

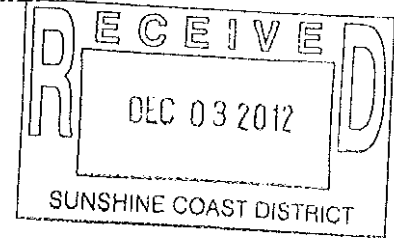
FOREST TENURE OPPORTUNITY "A" AGREEMENT

Forest Tenure Opportunity Agreement
(the "Agreement")

Between:

Xwémalhkwu First Nation
(also known as Homalco Indian Band)

As represented by
Chief and Council



and

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

(collectively the "Parties")

WHEREAS:

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

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

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

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

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2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

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

3. Forest Tenure Opportunity

- 3.1. After execution of this Agreement, Xwémalhkwa First Nation, or its Representative, may apply to the Regional Executive Director, in a form acceptable to the Regional Executive Director, for two non-replaceable licences (the "Licence(s)") on a non-competitive basis for up to 12,812 cubic meters annually in the Sunshine Coast Timber Supply Area, and an additional one-time direct award for up to 14,712 cubic meters in the Strathcona Timber Supply Area.

The Licence(s) will be comprised of:

Management Unit	Licence	Allowable Annual Cut (AAC) (m ³ /yr)	Total Volume in m ³	Term in years (yrs.)	Volume Source Bill 28
Sunshine Coast TSA	A90415	12,812	64,060	5	Yes
Strathcona TSA	A90455	N/A	14,712	2	No (major license unused)
Totals		12,812	78,772	5	

- 3.2. If Xwémalhkwa First Nation or its Representative already holds an existing Licence(s) that has or have been previously directly awarded under section 47.3 of the Forest Act, then the District Manager or Regional Executive Director may extend one or more or

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those existing Licence(s), authorizing additional volume or allowable annual cut (AAC) for those licences in the amounts identified under section 3.1.

- 3.3. The appointment of a Representative for the purpose of holding the Licence(s) must be made in accordance with the *Forest Act*.
- 3.4. Prior to submitting an application for the Licence A90415 referred to in 3.1, Xwémalhkwa First Nation will meet with British Columbia to discuss the identification of an Operating Area, and British Columbia will strive to identify an Operating Area that is located, to the extent operationally feasible, within Xwémalhkwa First Nation's Traditional Territory.
- 3.5. The Operating Area for Licence A90455 referenced in section 3.1 will be located in the Strathcona Timber Supply Area, as outlined in Appendix B on the attached map labelled "Sonora Island", and is described in the legend as the "Proposed Forest License Areas":

Cutblock Name	Location	Hectares
HM004	Sonora Island	11.0
HM005	Sonora Island	8.2

- 3.6. The Licence(s) under section 3.1 of this Agreement will:
 - 3.6.1. be a non-replaceable forest licence(s) as defined under the *Forest Act*;
 - 3.6.2. include other terms and conditions required by law including the condition that Xwémalhkwa First Nation must comply with this Agreement; and,
 - 3.6.3. include other terms and conditions as may be required by the Regional Executive Director.
- 3.7. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licence(s) referred to in section 3.1.
- 3.8. During the term of this Agreement and notwithstanding section 3.7, Xwémalhkwa First Nation agrees that British Columbia has provided to Xwémalhkwa First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Xwémalhkwa First Nation's Aboriginal Interests, in the form of the Licence(s) provided for under this Agreement.

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- 3.9. If the Licence(s) entered into under this Agreement remains in effect beyond the term of this Agreement, the Licence(s) will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.8 until the Licence(s) expires or is terminated.
- 3.10. Any Licences entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

4. Reporting of Tenure Information

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

5. Xwémalhkwu First Nation Traditional Territory

- 5.1. British Columbia will use the map of Xwémalhkwu First Nation's Traditional Territory used in the Homalco Indian Band Forest and Range Consultation and Revenue Sharing Agreement which map will be set out in this Agreement as Appendix A.

6. Economic and Operational Stability within Xwémalhkwu First Nation Traditional Territory

- 6.1. Xwémalhkwu First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Xwémalhkwu First Nation with provincially authorized forest activities and will work cooperatively with British Columbia to assist in resolving any such matters.

7. Term and Termination

- 7.1. The term of this Agreement is 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:
- 7.3.1. expiry of its term;
 - 7.3.2. 90 days notice by either Party to the other Party; or

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7.3.3. mutual agreement of the Parties.

- 7.4. This Agreement may be terminated by British Columbia if the Licence(s) or any of them issued pursuant to section 3.1 is or are cancelled, surrendered or otherwise terminated under the Forest Act.
- 7.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 7.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

8. Dispute Resolution

- 8.1. If a dispute arises between British Columbia and Xwémalkwu First Nation regarding the interpretation of a provision of this Agreement, the Parties or Representatives will meet as soon as is practicable to attempt to resolve the interpretation dispute.
- 8.2. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and Xwémalkwu First Nation.
- 8.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation dispute.

9. Renewal of the Agreement

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

10. Amendment of Agreement

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

11. Suspension or Cancellation by the Minister

- 11.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the Licence(s) issued under this Agreement, if the Minister or a person authorized by the Minister

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determines that Xwémalhkwu First Nation is not in compliance with this Agreement.

11.2. If this Agreement is terminated in accordance with section 7.3.2 or 7.3.3, the Minister may cancel the Licence(s) issued pursuant to this Agreement.

11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to Xwémalhkwu First Nation of any alleged contravention of this Agreement that may lead to Xwémalhkwu First Nation not being in compliance with this Agreement.

12. Entire Agreement

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

13. Notice

13.1. Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as set out in this section of the Agreement.

13.2. Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. on that day.

13.3. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia	Xwémalhkwu First Nation
Minister	Chief Richard Harry
Ministry of Forests, Lands, and Natural Resource Operations	Xwémalhkwu First Nation
P.O. Box 9049 STN PROV GOVT	1218 Bute Crescent
Victoria, British Columbia V8W 9E2	Campbell River, British Columbia V9H 1G5
Telephone: (250) 387-6240	Telephone: (250) 923-4979
Facsimile: (250) 387-1040	Facsimile: (250) 923-4987

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- 13.4. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Xwémalhkwa First Nation's Representative in respect of any licences issued under this Agreement.

14. Miscellaneous

- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. British Columbia acknowledges and enters into this Agreement on the basis that Xwémalhkwa First Nation has Aboriginal Interests within its Traditional Territory but that the specific nature, scope and geographic extent of Xwémalhkwa First Nation's Aboriginal Interests have not yet been determined, and further that broader processes engaged in to bring about reconciliation will eventually result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of Xwémalhkwa First Nation.
- 14.4. This Agreement does not exclude Xwémalhkwa First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.5. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 14.6. This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 14.7. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.

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- 14.8. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 14.9. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.10. The laws of British Columbia will govern this Agreement.
- 14.11. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to Xwémalhkwu First Nation.
- 14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

Xwémalhkwu First Nation

Chief *Robert Henry* Date: Nov. 27, 2012

Councillor *Brie Blaney* Councillor *[Signature]*

Councillor _____ Councillor *Mary Ann Emerald*

Councillor _____ Councillor *[Signature]*

Councillor _____

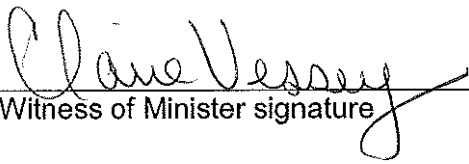
[Signature]
Witness of Xwémalhkwu First Nation
signatures *S. HELMER*.

Signed on behalf of:

British Columbia Date: Feb 19 / 2013

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

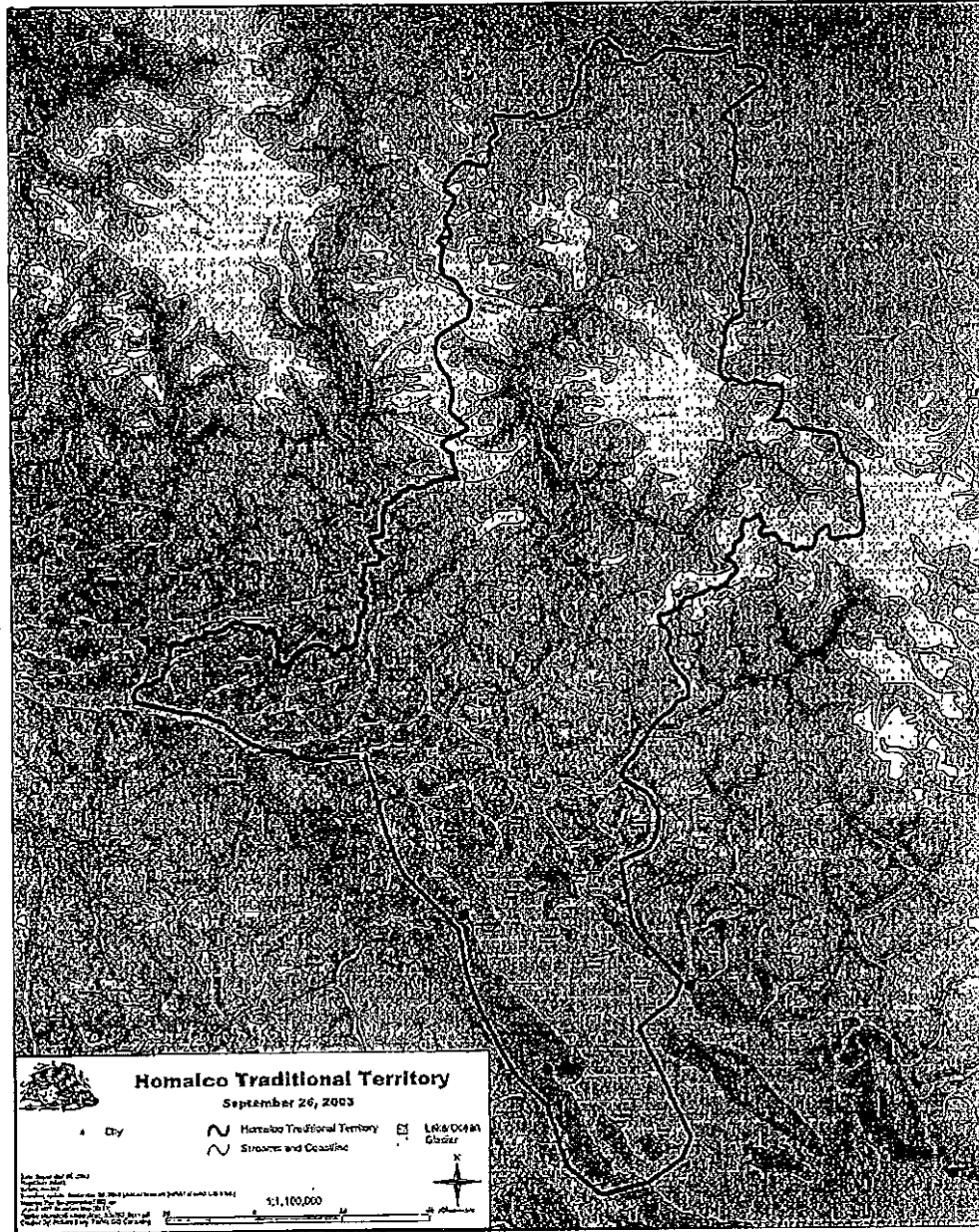
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Witness of Minister signature

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APPENDIX A

Map of Xwémalhkwu First Nation Traditional Territory



A90455 Operating Area Map Homalco First Nation

