

# FOREST TENURE OPPORTUNITY AGREEMENT

## Forest Tenure Opportunity Agreement (the "Agreement")

Between:

**Hupacasath First Nation**  
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. Hupacasath First Nation has Aboriginal Interests within its Traditional Territory.
- C. This Agreement is intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the Traditional Territory of Hupacasath 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 Hupacasath First Nation are addressed through other agreements or processes.
- D. This Agreement is intended to address section 9.1(b) and 9.1(c) of the Accommodation Agreement entered into between the Province and the Hupacasath First Nation dated July 12, 2012.

### 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

## FOREST TENURE OPPORTUNITY AGREEMENT

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. "Accommodation Agreement" means the agreement between British Columbia and Hupacasath First Nation dated July 12, 2012.
- 1.9. "Representative" carries the same meaning as it is given in the *Forest Act*.
- 1.10. "Traditional Territory" means Hupacasath First Nation's claimed or asserted Traditional Territory as shown on bold black on the map attached in Appendix A.

### 2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Provide an opportunity for Hupacasath First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Hupacasath First Nation in achieving progress towards closing socio-economic gaps between the members of Hupacasath First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Hupacasath 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 Hupacasath First Nation's Aboriginal Interests.

## FOREST TENURE OPPORTUNITY AGREEMENT

- 2.4. Fulfill the commitment in section 9.1(b) and 9.1(c) of the Accommodation Agreement to invite Hupacasath First Nation to apply for a non-replaceable volume-based license and a woodlot.

### 3. Forest Tenure Opportunity

- 3.1. After execution of this Agreement, Hupacasath First Nation, or its Representative, may apply to the Regional Executive Director, in a form acceptable to the Regional Executive Director, for a forestry licence to cut (the "Licence") on a non-competitive basis for up to 20,000 cubic meters within Tree Farm Licence 44. The Licence will be comprised of:

Management Unit	Licence(s)	Allowable Annual Cut (AAC) (m <sup>3</sup> /yr)	Total Volume in m <sup>3</sup>	Term in years (yrs.)
TFL 44	FLTC	n/a	20,000	5 yrs, extendable to 10 years pursuant to the <i>Forest Act</i>

- 3.2. The appointment of a Representative for the purpose of holding the Licence(s) must be made in accordance with the *Forest Act*.
- 3.3. The Operating Area for the Licence referenced in section 3.1 will be located in the Great Central Lake management unit of Tree Farm Licence 44 and is outlined on the map attached to this Agreement as Appendix B.
- 3.4. The Licence(s) under section 3.1 of this Agreement will:
- 3.4.1. be a forestry licence to cut as defined under the *Forest Act*;
  - 3.4.2. include other terms and conditions required by law including the condition that Hupacasath First Nation must comply with this Agreement; and,
  - 3.4.3. include other terms and conditions as may be required by the Regional Executive Director.

#### Woodlot Licence

- 3.5. After the execution of this Agreement and subject to 3.2, the Hupacasath First Nation may apply to the District Manager to enter into Woodlot Licence (the "Licence") No. 1476.. The Licence is identified on the map attached as Appendix C.

## FOREST TENURE OPPORTUNITY AGREEMENT

- 3.5.1. The Licence under 3.5 of this Agreement will:
- 3.5.1.1. be subject to the approval of the District Manager which includes the submission and approval of a management plan;
  - 3.5.1.2. be for a term of 20 years;
  - 3.5.1.3. be eligible for replacement provisions as defined within the *Forest Act*;
  - 3.5.1.4. include other terms and conditions required by law including the condition that Hupacasath First Nation must comply with this Agreement; and,
  - 3.5.1.5. include other terms and conditions as may be required by the District Manager.

- 3.6. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licences referred to in section 3.1 and 3.5
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Hupacasath First Nation agrees that British Columbia has fulfilled its obligations under section 9.1(b) and 9.1(c) of the Accommodation Agreement.
- 3.8. If the Licences entered into under this Agreement remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.7 until the Licences expire or is terminated.
- 3.9. Any Licence 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 request certain information from Hupacasath First Nation on what measurable benefits the Hupacasath First Nation community has been able to achieve as a result of this Agreement.
- 4.2. Hupacasath 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. Hupacasath Traditional Territory

- 5.1. British Columbia will use the map of Hupacasath First Nation's Traditional Territory used in the *Hupacasath First Nation Interim*

## FOREST TENURE OPPORTUNITY AGREEMENT

*Agreement on Forest and Range Opportunities* which map will be set out in this Agreement as Appendix A.

### 6. Economic and Operational Stability within Hupacasath First Nation Traditional Territory

- 6.1. Hupacasath First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Hupacasath 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 ten 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
  - 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 Hupacasath 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 Hupacasath 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.

## FOREST TENURE OPPORTUNITY AGREEMENT

### 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 Hupacasath 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 issued under this Agreement, if the Minister or a person authorized by the Minister determines that Hupacasath 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 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 Hupacasath First Nation of any alleged contravention of this Agreement that may lead to Hupacasath 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.

## FOREST TENURE OPPORTUNITY 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.

<b>British Columbia</b>	<b>Hupacasath First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Hupacasath First Nation
P.O. Box 9525 STN PROV GOVT	PO Box 211
Victoria B.C. V8W 9C3	Port Alberni, B.C. V9Y 7M7
Telephone: 250.356.5012	Telephone: 250.724.4041
Facsimile: 250.953.3687	Facsimile: 250.724.1232

- 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 Hupacasath 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 Hupacasath First Nation has Aboriginal Interests within its Traditional Territory but that the specific nature, scope and geographic extent of Hupacasath 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 Hupacasath First Nation.
- 14.4. This Agreement does not exclude Hupacasath First Nation from accessing forestry economic opportunities and benefits, which may

## FOREST TENURE OPPORTUNITY AGREEMENT

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 charge 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.
- 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 Hupacasath First Nation.
- 14.12. The appendices to this Agreement form part of the Agreement.



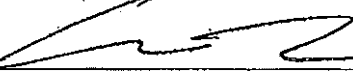
**FOREST TENURE OPPORTUNITY AGREEMENT**

Signed on behalf of:

**Hupacasath First Nation"**

Chief 

Date: January 17<sup>th</sup>, 2013

Councillor 

Councillor 

Councillor \_\_\_\_\_

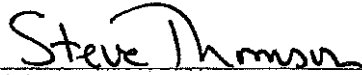
Councillor \_\_\_\_\_

Witness of Hupacasath First Nation"  
signatures

Signed on behalf of:

**British Columbia**

Date: Feb 25 / 2013



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



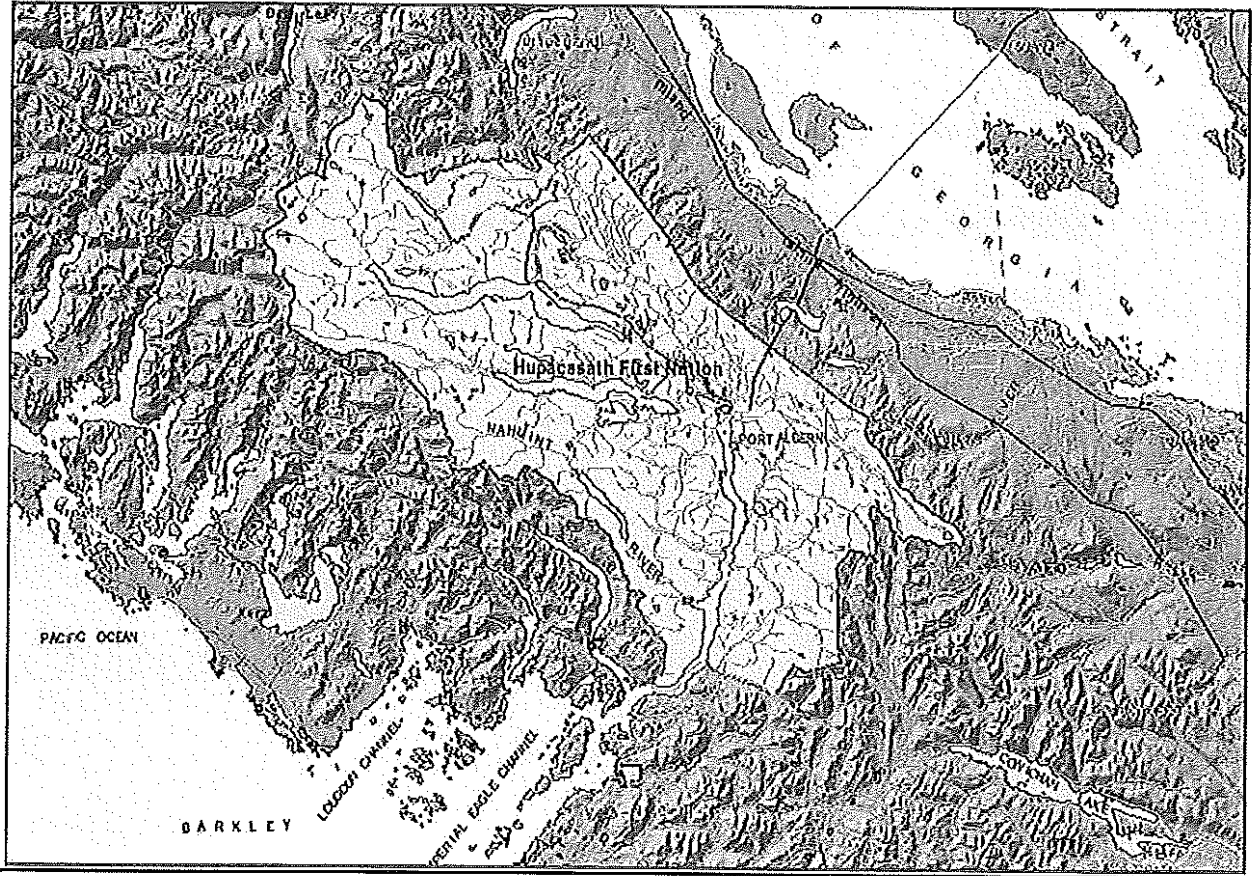
Witness of Minister signature

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# FOREST TENURE OPPORTUNITY AGREEMENT

## APPENDIX A

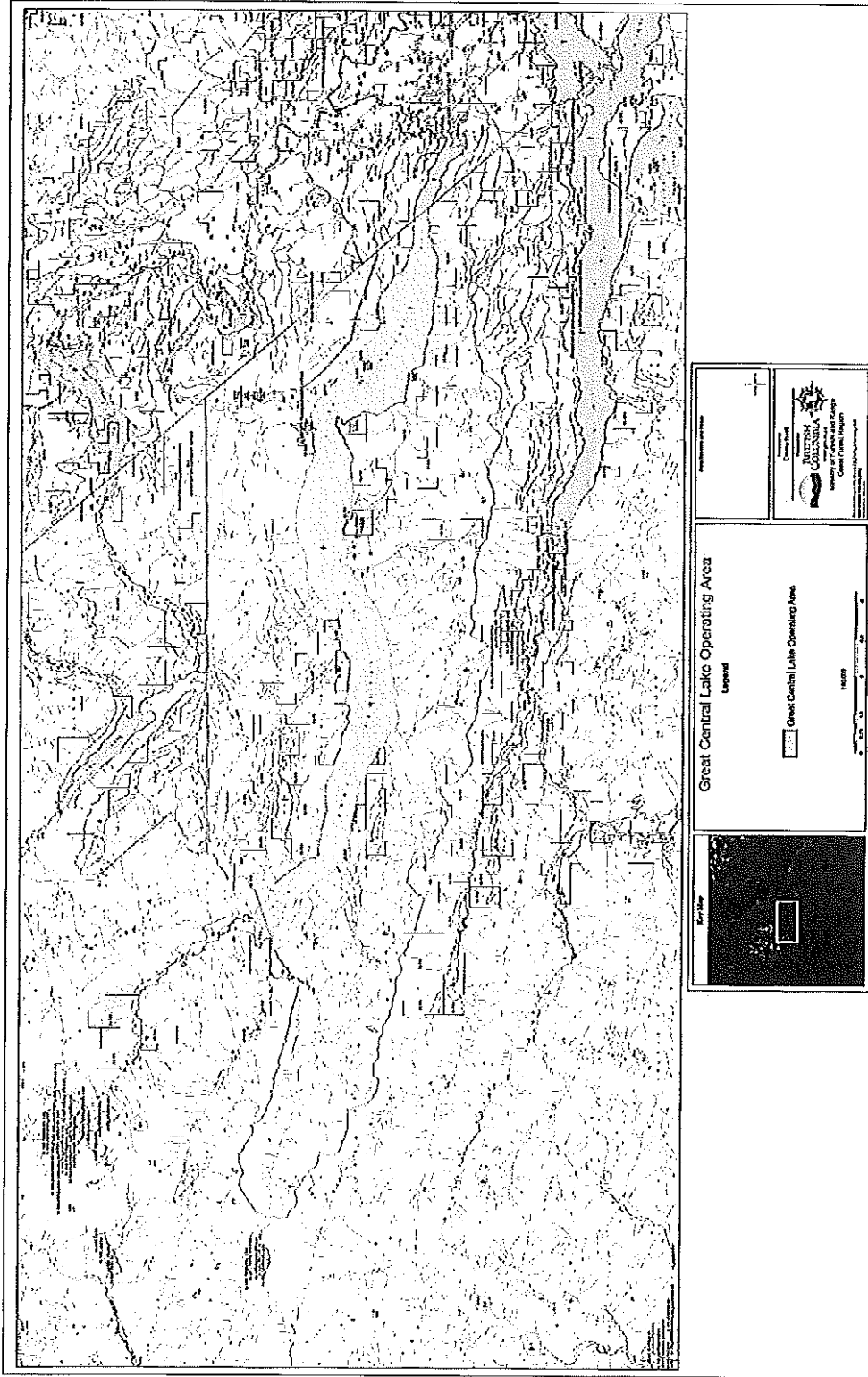
### Map of Hupacasath First Nation Traditional Territory



FOREST TENURE OPPORTUNITY AGREEMENT

APPENDIX B

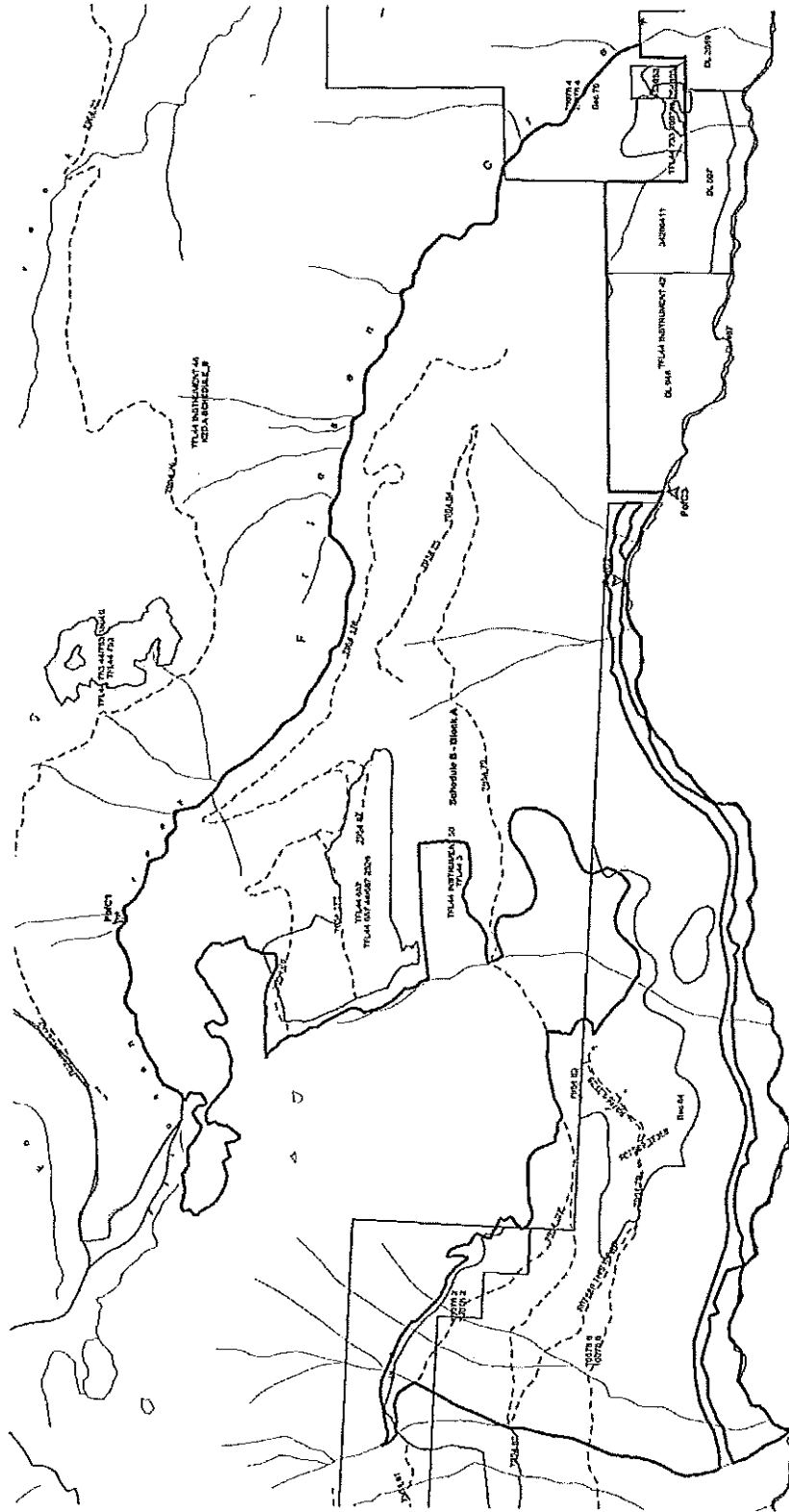
Operating Area: Great Central Lake - TFL44



**FOREST TENURE OPPORTUNITY AGREEMENT**

**APPENDIX C**

**Proposed Sproat Lake Woodlot – W1476**



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