

**Interim Measures Agreement**  
(the "Agreement")

**Between:**

***Malahat First Nation***

As represented by  
Chief and Council  
Malahat First Nation

**And**

**Her Majesty the Queen in Right of the Province of British Columbia**

as represented by the Minister of Forests and Range  
(the "Government of British Columbia")

(collectively the "Parties")

**Whereas:**

- The Te'mexw Treaty Association signed *An Agreement Respecting Management of Forest Resources* with the Government of British Columbia on October 8, 1996.
- This Agreement replaces the October 8, 1996 Agreement with respect to the specific interests of the Malahat First Nation.
- The Malahat First Nation has a relationship to the land that is important to its culture and the well-being of its community, governance and economy.
- The Malahat First Nation has Douglas Treaty rights to hunt over the unoccupied lands and the right to carry on its fisheries as formerly.
- The Malahat First Nation is currently negotiating a modern, comprehensive treaty under the British Columbia Treaty Process.
- The Government of British Columbia wishes to support economic opportunities for Malahat First Nation.

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Therefore the Parties agree as follows:

## 1.0 Definitions

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

- 1.1 "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 Malahat First Nation's Traditional Territory.
- 1.2 "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 Malahat First Nation's Traditional Territory.
- 1.3 "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 Tree Farm Licence; and,
  - The establishment of an interpretive forest site, recreation site and/or recreation trail.
- 1.4 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.

1.5 "Traditional Territory" means the Malahat First Nation's asserted Traditional Territory as shown in bold black on the map attached to this Agreement as **Appendix A**.

1.6 "Licensee" means a holder of a Forest Tenure or a Range Tenure.

1.7 "Treaty Rights" means the Douglas Treaty rights of the Malahat First Nation to hunt over the unoccupied lands and carry on fisheries as formerly.

## 2.0 Purpose

The purposes of this Agreement are to:

- 2.1 increase the participation of the Malahat First Nation in the forest sector; and,
- 2.2 provide an economic benefit through a forest tenure opportunity to the Malahat First Nation.

## 3.0 Economic Benefits to the Malahat First Nation

During the term of this Agreement, British Columbia will provide the following economic benefit to the Malahat First Nation:

### 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 Malahat First Nation, or such legal entity as the Malahat First Nation has appointed as its representative to hold the licence to apply under the *Forest Act* for a Licence on a non-competitive basis for up to 3,000 cubic meters annually in the Arrowsmith Timber Supply Area.

3.2 For greater certainty, the licence opportunity will be located on portions of the Arrowsmith Timber Supply Area as shown on the map attached as **Appendix B**. The maximum volume that may be available under the Licence referred to in Section 3.1 will be up to 15,000 cubic meters over 5 years.

3.3 A Licence entered into as a result of an invitation under section 3.1 will be for a term of five years.

3.4 The Minister may invite the Malahat First Nation to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

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- 3.5 An invitation to apply for a licence(s) and any licence(s) entered into as a result of the invitation to apply under this Agreement may be combined with a tenure opportunity included in any other agreement in accordance with the *Forest Act*.
- 3.6 The Parties acknowledge that the Malahat First Nation's objective is to pursue a woodlot licence within its Traditional Territory. During the term of this agreement, the Parties will discuss the possibility of establishing a woodlot for the Malahat First Nation.

#### **4.0 Consultation Regarding Operational and Administrative Decisions and Plans**

- 4.1 The Malahat First Nation is entitled to full consultation with respect to all potential infringements of its Treaty Rights arising from any Operational or Administrative Decisions or Plans.
- 4.2 The Parties agree to adopt the following consultation process to address both Operational and Administrative Decisions or Plans that may affect the Malahat First Nation's Treaty Rights within its Traditional Territory.

##### **Operational Plans:**

- 4.3 The Government of British Columbia agrees to consult with the Malahat First Nation in a timely manner on Operational Plans that may potentially infringe the Malahat First Nation's Treaty Rights within the Traditional Territory.
- 4.4 The Malahat First Nation agrees to fully participate, as set out in this section, in the review of all Operational Plans provided to it by the Government of British Columbia, and by Licensees.
- 4.5 In reviewing and responding to an Operational Plan submitted to them, the Malahat First Nation will, within 60 days, provide the party that supplied the plan with all reasonably available information identifying any potential impacts to its Treaty Rights within its Traditional Territory that may result from the proposed forestry development activities.
- 4.6 Upon receiving the response from Malahat First Nation as specified in Section 4.5, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Malahat First Nation any potential infringements of Malahat First Nation's Treaty Rights within the Traditional Territory that may occur as a result of proposed Operational Plans.

- 4.7 If no response is received from the Malahat First Nation within the 60 day period, then the Government of British Columbia may conclude that the Malahat First Nation does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.8 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Malahat First Nation, whether received directly or through a Licensee, and will consider whether the concerns identified by the Malahat First Nation have been addressed.
- 4.9 The Government of British Columbia will advise the Malahat First Nation in writing how any concerns raised in 4.6 have been sought to be addressed.

**Administrative Decisions:**

- 4.10 The Government of British Columbia will provide to the Malahat First Nation on an annual basis a list of all proposed Administrative Decisions anticipated within the year, and either upon the request of the Malahat First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, it will provide to Malahat First Nation with an updated list.
- 4.11 The Government of British Columbia will meet with the Malahat First Nation at mutually agreed times throughout the year to provide an opportunity for the Malahat First Nation to make known to representatives of the Government of British Columbia its concerns and comments about the effect of the Administrative Decision(s) on its Treaty Rights within the Traditional Territory.
- 4.12 The Government of British Columbia will include the Malahat First Nation in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Arrowsmith Timber Supply Area.
- 4.13 The Malahat First Nation agrees to participate in public Timber Supply Review processes by providing all reasonably available information about the extent to which its Treaty Rights within the Traditional Territory may potentially be affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.

- 4.14 If after considering the concerns and comments of the Malahat First Nation, the statutory decision-maker is of the opinion that an Administrative Decision may infringe Malahat First Nation Treaty Rights, the statutory decision maker will seek to either address the comments and concerns in the Administrative Decision or through the process contained in Sections 4.3 through 4.8 of this Agreement.
- 4.15 The Government of British Columbia will advise the Malahat First Nation in writing how any concerns raised in Section 4.11 have been sought to be addressed.
- 4.16 The Malahat First Nation agrees that British Columbia, by adhering to the processes outlined in Section 4, has developed an adequate consultation process for dealing with the Malahat First Nation's Treaty Rights in the making of Administrative and Operational Decisions.
- 4.17 Any Administrative Decision made by the Government of British Columbia shall not be interpreted as concurrence by the Malahat First Nation unless the Malahat First Nation has expressly stated its concurrence.

## **5.0 Dispute resolution**

- 5.1 If a dispute arises between the Government of British Columbia and the Malahat First Nation 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 the Government of British Columbia and Malahat First Nation.
- 5.3 The Parties may, by mutual agreement, choose other appropriate approaches to assist in reaching agreement on the interpretation dispute.

## **6.0 Amendments**

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

## **7.0 Term**

- 7.1 This Agreement will take effect on the date on which the last Party has executed it.

- 7.2 This Agreement will terminate on the occurrence of the earliest of any of the following events: suspension, cancellation, expiry or termination of the Licence; 90 days notice; or mutual agreement of the Parties.
- 7.3 Prior to the expiry of the 90 days following notice of termination under Section 7.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the notice of termination.
- 7.4 The Government of British Columbia will not terminate this Agreement on the grounds that the Malahat First Nation has challenged an Administrative or Operational Decision by way of legal proceedings.

## **8.0 Notice**

- 8.1 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 as in this section of the Agreement.
- 8.2 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.
- 8.3 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) 387-3656 / Facsimile: (250) 953-3687

### ***Malahat First Nation***

Chief and Council  
Malahat First Nation  
110 Thunder Road RR4  
Mill Bay, BC V0R 2P0  
Telephone: (250) 743-3231 / Facsimile: (250) 743-3251

## 9.0 Miscellaneous

- 9.1. Where, as part of the consultation process outlined above, the Malahat First Nation presents information to the Government of British Columbia about the exercise of its Treaty Rights and requests that this information be kept confidential, the Government of British Columbia will, subject to the provisions of Provincial freedom of information and privacy legislation, adhere to that request.
- 9.2. Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that improperly fetters the statutory discretion of any government decision-maker.
- 9.3. 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, except as otherwise provided in this agreement, recognize, affirm or deny the existence of any treaty or Aboriginal right, including aboriginal title.
- 9.4. This Agreement will not limit the position that a party may take in future negotiations or court actions.
- 9.5. Any reference to a statute in this agreement includes all regulations made under that statute and any amendments or replacement of that statute.
- 9.6. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 9.7. This Agreement shall be governed by the applicable laws of British Columbia and Canada.




*Signed on behalf of:*

**Malahat First Nation:**

Date: Sept 9 2008

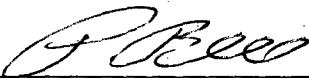
  
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**Chief Randy Daniels**

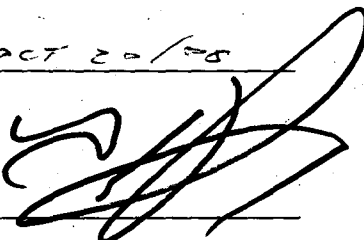
  
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Witness **Dominique Nouvel**

*Signed on behalf of:*

**Government of British Columbia**

Date: Oct 20/08

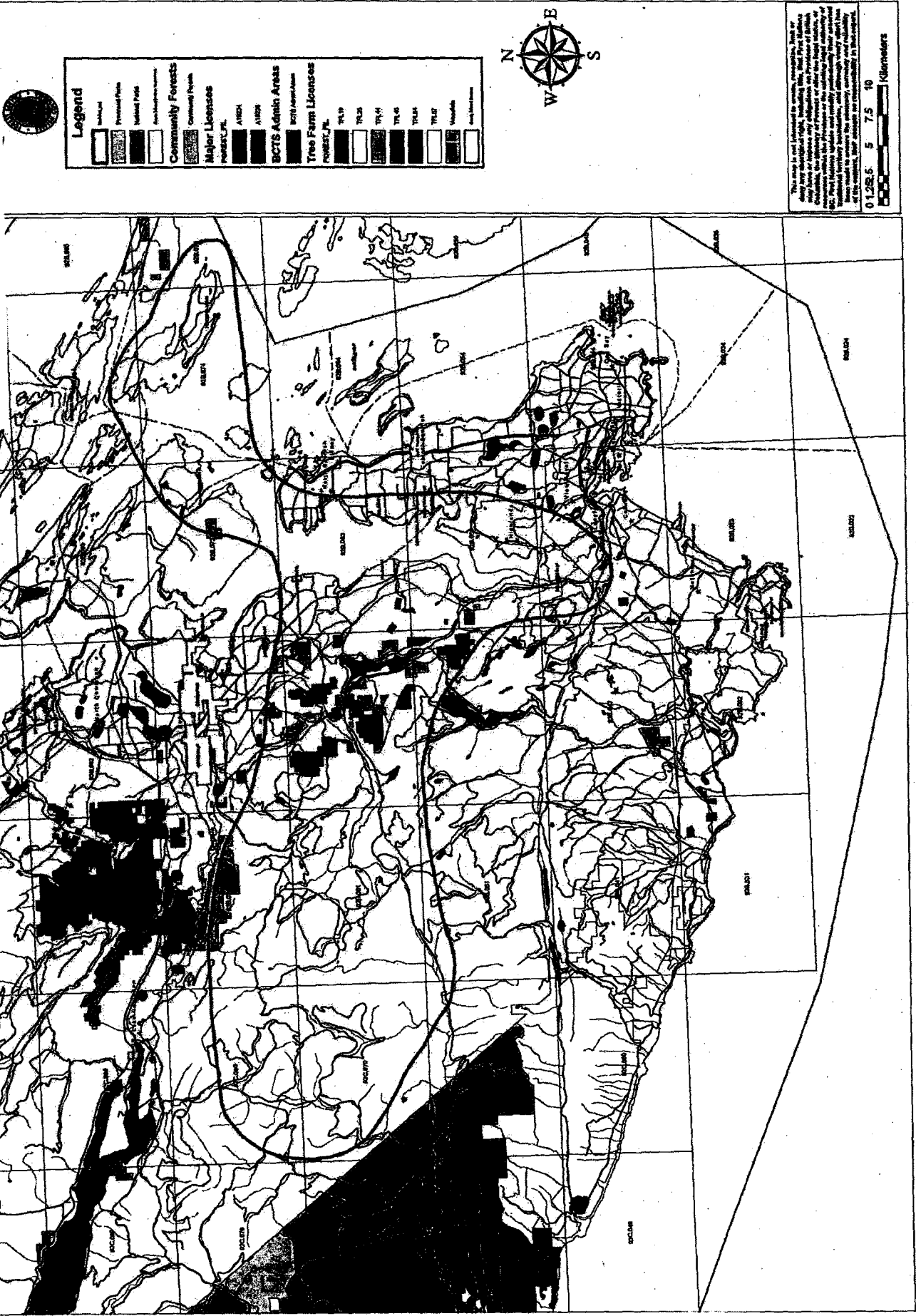
  
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**Honourable Pat Bell**  
**Minister of Forests and Range**

  
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Witness



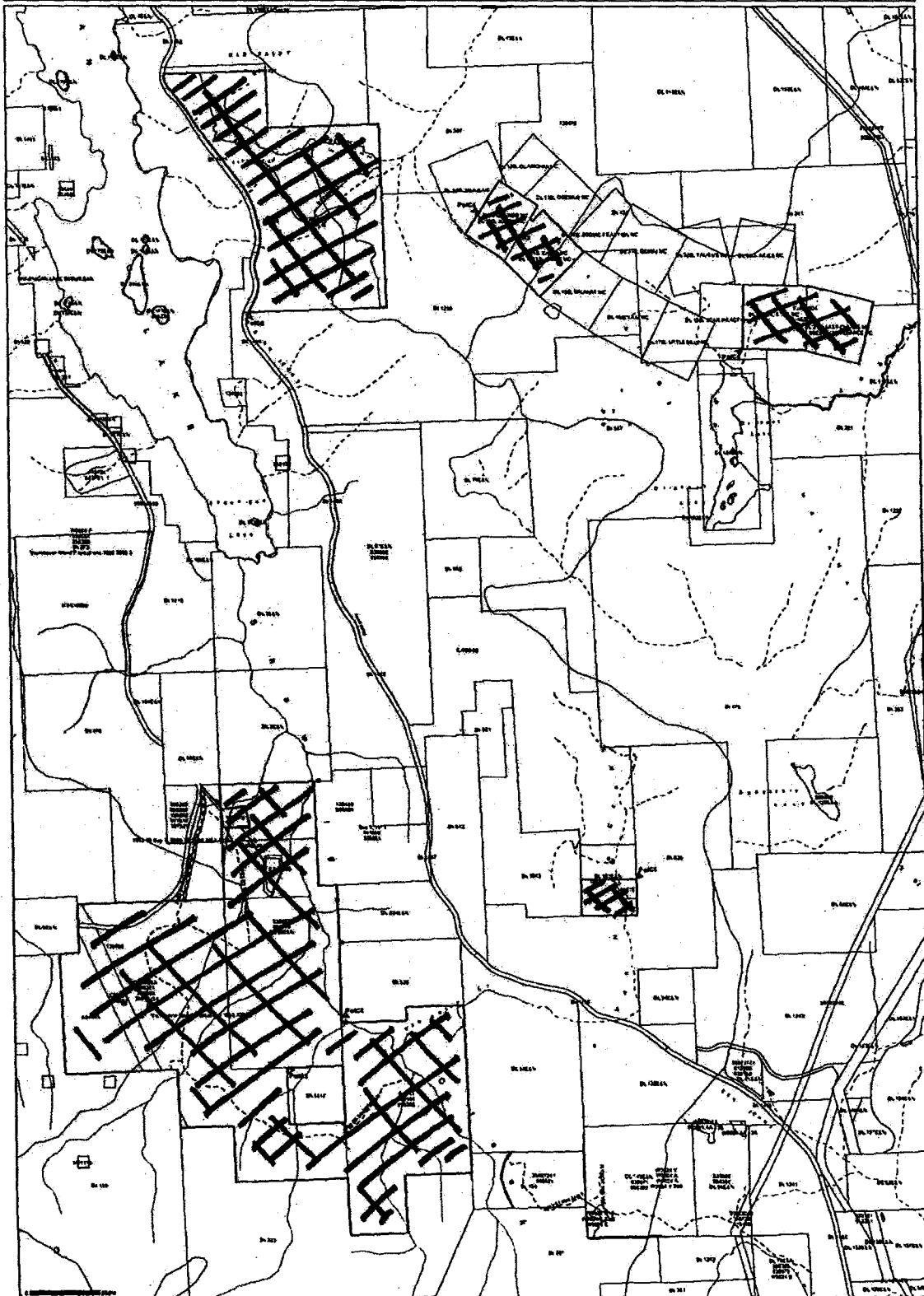
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# Appendix A Malahat First Nation Traditional Territory





<b>MAP OF : L40048 (shown in bold black)</b>			
FOREST REGION : RCO FOREST DISTRICT : D91	TSA : 38 LAND DISTRICT : MALAHAT DISTRICT	PULPWOOD AGREEMENT :	MGT UNIT TYPE : TIMBER SUPPLY AREA MGT UNIT NO : 38
ESF SUBMISSION ID : 499817 BCGS MAPSHEET NO : 929.052	SCALE : 1:20000 at C Size Area (Ha) : 729.449	UTM : 10 NAD : NAD 83	DRAWN BY : FTA DATE : Sep 3, 2008



Legend	
	Timber Application
	Timber Road Application
	Approved Timber Road
	P.U.C.
	P.U.T.
	Timber Fellows
	Range
	TR
	Prohibit Forest
	Forest Service Road
	Highway
	Municipal Road
	Non Status Road
	Recreation Trail
	Road Road
	R.U.P. Road
	Right of Way
	School & GP Road
	Intersect Timber Paths
	City
	Waterbody
	MapSheet
	County / Island
L40048 (729,449 Ha) PORC1 UTM10 456581, 4350243 PORC2 UTM10 454377, 4378372 PORC3 UTM10 453966, 4378224 PORC4 UTM10 452861, 4335042 PORC5 UTM10 457538, 4383996 PORC6 UTM10 453962, 4356403	

**Appendix B**  
**Malahat First Nation**  
**Interim Measures Agreement**  
**(Cross - Hatched)**

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**APPENDIX C:**

***Description and Documentation pertaining to the Intended Holder of the licence***

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

A) Applicant for the license:

***OR***

B) Full legal name, or corporate description of the legal entity, authorized to represent the applicant of the licence

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- (i) Copy attached of legal instrument (letter) authorizing that legal entity to be their representative;
  - (ii) Copy attached of the ownership structure of the legal entity (the intended holder of the licence); and,
  - (iii) Copy of verification that the applicant has the controlling interest in that legal entity.

