPRETATION

10.1 In this Agreement:

- a) headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- b) a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and
- c) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

11.0 GOVERNING LAW

- 11.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

12.0 ENUREMENT

- 12.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.

13.0 NO ASSIGNMENT

- 13.1 This Agreement may not be assigned, either in whole or in part, by any Party.

14.0 NOTICES

- 14.1 A notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways:
 - a) delivered personally or by courier;
 - b) transmitted by facsimile transmission; or

c) mailed by post in Canada in any form which requires a receipt.

14.2 A communication will be considered to have been given or made, and received:

- a) if delivered personally or by courier, at 9:00 a.m. on the business day after the day on which it was received by the addressee or a responsible representative of the addressee;
- b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at 9:00 a.m. on the next business day after the day on which it was transmitted; or
- c) if mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

14.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: British Columbia

Attention:	Minister of Aboriginal Relations and Reconciliation
Personal or courier delivery:	Parliament Buildings Victoria, British Columbia
Facsimile transmission:	(250) 387-5594
Postal deliver:	PO Box 9468 STN PROV GOVT Victoria, British Columbia V8W 9E2

For: Nuxalk Nation

Attention:	Chief and Council
Facsimile transmission:	(250) 799-5426
Postal delivery:	PO Box 65 Bella Coola, British Columbia V0T 1C0

For: Wuikinuxv Nation

Attention:	Chief and Council
Facsimile transmission:	(250) 949-7105
Postal deliver:	Bag 3500 Port Hardy, British Columbia V0N 2P0

For: Metlakatla First Nation

Attention: Chief and Council
Facsimile transmission: (250) 628-9259
Postal deliver: PO Box 224
Prince Rupert, British Columbia V8J 3P6

For: Kitasoo Indian Band

Attention: Chief and Council
Facsimile transmission: (250) 839-1256
Postal deliver: General Delivery
Klemtu, British Columbia V0T 1L0

For: Heiltsuk Nation

Attention: Chief and Council
Personal or courier delivery: 226 Wabalisla St
Bella Bella, British Columbia V0T 1Z0
Facsimile transmission: (250) 957-2544
Postal deliver: P.O. Box 880
Bella Bella, British Columbia V0T 1Z0

For: Gitga'at First Nation

Attention: Chief and Council
Personal or courier delivery: 445 Hayimiisaxaa Way
Hartley Bay British Columbia VOV 1A0
Facsimile transmission: (250) 841-2541


15.0 EXECUTION IN COUNTERPARTS

- 15.1 This Agreement may be executed in counterparts and by facsimile. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document.

THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED as of the day and year first above written

EXECUTED in the presence of


) HER MAJESTY THE QUEEN
) IN RIGHT OF THE PROVINCE
) OF BRITISH COLUMBIA
) as represented by the Minister of
) Aboriginal Relations and Reconciliation
)
)
)


As to the signature of the
Minister of Aboriginal Relations
and Reconciliation

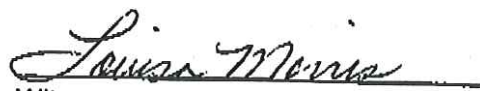

Minister of Aboriginal Relations and
Reconciliation

ON BEHALF OF THE FIRST NATIONS, as represented by:


Nuxalk Nation


Witness


Wuikinuxv Nation



Witness



Metlakatla First Nation


Witness


Kitasoo Indian Band


Witness

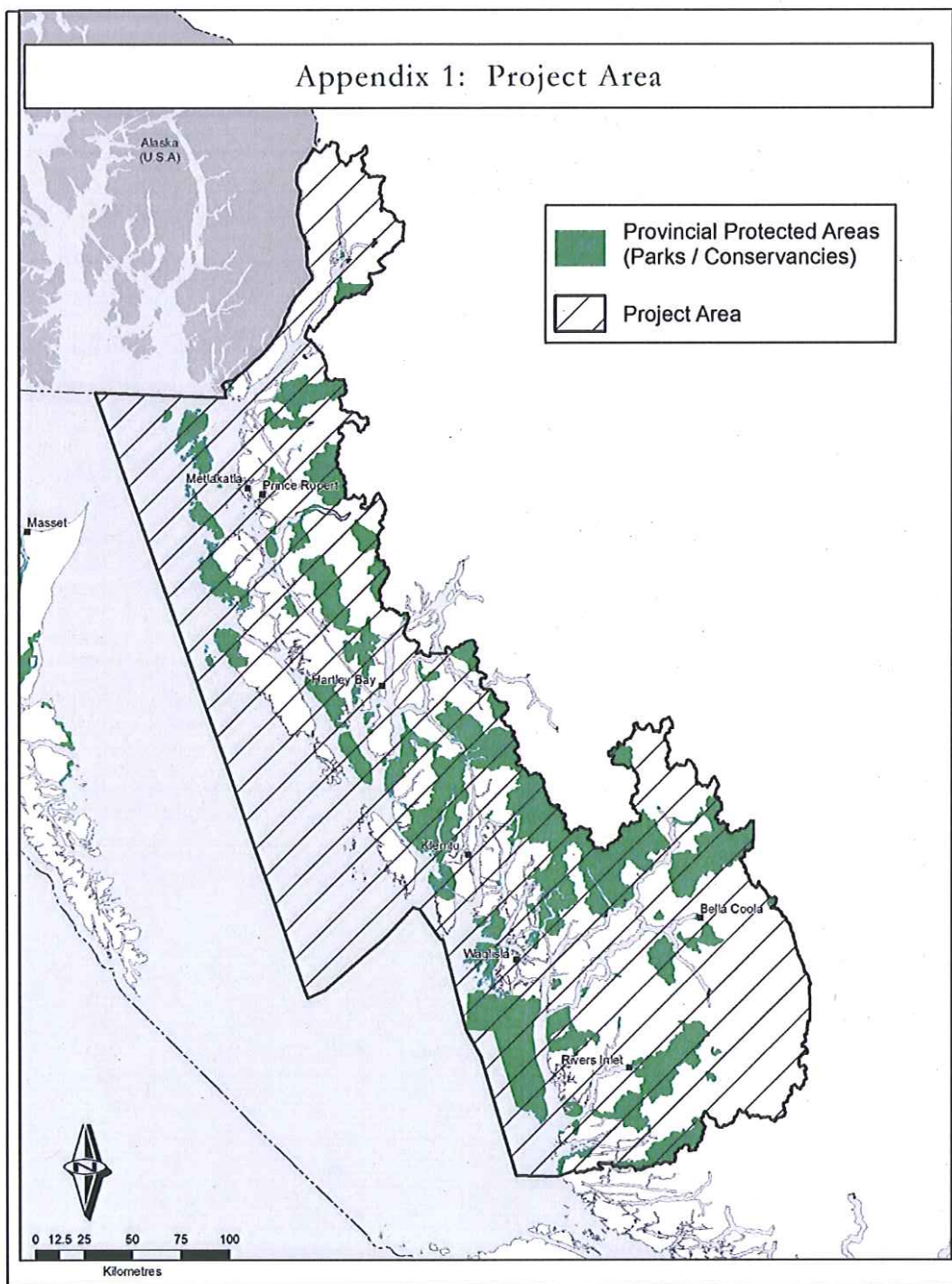

Heiltsuk Nation


Witness


Gitga'at First Nation


Witness

Appendix 1: Project Area



APPENDIX 2: The Forest Carbon Model

The Forest Carbon Model used by the Parties to quantify Atmospheric Benefits is as described in the following reports prepared by Andrew Fall, Gowlland Technologies Ltd:

1. Assessing Carbon Offset Potential of Land-Use Plans in the Central and North Coastal BC, March 2011.
2. Linking Spatial Timber Supply Analysis and Carbon Budget Modelling, Methods Developed for Coastal BC, March 2011.
3. Linking Spatial Timber Supply Analysis and Carbon Budget Modelling, An application in the Central-North Coast and South-Central of BC, December 2009.

APPENDIX 3:
Statement of Reconciliation Protocol Priorities

- Outcomes specific to the Reconciliation Protocol to be achieved by Central and North Coast First Nations from 2011 through 2015

Reconciliation Protocol Outcomes	Measurement Criteria