

TSESHAHT FOREST TENURE OPPORTUNITY AGREEMENT

Forest Tenure Opportunity Agreement (the “Agreement”)

Between:

Tseshah 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. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Tseshah 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 Tseshah 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 Tseshah 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 Tseshah First Nation community’s well-being.
- E. Tseshah 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 Tseshaht 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 Tseshaht First Nation are addressed through other agreements or processes.
- G. This Agreement is intended to address a proceeding by way of a petition in the Supreme Court of British Columbia cited as Tseshaht First Nation v. British Columbia (Minister of Forests), Action No. L051310 Vancouver Registry.

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 either a Forest Licence, a Forestry Licence to Cut, a Woodlot Licence, or a First Nations Woodland Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Licence or 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 is given in the *Forest Act*.
- 1.9. "Accommodation Agreement" means the agreement between British Columbia and Tseshaht First Nation dated [REDACTED]

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- 1.10. "Traditional Territory" means Tseshahat 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 Tseshahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Tseshahat First Nation in achieving progress towards closing socio-economic gaps between the members of Tseshahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Tseshahat First Nation's participation in the forest sector by offering area and volume based forest tenure opportunities.
- 2.3. Provide an accommodation to Tseshahat First Nation.
- 2.4. Fulfil the commitment within section 9 of the Accommodation Agreement to invite Tseshahat to apply for a number of Forest Tenure Opportunities

3. Forest Tenure Opportunities

During the term of this Agreement, British Columbia will seek to provide the following Forest Tenures to Tseshahat:

First Nations Woodland Licences:

- 3.1. After the execution of this Agreement, the Minister will invite Tseshahat or its Representative, to apply for two (2) First Nations Woodland Licences (the "Licences").
 - 3.1.1. The proposed Cataract Lake Licence area will be approximately 1500 hectares in size and is identified on the map attached as Appendix B and will take effect no earlier than October 28, 2014.
 - 3.1.2. The proposed Eahwanim Licence (N1C) area will be identified consistent with the principles in the the Accomodation Agreement and the map attached as Appendix D. The Eahwanim licence will take effect no earlier than November 5, 2014.
 - 3.1.3. The proposed Licences will be based on the most recent timber supply analysis for the management unit from which the Licences are derived. The initial AAC of the Licences may be

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less than the maximum possible due to the site characteristics of the area.

- 3.1.4. The Licences under section 3.1 of this Agreement will:
- 3.1.4.1. be subject to the approval of the Regional Executive Director which includes the submission and approval of a management plan be for a term of 25 years;
 - 3.1.4.2. be eligible for replacement provisions as defined within the *Forest Act*;
 - 3.1.4.3. include other terms and conditions required by law including the condition that Tseshah First Nation must comply with this Agreement; and,
 - 3.1.4.4. include other terms and conditions as may be required by the Regional Executive Director.

Woodlot Licence

3.2. After the execution of this Agreement, the District Manager will invite Tseshah First Nation or its representatives to apply for Woodlot Licence (the "Licence") No. W2096. The Licence is identified on the map attached as Appendix C.

- 3.2.1. The Licence under 3.2 of this Agreement will:
- 3.2.1.1. be subject to the approval of the District Manager which includes the submission and approval of a management plan;
 - 3.2.1.2. be for a term of 20 years;
 - 3.2.1.3. be eligible for replacement provisions as defined within the *Forest Act*;
 - 3.2.1.4. include other terms and conditions required by law including the condition that Tseshah First Nation must comply with this Agreement; and,
 - 3.2.1.5. include other terms and conditions as may be required by the District Manager.

Pacific Timber Supply Area (TSA) Volume Based Licence

3.3. After execution of this Agreement, Tseshah First Nation, or its Representative, may apply to the Regional Executive Director, in a form acceptable to the Regional Executive Director, for a non-replaceable forest licence or a forestry licence to cut (the "Licence") on a non-competitive basis for up to 52 000 cubic meters within the Pacific TSA.

The Licence will be comprised of:

Management Unit	Licence	Allowable Annual Cut	Total Volume	Term
Pacific TSA - Sproat Lake Operating Area	FLTC	10 400 m ³ /yr	52 000 m ³	5 Years

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- 3.3.1. If Tseshaht 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 those existing Licence(s), authorizing additional volume or allowable annual cut (AAC) for those licences in the amounts identified under section 3.3.
- 3.3.2. The Operating Area for the Licence referred to in section 3.3 will be located in the Sproat Lake Operating Area of the Pacific TSA. Prior to submitting an application for the Licence(s) referred to in 3.3, Tseshaht will meet with British Columbia to discuss the identification of Operating Area, and British Columbia will make reasonable efforts to identify an Operating Area that is located, to the extent operationally feasible, within Tseshaht's Traditional Territory.
- 3.3.3. The Licence under section 3.3 of this Agreement will:
 - 3.3.3.1. include other terms and conditions required by law including the condition that Tseshaht must comply with this Agreement; and,
 - 3.3.3.2. include other terms and conditions as may be required by the Regional Executive Director.
- 3.4. 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, 3.2, and 3.3.
- 3.5. During the term of this Agreement and notwithstanding section 3.4, Tseshaht First Nation agrees that British Columbia has provided to Tseshaht First Nation an accommodation as set out in the Accomodation Agreement.
- 3.6. Any Licence(s) entered into under this Agreement can only be transferred in accordance with the *Forest Act*.
- 3.7. The appointment of a Representative for the purpose of holding any of the Licence(s) entered into under this Agreement must be made in accordance with the *Forest Act*.

4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Tseshaht First Nation, or its Representative, will, subject to the licence and the *Forest Act*, have exclusive rights to harvest timber in the Licence(s) referred to in section 3.1 of this Agreement.
- 4.2. Tseshaht First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the

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District Manager to issue Free Use Permits to a First Nations person for traditional use, cultural use or as part of a treaty agreement in accordance with the *Forest Act*.

5. Reporting of Tenure Information

- 5.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may request certain information from Tseshaht First Nation on what measurable benefits the Tseshaht First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Tseshaht 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.

6. Tseshaht First Nation Traditional Territory

- 6.1. British Columbia will use the map of Tseshaht First Nation's claimed traditional territory used in the "*Tseshaht First Nation Forest & Range Consultation and Revenue Sharing Agreement*" which map will be set out in this Agreement as Appendix A..

7. Economic and Operational Stability within Tseshaht First Nation Claimed Traditional Territory

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

8. Term and Termination

- 8.1. The term of this Agreement is 25 years.
- 8.2. This Agreement will take effect on the date on which the last Party has executed it.
- 8.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - 8.3.1. expiry of its term;
 - 8.3.2. 90 days notice by either Party to the other Party; or
 - 8.3.3. mutual agreement of the Parties.
- 8.4. This Agreement may be terminated by British Columbia or Tseshaht First Nation if the Licence(s) issued pursuant to section 3.1, 3.2, or 3.3 is/are cancelled, surrendered or otherwise terminated under the *Forest Act*.

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- 8.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 8.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.
- 8.6. If the Licence(s) entered into under this Agreement, is/are replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as that of the replaced Licence(s).

9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Tseshahat 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.
- 9.2. 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 Tseshahat First Nation.
- 9.3. 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.

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 determines that Tseshahat First Nation is not in compliance with this Agreement.
- 11.2. If this Agreement is terminated in accordance with section 8.3.2 or 8.3.3, 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 Tseshahat First Nation of any alleged contravention of this Agreement that may lead to Tseshahat First Nation not being in compliance with this Agreement.

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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	Tseshahat First Nation
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Tseshahat First Nation
P.O. Box 9525 STN PROV GOVT	P.O. Box 1218
Victoria B.C. V8W 9C3	Port Alberni, B.C. V9Y 8X9
Facsimile: 250-953-3687	Facsimile: 250-724-4385

- 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 Tseshahat'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 Tseshahat First Nation has Aboriginal Interests within

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its Traditional Territory but that the specific nature, scope and geographic extent of Tseshahat 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 Tseshahat First Nation .

- 14.4. This Agreement does not exclude Tseshahat 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.
- 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.

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Signed on behalf of:

Tseshah First Nation

Date Dec January 9/13




Chief Hugh Braker


Witness of Tseshah First Nation signatures

Signed on behalf of:

British Columbia

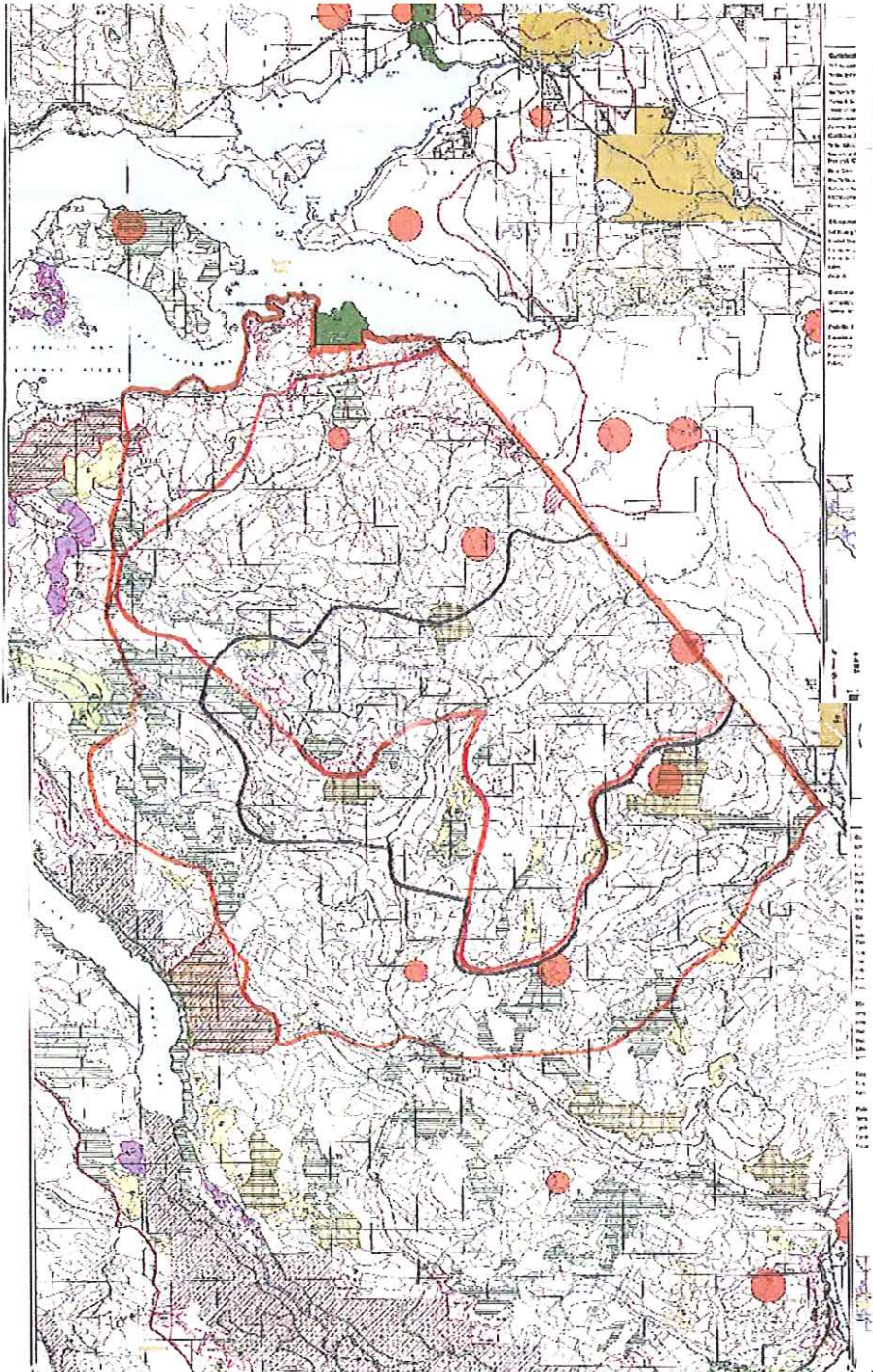
Date: Jan 17/2013


Steve Thomson
Minister of Forests Lands, and Natural
Resource Operations


Witness of Minister signature

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APPENDIX D – Eahwanim First Nations Woodland Licence N1C (approximate location)



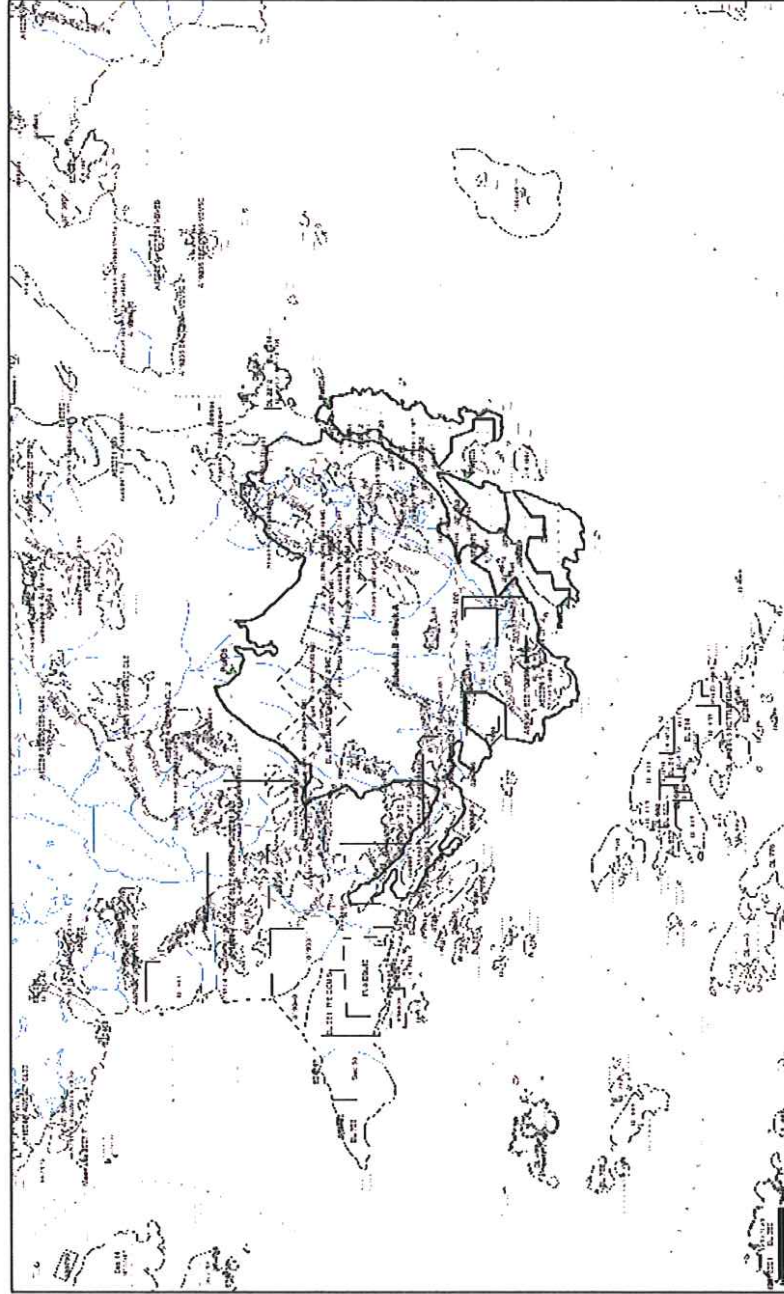
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APPENDIX B – Cataract Lake First Nations Woodland Licence (N1B)



EXHIBIT A

MAP OF : K4J (shown in bold black)	TSA : 38	PULPWOOD AGREEMENT :
FOREST REGION : RCO	LAND DISTRICT : South Island Forest District	MGT UNIT TYPE :
FOREST DISTRICT : DSI	SCALE : 1:50000 at B Size	MGT UNIT NO :
ESF SUBMISSION ID : 1011384	Area (ha) : 1519.736	UTM : 10
BCS MAPSHEET NO : 62C.D64		NAD : NAD 83
		DRAWN BY : JTA
		DATE : Dec 7, 2011



Legend	
	Tenure Operations
	Forest Land
	Crown Land
	Private Land
	Water
	Road
	Boundary
	Contour
	Spot Elevation
	Watercourse
	Wetland
	Riparian Zone
	Forest Stand
	Forest Type
	Forest Class
	Forest Subclass
	Forest Product
	Forest Management Plan
	Forest Inventory
	Forest Assessment
	Forest Planning
	Forest Monitoring
	Forest Research
	Forest Education
	Forest Outreach
	Forest Partnership
	Forest Collaboration
	Forest Innovation
	Forest Leadership
	Forest Excellence
	Forest Sustainability
	Forest Resilience
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APPENDIX A

