

Malahat First Nation  
110 Thunder Road  
Mill Bay, British Columbia  
V0R 2P0

Dear Chief David Harry:

As a follow up to the Forest Tenure Opportunity Agreement between the Malahat First Nation and the province of British Columbia signed concurrently with this letter, I invite you to apply under Section 47.3 of the *Forest Act* for a woodlot licence (the licence).

I am aware that the licence area has been identified and agreed upon by the stakeholders from areas within the Arrowsmith Timber Supply Area and that discussions regarding the licence document are in progress. The district manager of the South Island District is the delegated decision maker that will enter into the licence with the Malahat First Nation.

For the purposes of the application to the district manager please ensure that the following information is included:

1. A description of the Intended Holder of the licence.
2. If the Intended Holder is other than the Malahat First Nation:
  - a) Documentation that the Intended Holder of the licence meets the requirements of “representative” as defined by Section 47.3 of the *Forest Act*; and
  - b) copy of a band council resolution appointing the Intended Holder to be the representative of the Malahat First Nation.
3. Confirmation that the Management Plan is approved and an allowable annual cut determination is made for the licence by the district manager.
4. A map of the proposed woodlot area.

The Intended Holder of the licence will be required to comply with British Columbia law and other administrative requirements, including:

1. The requirement of the licence holder to pay to the government of British Columbia, in addition to other amounts payable under the *Forest Act* and regulations, stumpage, under Part 7 of the *Forest Act*; and to prepare operational plans for the licence in accordance with British Columbia law.
2. Prior to entering the licence, the Intended Holder of the Licence is required to submit a security deposit to the government of British Columbia. Annual rent will be invoiced subsequent to licence issuance. In addition, a silviculture security or an agreement to utilize revenue sharing payments to cover such costs may be required at the discretion

the district manager. All deposits and securities must be in an acceptable form and/or security.

3. The Intended Holder is responsible for reforestation and the establishment of free growing stands in accordance with British Columbia law.

It is the responsibility of the Malahat First Nation to ensure that such financial viability or feasibility assessments are carried out by appropriate experts and, where necessary, lending institutions, prior to entering into the licence.

If you have any questions regarding this invitation please contact  
Mary Bauto, Resource Manager, South Island District at 250-731-3016, or by email at  
[Mary.Bauto@gov.bc.ca](mailto:Mary.Bauto@gov.bc.ca).

Sincerely,

Steve Thomson  
Minister

pc: Sharon Hadway, Regional Executive Director, West Coast Region  
Denis Collins, Director of Pricing Tenures and Mines, Coast Area  
Rhonda Morris, District Manager, South Island District

**MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
DECISION NOTE**

Date: January 28, 2013  
File: 19720-20/W0030  
10450-20/Malahat  
CLIFF/tracking #: 193771

**PREPARED FOR:** The Honourable Steve Thomson, Minister of Forests, Lands, and Natural Resource Operations

**ISSUE:** Forest Tenure Opportunity Agreement with Malahat First Nation

**BACKGROUND:**

The South Island District has developed a Forest Tenure Opportunity Agreement with the Malahat First Nation as per the mandate signed by the minister on February 14, 2012 (CLIFF: 179822).

**DISCUSSION:**

The Crown and the Malahat First Nation (Malahat) may enter into a forest tenure, without competition, after signing an interim measures agreement, treaty related measures agreement or economic measures agreement in accordance with the *Forest Act*. Forest tenures may be direct awarded using Forest Tenure Opportunity Agreements (FTOA), which will satisfy the requirements as outlined in the *Forest Act*.

The purpose of the FTOA is to provide the following:

- An opportunity for the Malahat to pursue socio-economic objectives within its community and to assist in closing socio-economic gaps between members of the Malahat and non-Aboriginal people of British Columbia;
- Promote and increase Malahat's participation in the forest sector; and
- Provide an accommodation in respect of potential impacts of forestry decisions within their traditional territory.

The purpose of this decision note is to request that the minister sign the attached FTOA and invitation letter.

**OPTIONS:**

s.13,s.16

/

---

**DECISION & SIGNATURE**  
Steve Thomson  
Minister

---

**DATE SIGNED**

**Attachments:** Forest Tenure Opportunity Agreement  
Approval/invitation letter  
Approved Mandate request February 14, 2012

**Contact:**  
*Denis Collins*  
*Director of Pricing, Tenures & Mines*  
*Coast Area*  
*(250) 751-7121*

**Alternate Contact:**  
*Greg Gage*  
*Section Head, Forest Tenures*  
*Coast Area*  
*(250) 751-7041*

**Prepared by:**  
*Neil Edwards*  
*Tenures Forester*  
*Coast Area*  
*(250) 751-3136*

Reviewed by	Initials	Date
Deputy Minister – Doug Konkin		
First Nations Relations Branch Director – Darrell Robb		
Assistant Deputy Minister – Craig Sutherland		
Regional Executive Director – Sharon Hadway	SH	January 29, 2013
Director – Denis Collins	DC	January 25, 2013
Section Head – Greg Gage	GG	January 23, 2013
District Manager South Island – Rhonda Morris	MB	January 10, 2013
Author – Neil Edwards	NE	January 22, 2013

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

**Between:**

***Malahat 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")

*Sykes*  
*Jul 16, 2013*

**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 Malahat 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 Malahat 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 Malahat 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 Malahat First Nation community's well-being.
- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation's

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- 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 Malahat 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 Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

- 1.1. "Douglas Treaty rights" means treaty rights of the Malahat First Nation to hunt over unoccupied lands and carry on fisheries as formerly, 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 Woodlot Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Woodlot Licence.
- 1.6. "Representative" carries the same meaning as is given in the *Forest Act*.
- 1.7. "Traditional Territory" means "Malahat 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 Malahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Malahat First Nation's participation in the forest sector by offering an area based forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights..

- 2.4. The forest tenure offered is considered to be the forest tenure opportunity in support of concluding treaties or other land claim processes.

### 3. Forest Tenure Opportunity

- 3.1. After the execution of this Agreement by the Parties, the Minister will invite Malahat First Nation, or its Representative, to apply for a Woodlot Licence (the "Licence").
- 3.2. The appointment of a Representative for the purpose of holding the Licences must be made in accordance with the *Forest Act*.
- 3.3. The proposed Licence boundary will be approximately 571 hectares in size and is identified on the map attached to this Agreement as Appendix C..
- 3.4. The Licence under Section 3.1 will be subject to the approval of the District Manager upon the submission and approval of a Management Plan.
- 3.5. The Licence under section 3.1 of this Agreement will:
  - 3.5.1. be for a term of **20** years;
  - 3.5.2. be eligible for replacement provisions as defined within the *Forest Act*;
  - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence 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 Licence expires or is terminated.
- 3.9. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

#### 4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Malahat First Nation, or its representative, will have exclusive rights to harvest timber in the Licence referred to in section 3.1 of this Agreement.
- 4.2. Malahat First Nation or its Representative may agree to the licence allowing for non exclusive harvesting rights.
- 4.3. Malahat First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the 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 require certain information from Malahat First Nation on what measurable benefits the Malahat First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Malahat 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. Malahat First Nation Traditional Territory

- 6.1. British Columbia will use the map of Malahat First Nation's Traditional Territory used in the "*Malahat First Nation's Forest Consultation and Revenue Sharing Agreement*", which map will be set out in this Agreement as Appendix A.

#### 7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 **20** 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 if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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 entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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 Malahat 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 issued under this

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

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile:250-743-3251

- 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 Malahat 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. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief Daryl Hing

Date: January 16, 2013

Councillor \_\_\_\_\_

Councillor \_\_\_\_\_

Councillor Erin Hing

Councillor Deon Barry

Councillor \_\_\_\_\_

Councillor \_\_\_\_\_

Councillor \_\_\_\_\_

\_\_\_\_\_  
Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

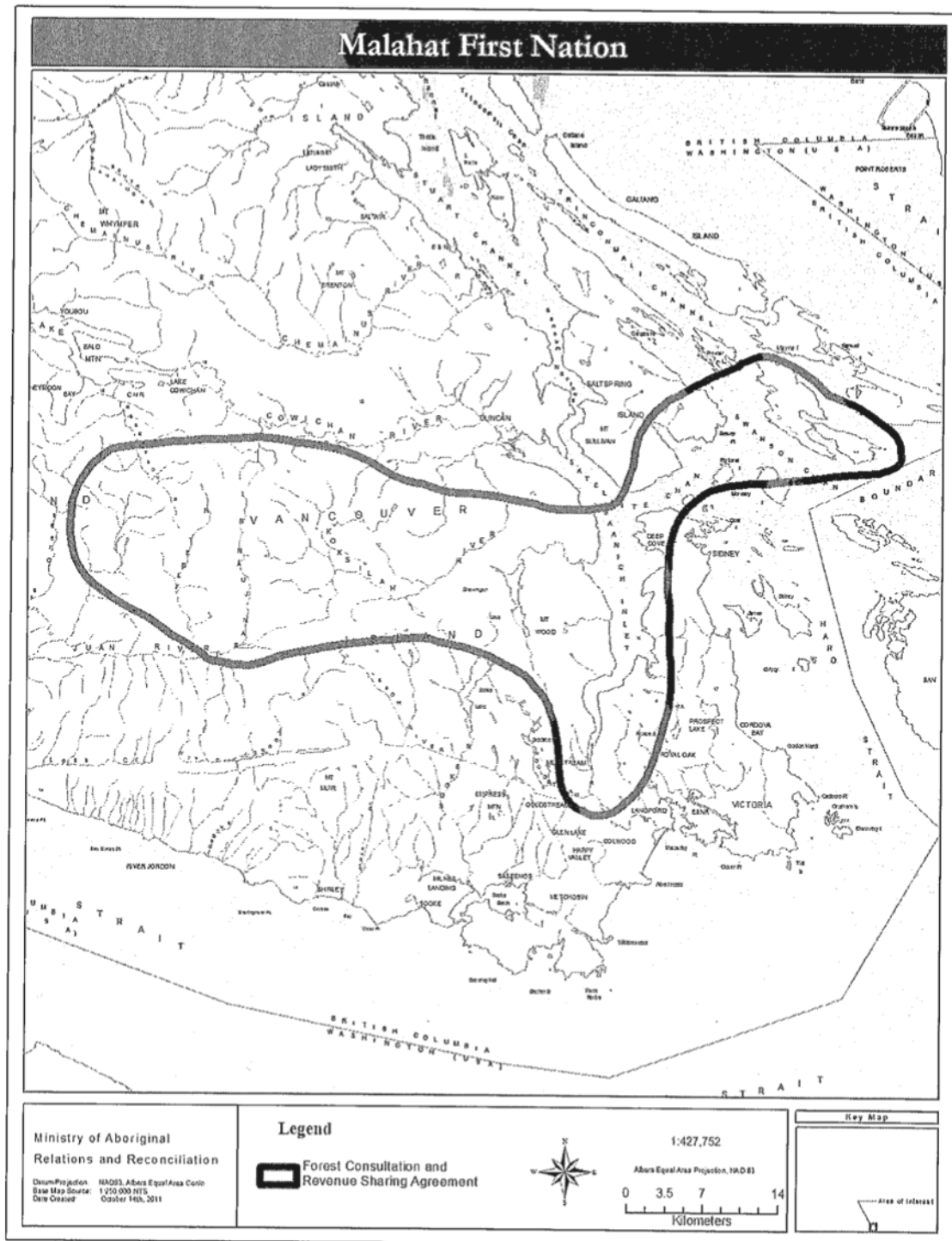
Date: \_\_\_\_\_

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

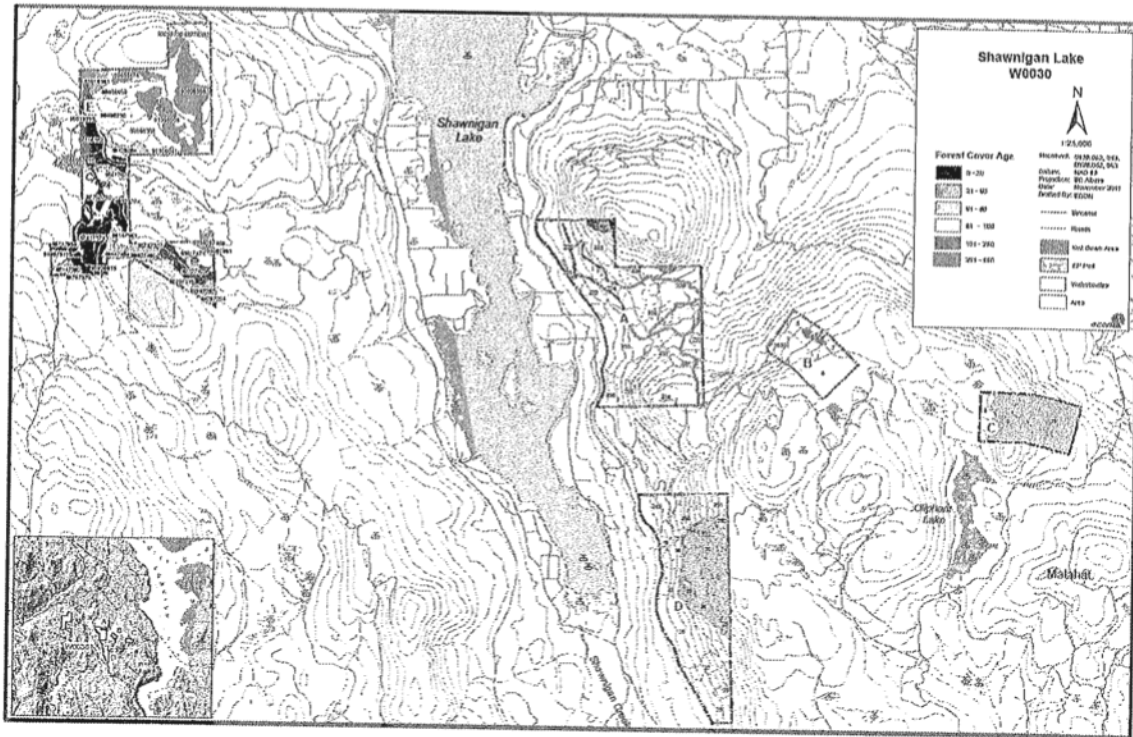
\_\_\_\_\_  
Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



## APPENDIX B – Proposed Woodlot Licence Boundary



**From:** [de Bree, Jennifer FLNR:EX](#)  
**To:** [Donison, Sonia FLNR:EX](#)  
**Cc:** [Edwards, Neil D FLNR:EX](#); [Robb, Darrell FLNR:EX](#)  
**Subject:** 193771 approval - Rush  
**Date:** Tuesday, February 26, 2013 8:26:15 AM  
**Attachments:** [193771 Agreement.pdf](#)  
[193771 Final Response.docx](#)  
[193771 BN.doc](#)

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Hi there.

Assistant Deputy Minister Craig Sutherland approved the attached 193771 package. I have completed the ADM Coast referral line and updated cliff log notes.

Jennifer de Bree

Executive Administrative Assistant

Ministry of Forests, Lands and Natural Resource Operations

Phone: (250) 387-9773

Fax: (250) 356-2150

Email: [Jennifer.deBree@gov.bc.ca](mailto:Jennifer.deBree@gov.bc.ca)

---

**From:** Sutherland, Craig FLNR:EX  
**Sent:** Monday, February 25, 2013 4:55 PM  
**To:** de Bree, Jennifer FLNR:EX  
**Subject:** Fwd: 193771 approval - Rush  
Approved

Craig Sutherland

Coast Area ADM, MFLNR

Victoria, BC

Cell: 250-886-5857

Begin forwarded message:

**From:** "de Bree, Jennifer FLNR:EX" <[Jennifer.deBree@gov.bc.ca](mailto:Jennifer.deBree@gov.bc.ca)>  
**Date:** 25 February, 2013 9:59:38 AM PST  
**To:** "Sutherland, Craig FLNR:EX" <[Craig.Sutherland@gov.bc.ca](mailto:Craig.Sutherland@gov.bc.ca)>  
**Subject:** 193771 approval - Rush

Hi Craig.

For your review and approval.

Jennifer de Bree

Executive Administrative Assistant

Ministry of Forests, Lands and Natural Resource Operations

Phone: (250) 387-9773

Fax: (250) 356-2150

Email: [Jennifer.deBree@gov.bc.ca](mailto:Jennifer.deBree@gov.bc.ca)

---

**From:** Donison, Sonia FLNR:EX  
**Sent:** Monday, February 25, 2013 9:09 AM  
**To:** de Bree, Jennifer FLNR:EX  
**Cc:** Edwards, Neil D FLNR:EX; Robb, Darrell FLNR:EX  
**Subject:** 193771 approval - Rush

**Importance:** High

Hi Jennifer! For ADM approval please, any changes please advise via track changes.

*Thank You! Di Bohja!*

Sonia Donison, Manager  
Correspondence Services  
4th Floor, 780 Blanshard  
Tel: 250-356-9638  
Fax: 250-356-6791  
[sonia.donison@gov.bc.ca](mailto:sonia.donison@gov.bc.ca)

**MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
DECISION NOTE**

Date: January 28, 2013  
File: 19720-20/W0030  
10450-20/Malahat  
CLIFF/tracking #: 193771

**PREPARED FOR:** The Honourable Steve Thomson, Minister of Forests, Lands, and Natural Resource Operations

**ISSUE:** Forest Tenure Opportunity Agreement with Malahat First Nation

**BACKGROUND:**

The South Island District has developed a Forest Tenure Opportunity Agreement with the Malahat First Nation as per the mandate signed by the minister on February 14, 2012 (CLIFF: 179822).

**DISCUSSION:**

The Crown and the Malahat First Nation (Malahat) may enter into a forest tenure, without competition, after signing an interim measures agreement, treaty related measures agreement or economic measures agreement in accordance with the *Forest Act*. Forest tenures may be direct awarded using Forest Tenure Opportunity Agreements (FTOA), which will satisfy the requirements as outlined in the *Forest Act*.

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- Promote and increase Malahat's participation in the forest sector; and
- Provide an accommodation in respect of potential impacts of forestry decisions within their traditional territory.

The purpose of this decision note is to request that the minister sign the attached FTOA and invitation letter.

**OPTIONS:**

s.13,s.16

**RECOMMENDATION:**

s.13,s.16

\_\_\_\_\_  
**DECISION & SIGNATURE**  
Steve Thomson  
Minister

\_\_\_\_\_  
**DATE SIGNED**

**Attachments:** Forest Tenure Opportunity Agreement  
Approval/invitation letter  
Approved Mandate request February 14, 2012

**Contact:**  
*Denis Collins*  
*Director of Pricing, Tenures & Mines*  
*Coast Area*  
*(250) 751-7121*

**Alternate Contact:**  
*Greg Gage*  
*Section Head, Forest Tenures*  
*Coast Area*  
*(250) 751-7041*

**Prepared by:**  
*Neil Edwards*  
*Tenures Forester*  
*Coast Area*  
*(250) 751-3136*

<b>Reviewed by</b>	<b>Initials</b>	<b>Date</b>
Deputy Minister – Doug Konkin		
First Nations Relations Branch Director – Darrell Robb		
Assistant Deputy Minister – Craig Sutherland		
Regional Executive Director – Sharon Hadway	SH	January 29, 2013
Director – Denis Collins	DC	January 25, 2013
Section Head – Greg Gage	GG	January 23, 2013
District Manager South Island – Rhonda Morris	MB	January 10, 2013
Author – Neil Edwards	NE	January 22, 2013



Ref: 193771

Chief David Harry  
Malahat First Nation  
110 Thunder Road  
Mill Bay, British Columbia  
V0R 2P0

Dear Chief David Harry:

As a follow up to the Forest Tenure Opportunity Agreement between the Malahat First Nation and the Province of British Columbia signed concurrently with this letter, I invite you to apply under section 47.3 of the *Forest Act* for a woodlot licence (the “licence”).

I am aware that the licence area has been identified and agreed upon by the stakeholders from areas within the Arrowsmith Timber Supply Area and that discussions regarding the licence document are in progress. The District Manager (DM) of the South Island Resource District is the delegated decision maker that will enter into the licence with the Malahat First Nation.

For the purposes of the application to the DM please ensure that the following information is forwarded including:

1. A description of the Intended Holder of the licence.
2. If the Intended Holder is other than the Malahat First Nation:
  - a) Documentation that the Intended Holder of the licence meets the requirements of “representative” as defined by section 47.3 of the *Forest Act*; and
  - b) copy of a band council resolution appointing the Intended Holder to be the representative of the Malahat First Nation.
3. Confirmation that the Management Plan is approved and an allowable annual cut determination is made for the woodlot licence by the DM.
4. A map of the proposed woodlot area.

The Intended Holder of the licence will be required to comply with British Columbia law and other administrative requirements, including:

1. The requirement of the licence holder to pay to the Government of British Columbia, in addition to other amounts payable under the *Forest Act* and regulations, stumpage, under Part 7 of the *Forest Act*; and to prepare operational plans for the licence in accordance with British Columbia law; and,
2. Prior to entering the licence, the Intended Holder of the licence is required to submit a security deposit to the Government of British Columbia. Annual rent will be invoiced subsequent to licence issuance. In addition, a silviculture security or an agreement to utilize revenue sharing payments to cover such costs may be required at the discretion of the DM. All deposits and securities must be in an acceptable form and/or security.
3. The Intended Holder is responsible for reforestation and the establishment of free growing stands in accordance with British Columbia law.

It is the responsibility of the Malahat First Nation to ensure that such financial viability or feasibility assessments are carried out by appropriate experts and where necessary, lending institutions, prior to entering into a woodlot licence.

If you have any questions regarding this invitation please contact Mary Bauto, Resource Manager of the South Island District by phone at 250-731-3016 or by email at [Mary.Bauto@gov.bc.ca](mailto:Mary.Bauto@gov.bc.ca).

Sincerely,

Steve Thomson  
Minister

pc: Sharon Hadway, Regional Executive Director, West Coast Region  
Denis Collins, Director , Coast Area  
Rhonda Morris, District Manager, South Island District  
Mary Bauto, Resource Manager, South Island District

Page 021 to/à Page 024

Withheld pursuant to/removed as

s.14

**From:** [Perzina, Vinka V FLNR:EX](#)  
**To:** [Donison, Sonia FLNR:EX](#)  
**Subject:** FW: cliff 193711  
**Date:** Friday, February 22, 2013 9:05:10 AM  
**Attachments:** [RUSH - CLIFF 193771.msg](#)  
[image001.png](#)  
**Importance:** High

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## Vinka Perzina

Correspondence, MRLs, and Briefing Note Coordinator  
Ministry of Forests, Lands and Natural Resource Operations  
West Coast Region  
Tel: 250-751-7134  
Fax: 250-751-7190

---

Kindness is language that the deaf can hear and the the blind can see - Mark Twain

---

**From:** Edwards, Neil D FLNR:EX  
**Sent:** Friday, February 22, 2013 8:54 AM  
**To:** Correspondence Serv. Sectn, FLNR:EX  
**Cc:** Perzina, Vinka V FLNR:EX; Gage, Greg P FLNR:EX  
**Subject:** cliff 193711  
**Importance:** High

Not sure how this occurred but the version of the signed FTOA received by your office from Vinka is not the same version that your section forwarded for approval to Darrell Robb. Vinka's version is correct yours is not. Could you please use the FTOA and BN and letter from Vinka and replace the versions you have with these attached in the Cliff log attachments and for forwarding to the Minister for approval.

Please contact me if you have questions

Neil Edwards RPF  
First Nations Policy Forester  
First Nations Relations Branch  
Ministry of Forests, Lands and Natural Resource Operations  
ph: (250)-356-6073

**From:** [Perzina, Vinka V FLNR:EX](#)  
**To:** [Edwards, Neil D FLNR:EX](#)  
**Subject:** FW: CLIFF 193771- attached BN, and Agreement (Forest Tenure Opportunity Agreement with Malahat First Nation)  
**Date:** Friday, February 22, 2013 1:38:40 PM  
**Attachments:** [FW cliff 193711.msg](#)

---

Vinka Perzina  
Correspondence, MRLs, and Briefing Note Coordinator  
Ministry of Forests, Lands and Natural Resource Operations  
West Coast Region  
Tel: 250-751-7134  
Fax: 250-751-7190  
Kindness is language that the deaf can hear and the the blind can see - Mark Twain

-----Original Message-----

**From:** Donison, Sonia FLNR:EX  
**Sent:** Friday, February 22, 2013 9:35 AM  
**To:** Robb, Darrell FLNR:EX  
**Cc:** Perzina, Vinka V FLNR:EX; Correspondence Serv. Sectn, FLNR:EX; de Bree, Jennifer FLNR:EX  
**Subject:** RE: CLIFF 193771- attached BN, and Agreement (Forest Tenure Opportunity Agreement with Malahat First Nation)

Hi Darrell! You are correct, but if a response comes out of the BN then CSS is involved. Apparently what was sent to you is incorrect?

How do you want to proceed?

Log number should also be 193771

Thank You! Di Bohja!  
Sonia Donison, Manager  
Correspondence Services  
4th Floor, 780 Blanshard  
Tel: 250-356-9638  
Fax: 250-356-6791  
[sonia.donison@gov.bc.ca](mailto:sonia.donison@gov.bc.ca)

-----Original Message-----

**From:** Robb, Darrell FLNR:EX  
**Sent:** Thursday, February 21, 2013 4:39 PM  
**To:** Donison, Sonia FLNR:EX  
**Subject:** FW: CLIFF 193771- attached BN, and Agreement (Forest Tenure Opportunity Agreement with Malahat First Nation)  
**Importance:** High

Sonia...some issues here. Also, is there a reason why CSS is involved with these decision notes....I can understand

MRLs etc., but I thought BNs were just handled through the ADM EAs?

---

From: Edwards, Neil D FLNR:EX  
Sent: Thursday, February 21, 2013 4:35 PM  
To: Robb, Darrell FLNR:EX; Mannix, Len FLNR:EX  
Subject: RE: CLIFF 193771- attached BN, and Agreement (Forest Tenure Opportunity Agreement with Malahat First Nation)

Well I was going to yes but I have just determined that the signed pdf in the package you have is not the correct nor the same version that was sent to Correspondence services this morning.

Not sure how they did it but correspondence services has picked up the wrong version. I will do more with this tomorrow but please do not forward what you received it is wrong and the dates are wrong as we had this agreement resigned on January 15, 2013 with the Douglas Treaty language.

I received a copy of the package sent to correspondence services - which was correct but what you received is not correct.....

:-(

Neil Edwards RPF  
First Nations Policy Forester  
First Nations Relations Branch  
Ministry of Forests, Lands and Natural Resource Operations  
ph: (250)-356-6073

-----Original Message-----

From: Robb, Darrell FLNR:EX  
Sent: Thursday, February 21, 2013 4:22 PM  
To: Mannix, Len FLNR:EX; Edwards, Neil D FLNR:EX  
Subject: FW: CLIFF 193771- attached BN, and Agreement (Forest Tenure Opportunity Agreement with Malahat First Nation)  
Importance: High

Neil...is this good to go...will there be any surprises as these guys I think are Douglas Treaty bands....and we dealt with another agreement recently that had issues...are we ok now?

---

From: Correspondence Serv. Sectn, FLNR:EX  
Sent: Thursday, February 21, 2013 2:57 PM  
To: Robb, Darrell FLNR:EX  
Cc: Donison, Sonia FLNR:EX; Correspondence Serv. Sectn, FLNR:EX  
Subject: CLIFF 193771- attached BN, and Agreement (Forest Tenure Opportunity Agreement with Malahat First Nation)

Hi Darrell,

I have attached the draft response, BN, and agreement for CLIFF 193771 for your review.

Please notify Correspondence Services by email at  
FLNR.Correspondence@gov.bc.ca<<mailto:FLNR.Correspondence@gov.bc.ca>> if changes are required.

Thank you for your assistance.

Thanks

Juliane Binas, Writer/Editor

Correspondence Services

Ministry of Forests, Lands & Natural Resource Operations 4th Floor, 780 Blanshard Victoria BC V8W 8V1

Tel: 250-387-4875

Fax: 250-953-3481

Juliane.Bainas@gov.bc.ca<<mailto:sonia.donison@gov.bc.ca>>

P Please consider the environment before printing this e-mail.

Page 029 to/à Page 033

Withheld pursuant to/removed as

s.14

**From:** [Edwards, Neil D FLNR:EX](#)  
**To:** [Bauto, Mary FLNR:EX](#)  
**Subject:** FW: FTOA for Malahat signing  
**Date:** Monday, January 21, 2013 4:24:00 PM  
**Attachments:** [image001.gif](#)  
[malahatfax@malahatnation.com\\_20130121\\_102159.pdf](#)

---

For your records – the newly signed FTOA. Looks like I will need to find a way to add the colour mapping – though that may not be necessary – I'll check to be sure.

Other than that I have everything ready to go – just need to dust it off and begin the proves to approve the FTOA.

As an aside did the district ever receive a submission of their management plan for the woodlot?

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

---

**From:** Shane Simard [<mailto:shanesimard@capfor.ca>]  
**Sent:** Monday, January 21, 2013 3:45 PM  
**To:** Edwards, Neil D FLNR:EX  
**Subject:** RE: FTOA for Malahat signing  
Hello Neil,

Here's the signed document. Can you give a rough time frame for the Woodlot licence. Thanks.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]  
**Sent:** January 10, 2013 4:17 PM  
**To:** Shane Simard; Bauto, Mary FLNR:EX  
**Cc:** Collins, Denis A FLNR:EX  
**Subject:** FTOA for Malahat signing  
**Importance:** High  
Shane and Mary

Attached is the updated FTOA to reflect Douglas Treaty rights properly. Please have the Chief and Council Members sign, date and witness this document.

The decision package is ready to go immediately once I receive the signed FTOA from the Malahat First Nation.

Any questions please contact me.

Neil Edwards RPF

Tenures Forester

Coast Area  
Ministry of Forest, Lands and Natural Resource Operations  
(250)-751-3136

---

**From:** Shane Simard [<mailto:shanesimard@capfor.ca>]

**Sent:** Tuesday, January 8, 2013 2:53 PM

**To:** Edwards, Neil D FLNR:EX

**Subject:** RE: Updated FTOA

Hello Neil,

The band has reviewed the updated FTOA and approve the wording. Please send me the final document and I'll have the band sign it. Thanks.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]

**Sent:** December 19, 2012 10:28 AM

**To:** Shane Simard

**Cc:** Bauto, Mary FLNR:EX

**Subject:** Updated FTOA

**Importance:** High

Shane,

I must apologize with this request for consideration by the Malahat. I was unaware of the wording that MARR had prepared for the FCRSA that has been approved by Minister Ida Chong on October 30, 2012. This agreement was about to be presented to the Minister for signing when the agreement language was noted.

The FTOA, attached, was updated to ensure both agreements provide the same language, especially around Douglas Treaty rights. The original offer of the woodlot remains the same, though the attached FTOA shows the changes requested for Malahat to consider.

If the wording changes are accepted please advise me directly and I will send you a clean version to be signed. And if further discussion is required let me know and we will try to arrange meeting to review these changes.

Again I apologize for this late request and hope that we can reach agreement on this language so that the Minister's office can approve the FTOA in order for us to issue the woodlot.

Please call if you have any questions.

Thanks.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

**From:** [Bauto, Mary FLNR:EX](#)  
**To:** [XT:Simard, Shane FLNR:IN](#)  
**Cc:** [Edwards, Neil D FLNR:EX](#)  
**Subject:** FW: Malahat Woodlot  
**Date:** Tuesday, January 22, 2013 9:19:51 AM

---

Hi Shane – regarding your question on the Woodlot Volume; as per email below it would not be available until the NRFL expires. The opportunity provided to the Malahat is based on 3,000m3/yr for 5 yrs. Starting 2009 and expiring 2014; total 15,000 m3. There isn't available volume to offer without impacting the AAC in the Arrowsmith TSA. The Woodlot will be area based and once issued will be removed from the Arrowsmith but the opportunity isn't available until NRFL expires.

*Mary Bauto*

Resource Manager  
Ministry of Forests, Lands and Natural Resource Operations  
South Island Natural Resource District  
Port Alberni  
Phone 250-731-3016/Fax 250-731-3010

---

**From:** Bauto, Mary FLNR:EX  
**Sent:** Monday, October 29, 2012 11:19 AM  
**To:** 'david harry'  
**Cc:** 'Shane Simard'  
**Subject:** Malahat Woodlot

Hi Michael – just checking in and letting you know that I've been working with our Regional folks to get your Forest Tenure Opportunity Agreement sent off to the Minister. I'm hopeful that we should see it back in a few weeks and will let you and Capacity Forestry know as soon as I hear something. We will be well ahead in having your Woodlot opportunity ready for when your Non-Replaceable Forest Licence A85948 expires November 5, 2014. As we discussed at our September meeting, the Woodlot volume will not be available for a harvest opportunity until the expiry date of A85948 but there is lots of work items to get in place in the interim.

Regards,

*Mary Bauto*

Resource Manager  
Ministry of Forests, Lands and Natural Resource Operations  
South Island Natural Resource District  
Port Alberni  
Phone 250-731-3016/Fax 250-731-3010

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

Between:

***Malahat 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 Malahat 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 Malahat 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 Malahat 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 Malahat First Nation community's well-being.
- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation's

*Sykes*  
*Jul 16, 2013*

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- 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 Malahat 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 Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

- 1.1. "Douglas Treaty rights" means treaty rights of the Malahat First Nation to hunt over unoccupied lands and carry on fisheries as formerly, 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 Woodlot Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Woodlot Licence.
- 1.6. "Representative" carries the same meaning as is given in the *Forest Act*.
- 1.7. "Traditional Territory" means "Malahat 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 Malahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Malahat First Nation's participation in the forest sector by offering an area based forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights..

- 2.4. The forest tenure offered is considered to be the forest tenure opportunity in support of concluding treaties or other land claim processes.

### 3. Forest Tenure Opportunity

- 3.1. After the execution of this Agreement by the Parties, the Minister will invite Malahat First Nation, or its Representative, to apply for a Woodlot Licence (the "Licence").
- 3.2. The appointment of a Representative for the purpose of holding the Licences must be made in accordance with the *Forest Act*.
- 3.3. The proposed Licence boundary will be approximately 571 hectares in size and is identified on the map attached to this Agreement as Appendix C..
- 3.4. The Licence under Section 3.1 will be subject to the approval of the District Manager upon the submission and approval of a Management Plan.
- 3.5. The Licence under section 3.1 of this Agreement will:
  - 3.5.1. be for a term of **20** years;
  - 3.5.2. be eligible for replacement provisions as defined within the *Forest Act*;
  - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence 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 Licence expires or is terminated.
- 3.9. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

#### 4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Malahat First Nation, or its representative, will have exclusive rights to harvest timber in the Licence referred to in section 3.1 of this Agreement.
- 4.2. Malahat First Nation or its Representative may agree to the licence allowing for non exclusive harvesting rights.
- 4.3. Malahat First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the 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 require certain information from Malahat First Nation on what measurable benefits the Malahat First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Malahat 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. Malahat First Nation Traditional Territory

- 6.1. British Columbia will use the map of Malahat First Nation's Traditional Territory used in the "*Malahat First Nation's Forest Consultation and Revenue Sharing Agreement*", which map will be set out in this Agreement as Appendix A.

#### 7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 **20** 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 if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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 entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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 Malahat 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 issued under this

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

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile: 250-743-3251

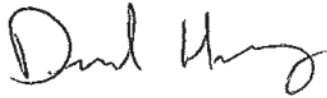
- 13.4. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Malahat 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. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief



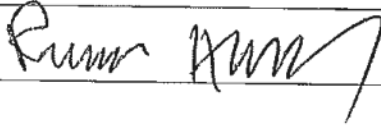
Date:

January 16, 2013

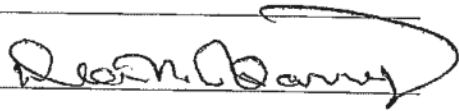
Councillor

Councillor

Councillor



Councillor



Councillor

Councillor

Councillor

Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

Date:

Feb 21 2013



Steve Thomson

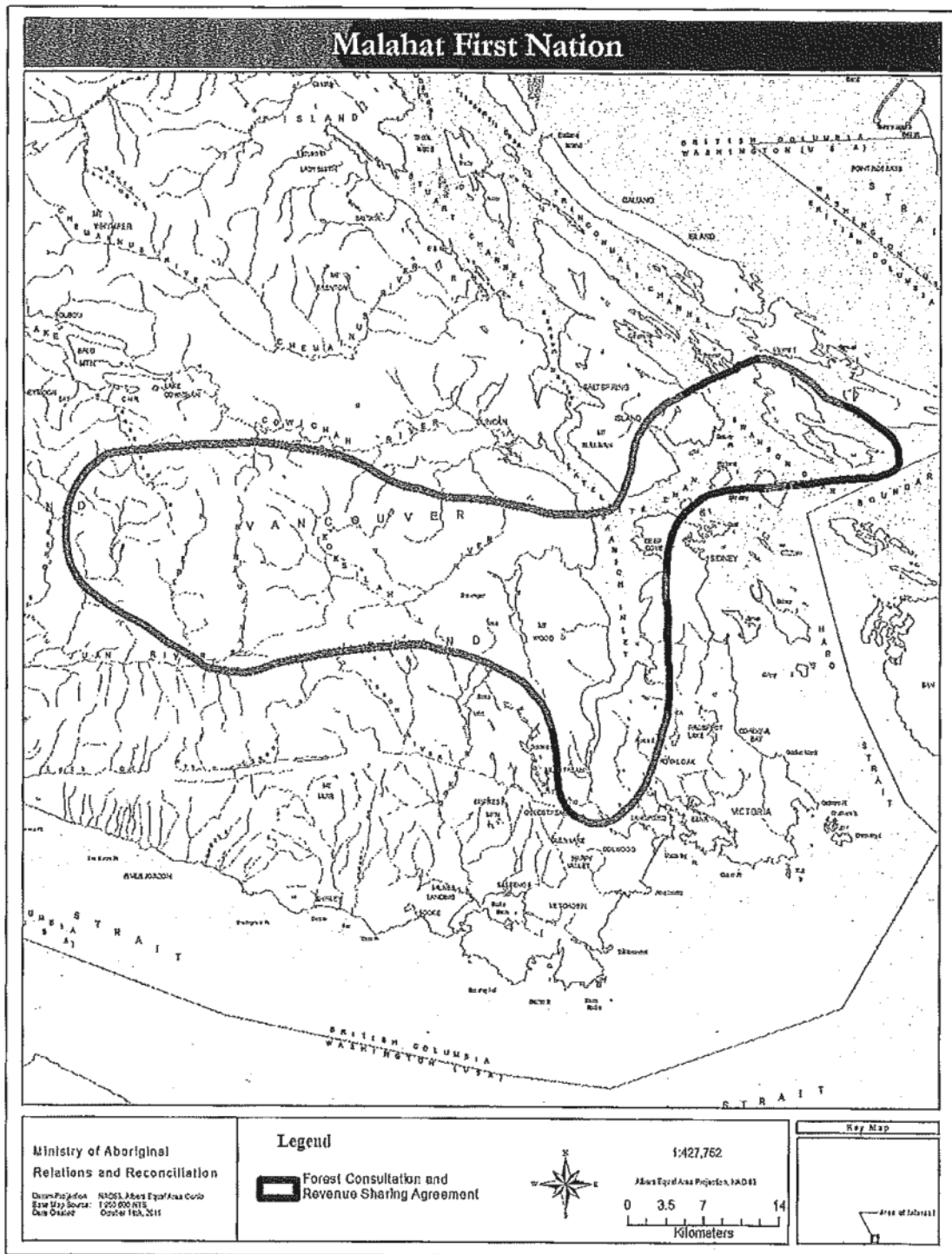
Minister of Forests, Lands, and Natural  
Resource Operations



Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



**Shawngn Lake Watershed**  
W0030

**Forest Cover Age**

- 1-20
- 21-40
- 41-60
- 61-100
- 101-200
- 201-400

**Land Use**

- Wetland
- Roads
- Old slash Area
- 50' Foot
- Wetlands
- 500'

**Legend**

- Wetland
- Roads
- Old slash Area
- 50' Foot
- Wetlands
- 500'

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

Between:

***Malahat First Nation***

As represented by  
Chief and Council

*Sykes*  
*Jul 16, 2013*

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.
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- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation's

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- 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 Malahat 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 Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

- 1.1. "Douglas Treaty rights" means treaty rights of the Malahat First Nation to hunt over unoccupied lands and carry on fisheries as formerly, 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 Woodlot Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Woodlot Licence.
- 1.6. "Representative" carries the same meaning as is given in the *Forest Act*.
- 1.7. "Traditional Territory" means "Malahat 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 Malahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Malahat First Nation's participation in the forest sector by offering an area based forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights..

- 2.4. The forest tenure offered is considered to be the forest tenure opportunity in support of concluding treaties or other land claim processes.

### 3. Forest Tenure Opportunity

- 3.1. After the execution of this Agreement by the Parties, the Minister will invite Malahat First Nation, or its Representative, to apply for a Woodlot Licence (the "Licence").
- 3.2. The appointment of a Representative for the purpose of holding the Licences must be made in accordance with the *Forest Act*.
- 3.3. The proposed Licence boundary will be approximately 571 hectares in size and is identified on the map attached to this Agreement as Appendix C..
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- 3.5. The Licence under section 3.1 of this Agreement will:
  - 3.5.1. be for a term of **20** years;
  - 3.5.2. be eligible for replacement provisions as defined within the *Forest Act*;
  - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence 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 Licence expires or is terminated.
- 3.9. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

#### 4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Malahat First Nation, or its representative, will have exclusive rights to harvest timber in the Licence referred to in section 3.1 of this Agreement.
- 4.2. Malahat First Nation or its Representative may agree to the licence allowing for non exclusive harvesting rights.
- 4.3. Malahat First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the 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 require certain information from Malahat First Nation on what measurable benefits the Malahat First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Malahat 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. Malahat First Nation Traditional Territory

- 6.1. British Columbia will use the map of Malahat First Nation's Traditional Territory used in the "*Malahat First Nation's Forest Consultation and Revenue Sharing Agreement*", which map will be set out in this Agreement as Appendix A.

#### 7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 **20** 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 if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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 entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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 Malahat 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 issued under this

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

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile: 250-743-3251

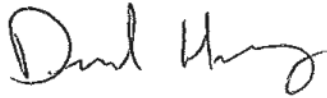
- 13.4. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Malahat 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. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief



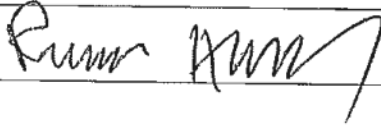
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January 16, 2013

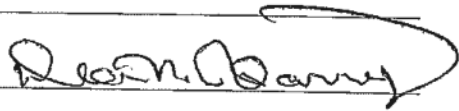
Councillor

Councillor

Councillor



Councillor



Councillor

Councillor

Councillor

Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

Date:

Feb 21 2013



Steve Thomson

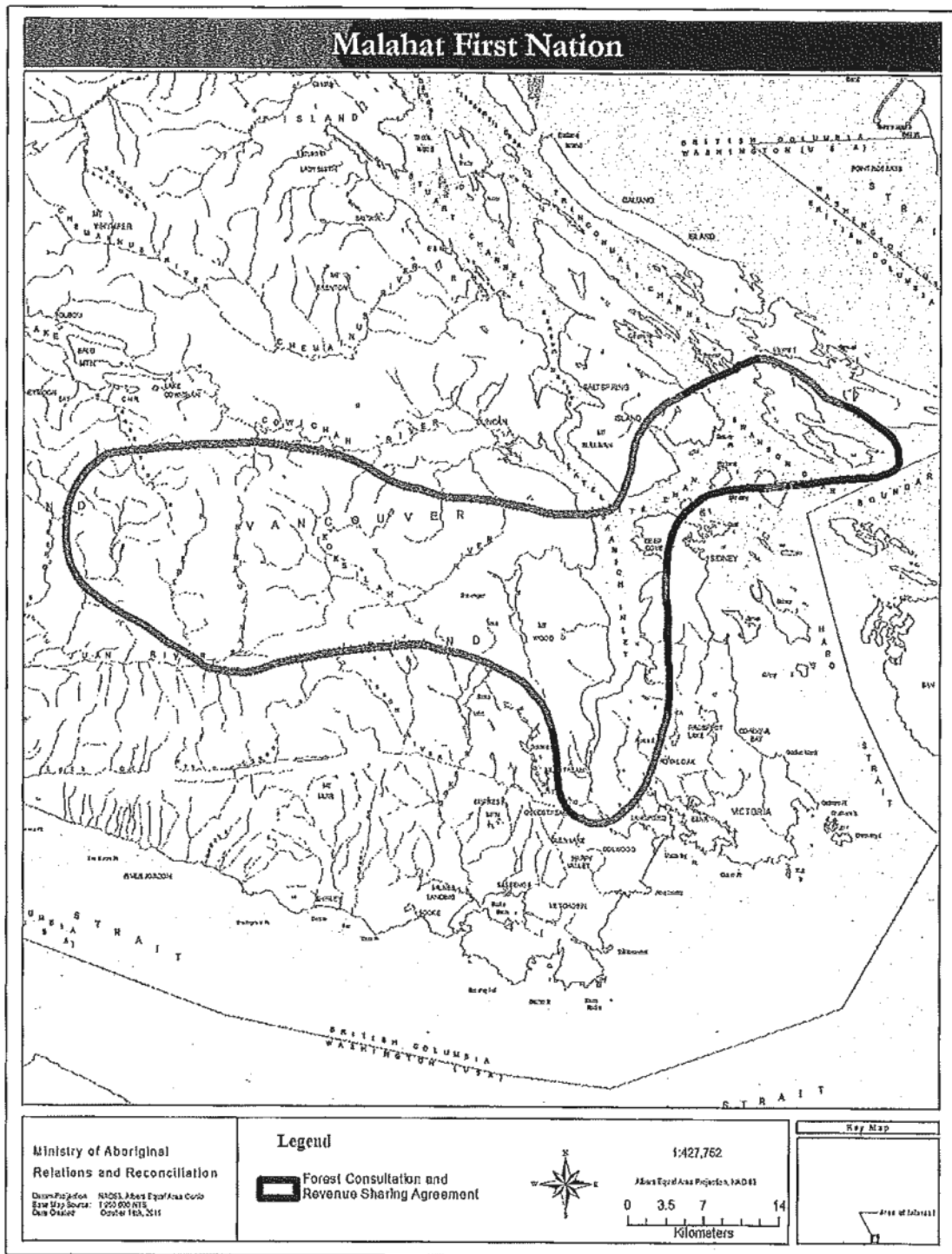
Minister of Forests, Lands, and Natural  
Resource Operations



Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



[illegible]

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

Between:

***Malahat First Nation***

As represented by  
Chief and Council

*Sykes*  
*Jul 16, 2013*

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 Malahat 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 Malahat 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 Malahat 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 Malahat First Nation community's well-being.
- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation's

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- 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 Malahat 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 Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

- 1.1. "Douglas Treaty rights" means treaty rights of the Malahat First Nation to hunt over unoccupied lands and carry on fisheries as formerly, 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 Woodlot Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Woodlot Licence.
- 1.6. "Representative" carries the same meaning as is given in the *Forest Act*.
- 1.7. "Traditional Territory" means "Malahat 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 Malahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Malahat First Nation's participation in the forest sector by offering an area based forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights..

- 2.4. The forest tenure offered is considered to be the forest tenure opportunity in support of concluding treaties or other land claim processes.

### 3. Forest Tenure Opportunity

- 3.1. After the execution of this Agreement by the Parties, the Minister will invite Malahat First Nation, or its Representative, to apply for a Woodlot Licence (the "Licence").
- 3.2. The appointment of a Representative for the purpose of holding the Licences must be made in accordance with the *Forest Act*.
- 3.3. The proposed Licence boundary will be approximately 571 hectares in size and is identified on the map attached to this Agreement as Appendix C..
- 3.4. The Licence under Section 3.1 will be subject to the approval of the District Manager upon the submission and approval of a Management Plan.
- 3.5. The Licence under section 3.1 of this Agreement will:
  - 3.5.1. be for a term of **20** years;
  - 3.5.2. be eligible for replacement provisions as defined within the *Forest Act*;
  - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence 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 Licence expires or is terminated.
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#### 4. Harvest rights within the FNWL may be shared

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

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#### 7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 **20** years.

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- 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
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- 8.4. This Agreement may be terminated by British Columbia if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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 entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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.
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## 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 Malahat First Nation is not in compliance with this Agreement.

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- 11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to Malahat First Nation of any alleged contravention of this Agreement that may lead to Malahat 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.

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile: 250-743-3251

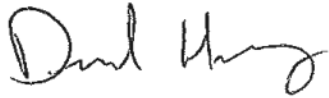
- 13.4. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Malahat 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. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief



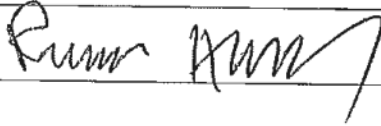
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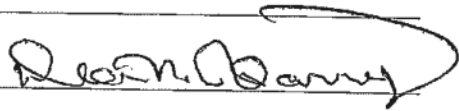
Councillor

Councillor

Councillor



Councillor



Councillor

Councillor

Councillor

Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

Date:

Feb 21 2013



Steve Thomson

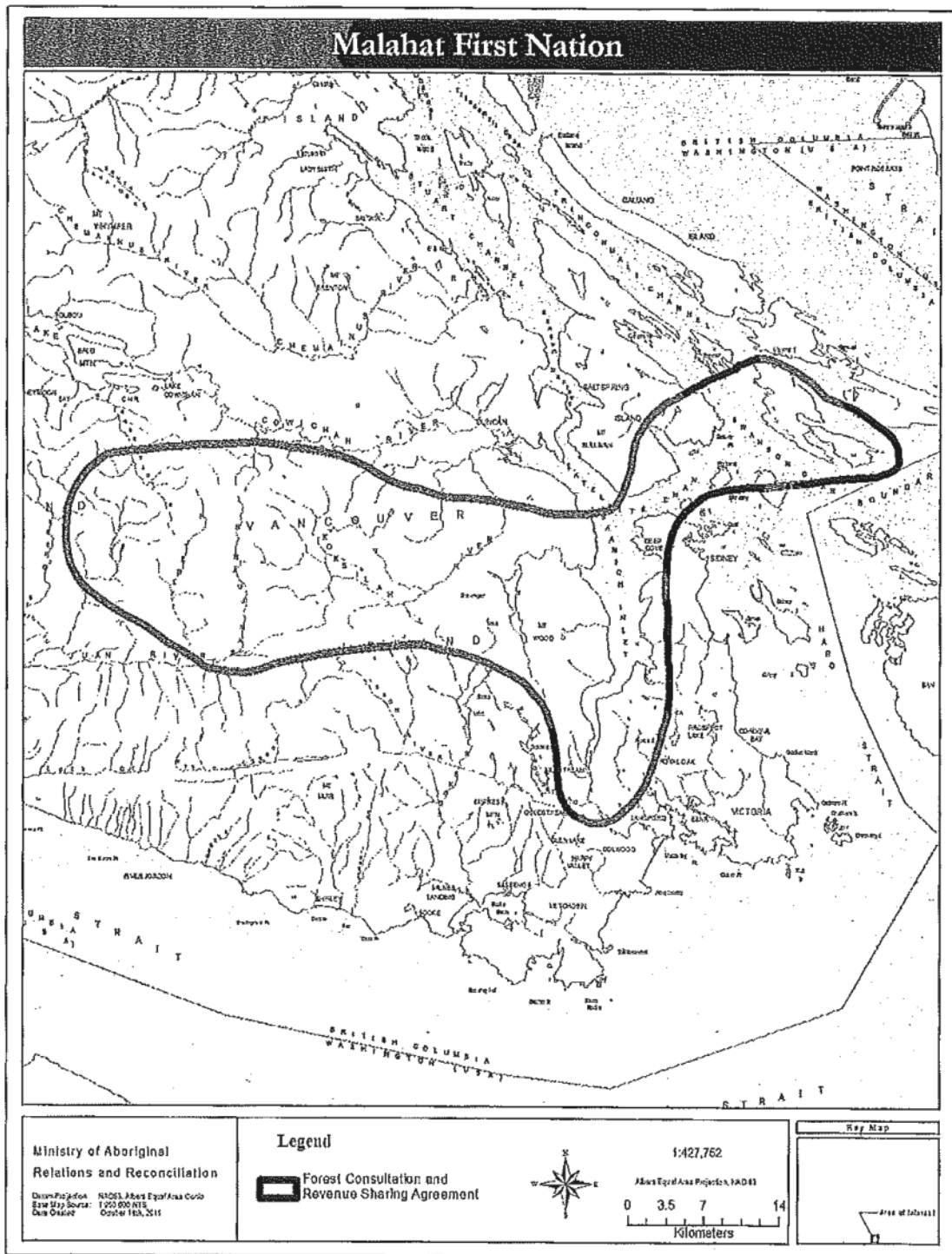
Minister of Forests, Lands, and Natural  
Resource Operations



Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



**Shawngn Lake Watershed**  
W0030

**Forest Cover Age**

- 1-20
- 21-40
- 41-60
- 61-100
- 101-200
- 201-400

**Land Use**

- Wetland
- Roads
- Old slash Area
- Old Field
- Wetlands
- Water

**Legend**

- Wetland
- Roads
- Old slash Area
- Old Field
- Wetlands
- Water

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

**Between:**

***Malahat 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")

*Sykes*  
*Jul 16, 2013*

**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.
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  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence 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 Licence expires or is terminated.
- 3.9. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

#### 4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Malahat First Nation, or its representative, will have exclusive rights to harvest timber in the Licence referred to in section 3.1 of this Agreement.
- 4.2. Malahat First Nation or its Representative may agree to the licence allowing for non exclusive harvesting rights.
- 4.3. Malahat First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the 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 require certain information from Malahat First Nation on what measurable benefits the Malahat First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Malahat 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. Malahat First Nation Traditional Territory

- 6.1. British Columbia will use the map of Malahat First Nation's Traditional Territory used in the "*Malahat First Nation's Forest Consultation and Revenue Sharing Agreement*", which map will be set out in this Agreement as Appendix A.

#### 7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 **20** 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 if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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 entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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 Malahat 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 issued under this

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

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile:250-743-3251

- 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 Malahat 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. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief Daryl Hing

Date:

January 16, 2013

Councillor

Councillor

Councillor

Russ Hing

Councillor

Deon Barry

Councillor

Councillor

Councillor

\_\_\_\_\_  
Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

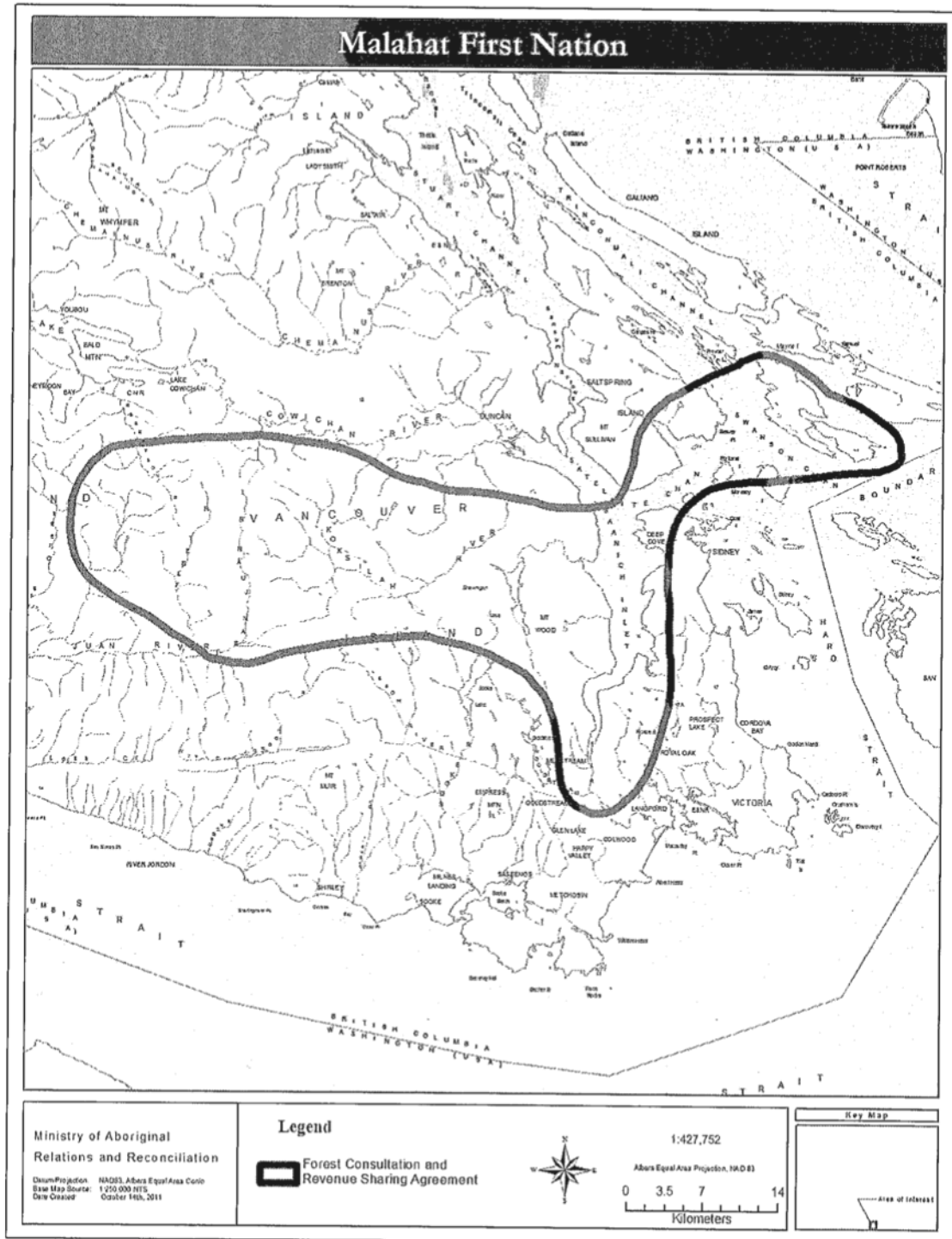
Date: \_\_\_\_\_

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

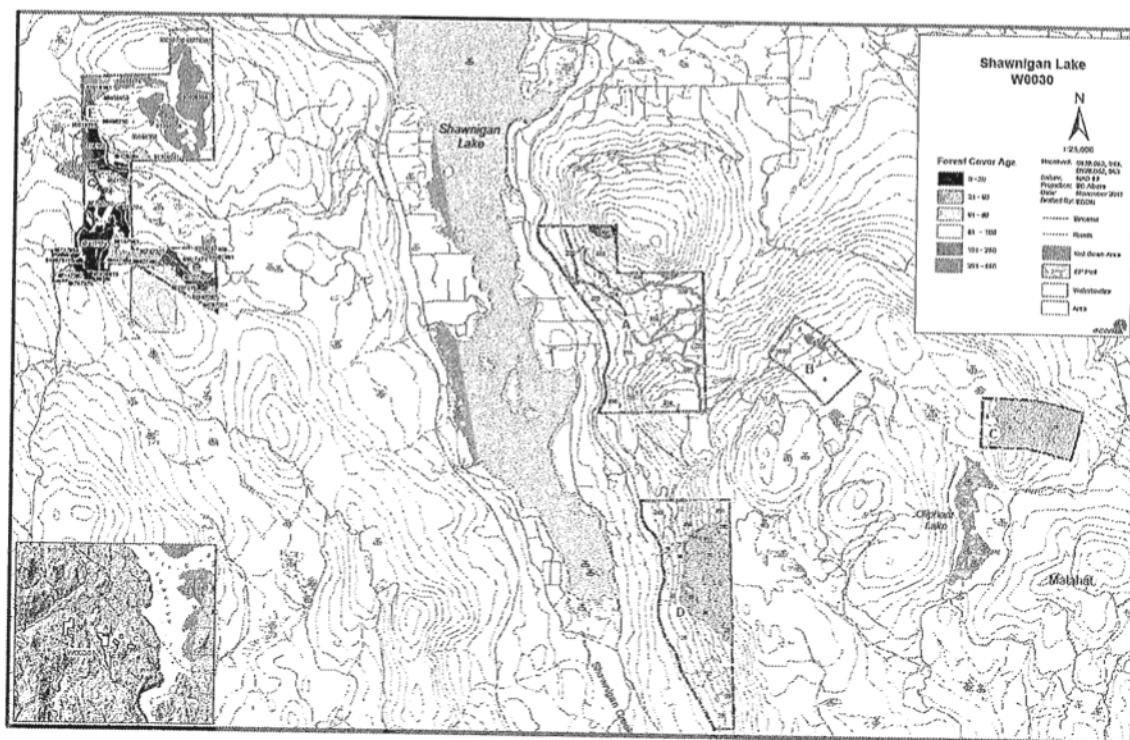
\_\_\_\_\_  
Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



## APPENDIX B – Proposed Woodlot Licence Boundary



**From:** [Donison, Sonia FLNR:EX](#)  
**To:** [Edwards, Neil D FLNR:EX](#)  
**Subject:** RE: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation  
**Date:** Wednesday, January 16, 2013 10:57:33 AM

---

Thanks Neil! Will follow up again late next week

Thank You! Di Bohja!  
Sonia Donison, Manager  
Correspondence Services  
4th Floor, 780 Blanshard  
Tel: 250-356-9638  
Fax: 250-356-6791  
[sonia.donison@gov.bc.ca](mailto:sonia.donison@gov.bc.ca)

-----Original Message-----

From: Edwards, Neil D FLNR:EX  
Sent: Wednesday, January 16, 2013 10:53 AM  
To: Donison, Sonia FLNR:EX; Robb, Darrell FLNR:EX; de Bree, Jennifer FLNR:EX  
Cc: Bauto, Mary FLNR:EX  
Subject: RE: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

We are waiting for a signed version of the FTOA from the Malahat FN reps.

We had to make significant changes to the wording around Douglas Treaty rights, and they have agreed to re-sign the FTOA. I have not seen the new signed FTOA yet.

Cheers!

Neil Edwards RPF  
Tenures Forester  
Coast Area  
Ministry of Forest, Lands and Natural Resource Operations  
(250)-751-3136

-----Original Message-----

From: Donison, Sonia FLNR:EX  
Sent: Tuesday, January 15, 2013 2:20 PM  
To: Robb, Darrell FLNR:EX; de Bree, Jennifer FLNR:EX; Edwards, Neil D FLNR:EX  
Subject: RE: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation  
Importance: High

Hi! just following up, still with region? Status please

Thank You! Di Bohja!  
Sonia Donison, Manager  
Correspondence Services  
4th Floor, 780 Blanshard  
Tel: 250-356-9638  
Fax: 250-356-6791  
[sonia.donison@gov.bc.ca](mailto:sonia.donison@gov.bc.ca)

-----Original Message-----

From: Robb, Darrell FLNR:EX  
Sent: Monday, January 7, 2013 7:47 AM  
To: Donison, Sonia FLNR:EX; de Bree, Jennifer FLNR:EX  
Subject: Re: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

Still with Region.

-----Original Message-----

From: Donison, Sonia FLNR:EX  
To: de Bree, Jennifer FLNR:EX  
To: Darrell Robb  
Sent: Jan 2, 2013 10:39 AM  
Subject: RE: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

Happy New Year! Just checking on status?

Thank You! Di Bohja!  
Sonia Donison, Manager  
Correspondence Services  
4th Floor, 780 Blanshard  
Tel: 250-356-9638  
Fax: 250-356-6791  
sonia.donison@gov.bc.ca

---

From: de Bree, Jennifer FLNR:EX  
Sent: Monday, December 17, 2012 9:22 AM  
To: Robb, Darrell FLNR:EX  
Cc: Donison, Sonia FLNR:EX  
Subject: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

Hi Darrell.

How is 193771 Briefing Note/letter package coming along?

Jennifer de Bree  
Executive Administrative Assistant  
Ministry of Forests, Lands and Natural Resource Operations  
Phone: (250) 387-9773  
Fax: (250) 356-2150  
Email: Jennifer.deBree@gov.bc.ca

---

From: Donison, Sonia FLNR:EX  
Sent: Monday, December 17, 2012 8:37 AM  
To: de Bree, Jennifer FLNR:EX  
Subject: RE: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

Hi Jennifer! How is this coming along?

Thank You! Di Bohja!  
Sonia Donison, Manager  
Correspondence Services

4th Floor, 780 Blanshard  
Tel: 250-356-9638  
Fax: 250-356-6791  
sonia.donison@gov.bc.ca

---

From: de Bree, Jennifer FLNR:EX  
Sent: Wednesday, December 12, 2012 2:53 PM  
To: Donison, Sonia FLNR:EX; Correspondence Serv. Sectn, FLNR:EX  
Subject: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

Hi there.

Please see Darrell Robb's email update on 193771 Briefing Note/Letter package below. I will keep you apprised of developments as they occur.

Jennifer de Bree  
Executive Administrative Assistant  
Ministry of Forests, Lands and Natural Resource Operations  
Phone: (250) 387-9773  
Fax: (250) 356-2150  
Email: Jennifer.deBree@gov.bc.ca

From: Robb, Darrell FLNR:EX  
Sent: Wednesday, December 12, 2012 2:23 PM  
To: de Bree, Jennifer FLNR:EX  
Subject: FW: 193771 - Forest Tenure Opportunity Agreement with Malahat First Nation

Jennifer...a review here in

-----Original Message Truncated-----

Page 080 to/à Page 084

Withheld pursuant to/removed as

s.14

**From:** [Edwards, Neil D FLNR:EX](#)  
**To:** ["Shane Simard"](#)  
**Cc:** [Bauto, Mary FLNR:EX](#)  
**Subject:** RE: FTOA for Malahat signing  
**Date:** Tuesday, January 22, 2013 8:36:00 AM  
**Attachments:** [image001.gif](#)

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I think it would be best to discuss with the district. In general two tenures on the same area are not allowed, especially when one is a area-based tenure with tabular stumpage rates as opposed to appraised stumpage rates for the NRFL. The district will be in touch once we have confirmation that the Minister has approved the FTOA.

Thx.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

---

**From:** Shane Simard [<mailto:shanesimard@capfor.ca>]  
**Sent:** Monday, January 21, 2013 4:26 PM  
**To:** Edwards, Neil D FLNR:EX  
**Subject:** RE: FTOA for Malahat signing  
Hello Neil,

Is the Malahat going to be able to receive the Woodlot licence while their existing tenure (NRFL A85948) is still in effect? The timber supply analysis report has already been completed in December 2011 by Econ Consulting. I'll look into starting the Management Plan. Thank you.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]  
**Sent:** January 21, 2013 4:21 PM  
**To:** Shane Simard  
**Cc:** Bauto, Mary FLNR:EX  
**Subject:** RE: FTOA for Malahat signing

Well as a very rough time frame I can offer the following:

I attached the signed FTOA to a decision package which is reviewed and sent to the Minister's office for approval. Since we have already done most of the leg work on this aspect – I think this should take no longer than 2 weeks to get to the Ministers office once it leaves Nanaimo.

At the Ministers office I would hazard to give you a for sure time frame but the Minister is aware of this woodlot and will most likely move to make his decision ASAP.

Once approved we can then proceed to award the tenure subject to any overlapping FN

consultation. I can't recall how many other FNs overlap. At minimum this could take 30 days or less. The key item required before Rhonda can sign the licence is that a management plan and AAC has been submitted and approved before the licence is awarded. This is a Forest Act requirement (legal).

So if you have already submitted a management plan for the DM to consider, then moving to award of the tenure is much faster, if Rhonda has already approved the plan.

So if all goes well and there are no delays or plans are not approved – the woodlot could be completed and issued in 60 – 90 days?? Maybe?

It is very hard to give you a definitive answer on a time line to issuance of the woodlot and is dependent on whether or not you have submitted and the DM has approved your management plan.

Mary, anything you can offer Shane?

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

---

**From:** Shane Simard [<mailto:shanesimard@capfor.ca>]

**Sent:** Monday, January 21, 2013 3:45 PM

**To:** Edwards, Neil D FLNR:EX

**Subject:** RE: FTOA for Malahat signing

Hello Neil,

Here's the signed document. Can you give a rough time frame for the Woodlot licence. Thanks.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]

**Sent:** January 10, 2013 4:17 PM

**To:** Shane Simard; Bauto, Mary FLNR:EX

**Cc:** Collins, Denis A FLNR:EX

**Subject:** FTOA for Malahat signing

**Importance:** High

Shane and Mary

Attached is the updated FTOA to reflect Douglas Treaty rights properly. Please have the Chief and Council Members sign, date and witness this document.

The decision package is ready to go immediately once I receive the signed FTOA from the Malahat First Nation.

Any questions please contact me.

Neil Edwards RPF

Tenures Forester  
Coast Area  
Ministry of Forest, Lands and Natural Resource Operations  
(250)-751-3136

---

**From:** Shane Simard [<mailto:shanesimard@capfor.ca>]

**Sent:** Tuesday, January 8, 2013 2:53 PM

**To:** Edwards, Neil D FLNR:EX

**Subject:** RE: Updated FTOA

Hello Neil,

The band has reviewed the updated FTOA and approve the wording. Please send me the final document and I'll have the band sign it. Thanks.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]

**Sent:** December 19, 2012 10:28 AM

**To:** Shane Simard

**Cc:** Bauto, Mary FLNR:EX

**Subject:** Updated FTOA

**Importance:** High

Shane,

I must apologize with this request for consideration by the Malahat. I was unaware of the wording that MARR had prepared for the FCRSA that has been approved by Minister Ida Chong on October 30, 2012. This agreement was about to be presented to the Minister for signing when the agreement language was noted.

The FTOA, attached, was updated to ensure both agreements provide the same language, especially around Douglas Treaty rights. The original offer of the woodlot remains the same, though the attached FTOA shows the changes requested for Malahat to consider.

If the wording changes are accepted please advise me directly and I will send you a clean version to be signed. And if further discussion is required let me know and we will try to arrange meeting to review these changes.

Again I apologize for this late request and hope that we can reach agreement on this language so that the Minister's office can approve the FTOA in order for us to issue the woodlot.

Please call if you have any questions.

Thanks.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

**From:** [Edwards, Neil D FLNR:EX](#)  
**To:** ["Shane Simard"](#)  
**Cc:** [Bauto, Mary FLNR:EX](#)  
**Subject:** RE: FTOA for Malahat signing  
**Date:** Monday, January 21, 2013 4:21:00 PM  
**Attachments:** [image001.gif](#)

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Well as a very rough time frame I can offer the following:

I attached the signed FTOA to a decision package which is reviewed and sent to the Minister's office for approval. Since we have already done most of the leg work on this aspect – I think this should take no longer than 2 weeks to get to the Ministers office once it leaves Nanaimo.

At the Ministers office I would hazard to give you a for sure time frame but the Minister is aware of this woodlot and will most likely move to make his decision ASAP.

Once approved we can then proceed to award the tenure subject to any overlapping FN consultation. I can't recall how many other FNs overlap. At minimum this could take 30 days or less. The key item required before Rhonda can sign the licence is that a management plan and AAC has been submitted and approved before the licence is awarded. This is a Forest Act requirement (legal).

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Mary, anything you can offer Shane?

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

---

**From:** Shane Simard [mailto:[shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)]

**Sent:** Monday, January 21, 2013 3:45 PM

**To:** Edwards, Neil D FLNR:EX

**Subject:** RE: FTOA for Malahat signing

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**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]

**Sent:** January 10, 2013 4:17 PM

**To:** Shane Simard; Bauto, Mary FLNR:EX

**Cc:** Collins, Denis A FLNR:EX

**Subject:** FTOA for Malahat signing

**Importance:** High

Shane and Mary

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The decision package is ready to go immediately once I receive the signed FTOA from the Malahat First Nation.

Any questions please contact me.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

---

**From:** Shane Simard [<mailto:shanesimard@capfor.ca>]

**Sent:** Tuesday, January 8, 2013 2:53 PM

**To:** Edwards, Neil D FLNR:EX

**Subject:** RE: Updated FTOA

Hello Neil,

The band has reviewed the updated FTOA and approve the wording. Please send me the final document and I'll have the band sign it. Thanks.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]

**Sent:** December 19, 2012 10:28 AM

**To:** Shane Simard

**Cc:** Bauto, Mary FLNR:EX

**Subject:** Updated FTOA

**Importance:** High

Shane,

I must apologize with this request for consideration by the Malahat. I was unaware of the wording that MARR had prepared for the FCRSA that has been approved by Minister Ida Chong on October 30, 2012. This agreement was about to be presented to the Minister for signing when the agreement language was noted.

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Please call if you have any questions.

Thanks.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

**From:** [Shane Simard](#)  
**To:** [Edwards, Neil D FLNR:EX](#)  
**Subject:** RE: FTOA for Malahat signing  
**Date:** Tuesday, February 19, 2013 9:13:29 AM  
**Attachments:** [image001.gif](#)  
[malahatfax@malahatnation.com\\_20130121\\_102159.pdf](#)

---

Hello Neil,  
Here it is. I also sent it to you on January 21.

**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [mailto:[Neil.Edwards@gov.bc.ca](mailto:Neil.Edwards@gov.bc.ca)]

**Sent:** February 19, 2013 9:09 AM

**To:** Shane Simard

**Subject:** FW: FTOA for Malahat signing

**Importance:** High

Morning Shane – has Malahat signed this updated and corrected FTOA for the woodlot? I have not seen anything returned to pass onto the Minister?

Minister's office is keen to make a decision on this file. I am in the Nanaimo office for today (February 19<sup>th</sup>) at 751-3136.

Please call with an update if you are able

Thx.

Neil Edwards RPF

First Nation Policy Forester

First Nation Relations Branch

Ministry of Forest, Lands and Natural Resource Operations

(250)-356-6073

---

**From:** Edwards, Neil D FLNR:EX

**Sent:** Thursday, January 10, 2013 4:17 PM

**To:** 'Shane Simard'; Bauto, Mary FLNR:EX

**Cc:** Collins, Denis A FLNR:EX

**Subject:** FTOA for Malahat signing

**Importance:** High

Shane and Mary

Attached is the updated FTOA to reflect Douglas Treaty rights properly. Please have the Chief and Council Members sign, date and witness this document.

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Any questions please contact me.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

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**Sent:** Tuesday, January 8, 2013 2:53 PM

**To:** Edwards, Neil D FLNR:EX

**Subject:** RE: Updated FTOA

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**Shane Simard, RFT**

Operations Engineer

Capacity Forest Management Ltd.

Ph: 250.287.2120

Fx: 250.287.2125

Cell: 250.830.8718

Email: [shanesimard@capfor.ca](mailto:shanesimard@capfor.ca)



---

**From:** Edwards, Neil D FLNR:EX [<mailto:Neil.Edwards@gov.bc.ca>]

**Sent:** December 19, 2012 10:28 AM

**To:** Shane Simard

**Cc:** Bauto, Mary FLNR:EX

**Subject:** Updated FTOA

**Importance:** High

Shane,

I must apologize with this request for consideration by the Malahat. I was unaware of the wording that MARR had prepared for the FCRSA that has been approved by Minister Ida Chong on October 30, 2012. This agreement was about to be presented to the Minister for signing when the agreement language was noted.

The FTOA, attached, was updated to ensure both agreements provide the same language, especially around Douglas Treaty rights. The original offer of the woodlot remains the same, though the attached FTOA shows the changes requested for Malahat to consider.

If the wording changes are accepted please advise me directly and I will send you a clean version to be signed. And if further discussion is required let me know and we will try to arrange meeting to review these changes.

Again I apologize for this late request and hope that we can reach agreement on this language so that the Minister's office can approve the FTOA in order for us to issue the woodlot.

Please call if you have any questions.

Thanks.

Neil Edwards RPF

Tenures Forester

Coast Area

Ministry of Forest, Lands and Natural Resource Operations

(250)-751-3136

**From:** [Perzina, Vinka V FLNR:EX](#)  
**To:** [Correspondence Serv. Sectn, FLNR:EX](#)  
**Cc:** [Edwards, Neil D FLNR:EX](#); [de Bree, Jennifer FLNR:EX](#)  
**Subject:** RUSH - CLIFF 193771  
**Date:** Tuesday, February 19, 2013 9:49:25 AM  
**Attachments:** [193771 - Draft Invite letter.docx](#)  
[193771 - Malahat FTOA C BRN.docx](#)  
[malahatfax@malahatnation.com 20130121 102159.pdf](#)  
**Importance:** High

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This is a rush update request that needs to go forward to the ADM as soon as possible, it has been reviewed and approved by Greg Gage, Denis Collins and Sharon Hadway.

If there are any questions, please contact Neil Edwards at [Neil.Edwards@gov.bc.ca](mailto:Neil.Edwards@gov.bc.ca), he's not always here, works mostly out of Victoria.

Vinka Perzina  
Correspondence, MRLs, and Briefing Note Coordinator  
Ministry of Forests, Lands and Natural Resource Operations  
West Coast Region  
Tel: 250-751-7134  
Fax: 250-751-7190

Kindness is language that the deaf can hear and the the blind can see - Mark Twain

## **Forest Tenure Opportunity Agreement**

(the “Agreement”)

**Between:**

***Malahat 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 Malahat 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 Malahat 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 Malahat 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 Malahat First Nation community’s well-being.
- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation’s

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- 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 Malahat 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 Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

- 1.1. "Douglas Treaty rights" means treaty rights of the Malahat First Nation to hunt over unoccupied lands and carry on fisheries as formerly, 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 Woodlot Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Woodlot Licence.
- 1.6. "Representative" carries the same meaning as is given in the *Forest Act*.
- 1.7. "Traditional Territory" means "Malahat 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 Malahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Malahat First Nation's participation in the forest sector by offering an area based forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights..

- 2.4. The forest tenure offered is considered to be the forest tenure opportunity in support of concluding treaties or other land claim processes.

### 3. Forest Tenure Opportunity

- 3.1. After the execution of this Agreement by the Parties, the Minister will invite Malahat First Nation, or its Representative, to apply for a Woodlot Licence (the "Licence").
- 3.2. The appointment of a Representative for the purpose of holding the Licences must be made in accordance with the *Forest Act*.
- 3.3. The proposed Licence boundary will be approximately 571 hectares in size and is identified on the map attached to this Agreement as Appendix C..
- 3.4. The Licence under Section 3.1 will be subject to the approval of the District Manager upon the submission and approval of a Management Plan.
- 3.5. The Licence under section 3.1 of this Agreement will:
  - 3.5.1. be for a term of **20** years;
  - 3.5.2. be eligible for replacement provisions as defined within the *Forest Act*;
  - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence 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 Licence expires or is terminated.
- 3.9. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

#### 4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Malahat First Nation, or its representative, will have exclusive rights to harvest timber in the Licence referred to in section 3.1 of this Agreement.
- 4.2. Malahat First Nation or its Representative may agree to the licence allowing for non exclusive harvesting rights.
- 4.3. Malahat First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the 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 require certain information from Malahat First Nation on what measurable benefits the Malahat First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Malahat 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. Malahat First Nation Traditional Territory

- 6.1. British Columbia will use the map of Malahat First Nation's Traditional Territory used in the "*Malahat First Nation's Forest Consultation and Revenue Sharing Agreement*", which map will be set out in this Agreement as Appendix A.

#### 7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat 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 **20** 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 if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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 entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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 Malahat 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 issued under this

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

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile: 250-743-3251

- 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 Malahat 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. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief

Date: \_\_\_\_\_

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

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Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

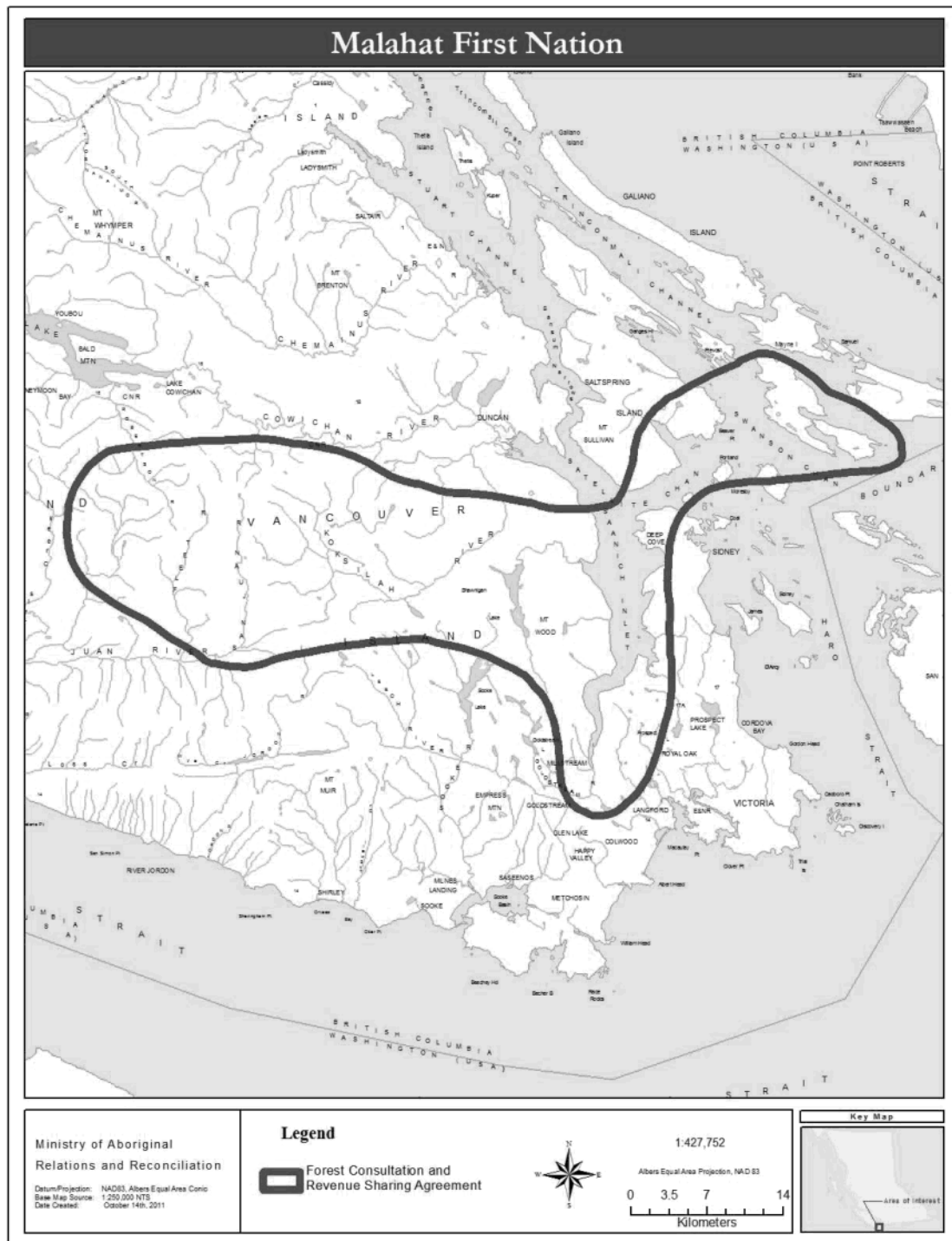
Date: \_\_\_\_\_

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

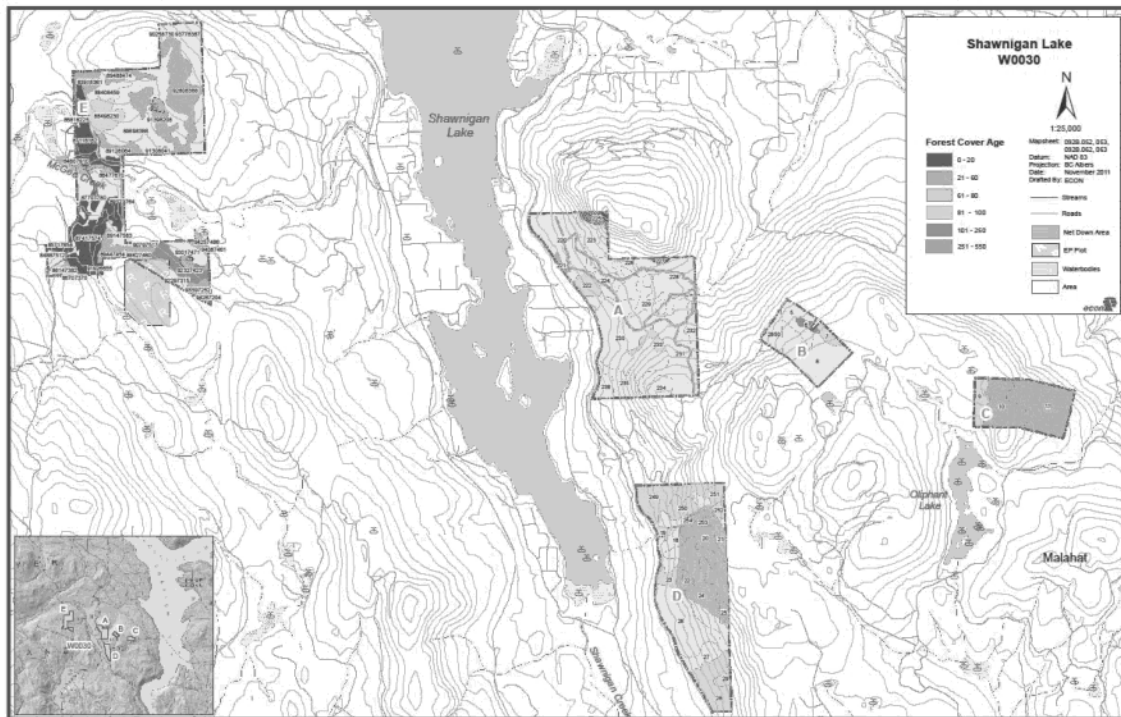
\_\_\_\_\_  
Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



## APPENDIX B – Proposed Woodlot Licence Boundary



## Jager, Brenda CSNR:EX

---

**From:** Morris, Rhonda M FLNR:EX  
**Sent:** Thursday, June 13, 2013 11:48 AM  
**To:** Graham, Marilyn ABR:EX  
**Subject:** FW: Malahat wl  
**Attachments:** Conveyance\_Letter.pdf; Malahat\_Executed\_FTOA.pdf

Hi Marilyn.

It was nice to chat with you today. As promised, here is information regarding the Malahat Woodlot. As you can see from the attachment, Malahat FN and the province have recently signed a Forest Tenure Opportunity Agreement inviting Malahat to apply for a woodlot. Malahat has hired a consulting firm to help them with the next step in the process which include developing a management plan and AAC for my consideration/approval.

---

**From:** Husband, Randy FLNR:EX  
**Sent:** Tuesday, March 19, 2013 1:26 PM  
**To:** Bauto, Mary FLNR:EX  
**Cc:** Morris, Rhonda M FLNR:EX  
**Subject:** Malahat

Attached is the signed FTOA and the letter sent to the Malahat.

*Randy Husband, RPF  
Tenures Forester  
Coast Area  
Forest, Lands, and Natural Resource Operations  
(250) 751-7057*



Ref: 193771

Chief David Harry  
Malahat First Nation  
110 Thunder Road  
Mill Bay, British Columbia  
V0R 2P0

Dear Chief David Harry:

As a follow up to the Forest Tenure Opportunity Agreement between the Malahat First Nation and the Province of British Columbia signed concurrently with this letter, I invite you to apply under section 47.3 of the *Forest Act* for a woodlot licence (the "licence").

I am aware that the licence area has been identified and agreed upon by the stakeholders from areas within the Arrowsmith Timber Supply Area and that discussions regarding the licence document are in progress. The District Manager (DM) of the South Island Resource District is the delegated decision maker that will enter into the licence with the Malahat First Nation.

For the purposes of the application to the DM please ensure that the following information is forwarded including:

1. A description of the Intended Holder of the licence.
2. If the Intended Holder is other than the Malahat First Nation:
  - a) Documentation that the Intended Holder of the licence meets the requirements of "representative" as defined by section 47.3 of the *Forest Act*; and
  - b) copy of a band council resolution appointing the Intended Holder to be the representative of the Malahat First Nation.
3. Confirmation that the Management Plan is approved and an allowable annual cut determination is made for the woodlot licence by the DM.
4. A map of the proposed woodlot area.

The Intended Holder of the licence will be required to comply with British Columbia law and other administrative requirements, including:

Page 1 of 2

1. The requirement of the licence holder to pay to the Government of British Columbia, in addition to other amounts payable under the *Forest Act* and regulations, stumpage, under Part 7 of the *Forest Act*; and to prepare operational plans for the licence in accordance with British Columbia law; and,
2. Prior to entering the licence, the Intended Holder of the licence is required to submit a security deposit to the Government of British Columbia. Annual rent will be invoiced subsequent to licence issuance. In addition, a silviculture security or an agreement to utilize revenue sharing payments to cover such costs may be required at the discretion of the DM. All deposits and securities must be in an acceptable form and/or security.
3. The Intended Holder is responsible for reforestation and the establishment of free growing stands in accordance with British Columbia law.

It is the responsibility of the Malahat First Nation to ensure that such financial viability or feasibility assessments are carried out by appropriate experts and where necessary, lending institutions, prior to entering into a woodlot licence.

If you have any questions regarding this invitation please contact Mary Bauto, Resource Manager of the South Island District by phone at 250-731-3016 or by email at [Mary.Bauto@gov.bc.ca](mailto:Mary.Bauto@gov.bc.ca).

Sincerely,



Steve Thomson  
Minister

pc: Sharon Hadway, Regional Executive Director, West Coast Region  
Denis Collins, Director , Coast Area  
Rhonda Morris, District Manager, South Island District  
Mary Bauto, Resource Manager, South Island District

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

Between:

***Malahat 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.
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- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation's

*Sykes*  
*Jul 16, 2013*

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- 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 Malahat 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 Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

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- 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*.
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- 3.5. The Licence under section 3.1 of this Agreement will:
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  - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
  - 3.5.4. 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 Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
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  - 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 if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 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.
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## 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat 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.
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Agreement, if the Minister or a person authorized by the Minister determines that Malahat First Nation is not 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.

<b>British Columbia</b>	<b>Malahat First Nation</b>
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile: 250-743-3251

- 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 Malahat First Nation's Representative in respect of any licences issued under this Agreement.

#### 14. Miscellaneous

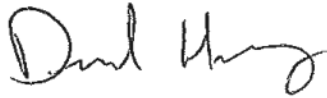
- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. 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 treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 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 Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

**Malahat First Nation**

Chief



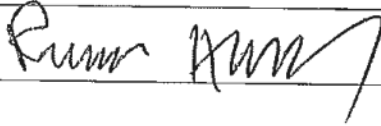
Date:

January 16, 2013

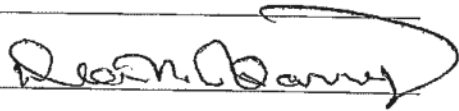
Councillor

Councillor

Councillor



Councillor



Councillor

Councillor

Councillor

Witness of Malahat First Nation  
signatures

Signed on behalf of:

**British Columbia**

Date:

Feb 21 2013



Steve Thomson

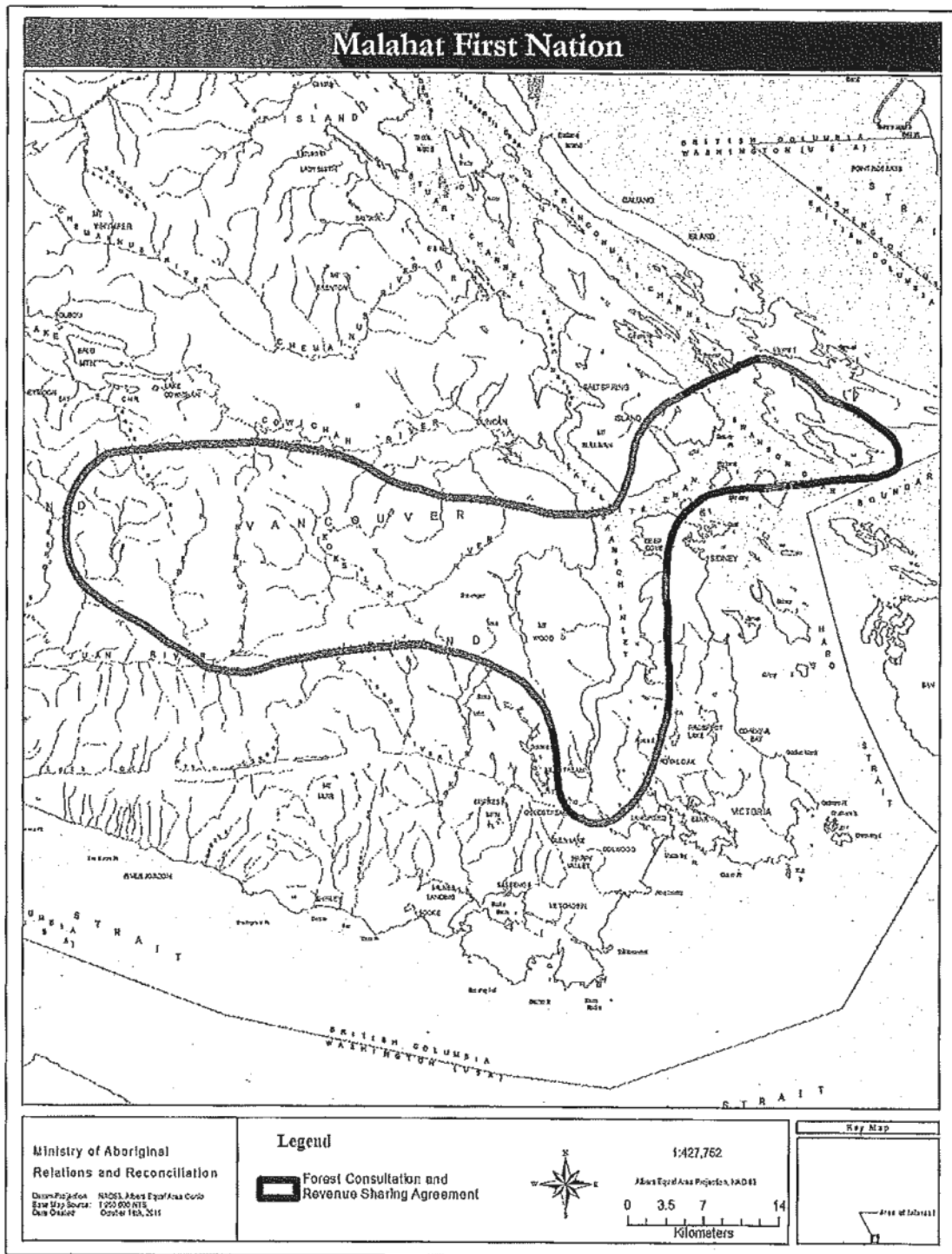
Minister of Forests, Lands, and Natural  
Resource Operations



Witness of Minister signature

# APPENDIX A

## Map of Malahat First Nation Traditional Territory



**Shawngn Lake Watershed**  
W0030

**Forest Cover Age**

- 1-20
- 21-40
- 41-60
- 61-100
- 101-200
- 201-400

**Land Use**

- Wetland
- Roads
- Old slash Area
- 50' Foot
- Wetlands
- 100'

**Legend**

- Wetland
- Roads
- Old slash Area
- 50' Foot
- Wetlands
- 100'

## Jager, Brenda CSNR:EX

---

**From:** Morris, Rhonda M FLNR:EX  
**Sent:** Tuesday, December 10, 2013 11:15 AM  
**To:** Simpson, Jim FLNR:EX  
**Cc:** MacGregor, David M FLNR:EX  
**Subject:** woodlot 0030 - Malahat FN

Hi there,

I received a call from s.22 . He has a private property near, but not adjacent, to the proposed woodlot s.22 near Shawnigan Lake Road and Verlon Road. He has asked what is the status of the proposed woodlot 30. He is concerned that tree cutting on the woodlot will exacerbate flooding that he already experiences on his property during peak rain events. He also asked if the Cowichan Valley Regional District received a referral of the WMP and WLP. He also notes that the CVRD has this area zoned as park land and wonders how we are able to issue a woodlot with this zoning in place. His number is s.22 or s.22 . Would you be able to call Jeff and answer his questions and send me an email with cc to me and Dave with a summary . I understand Jeff is a retired city planner. Thanks a bunch.

---

Rhonda Morris, RPF  
District Manager  
South Island Resource District  
Phone: 250 731-3033  
Cel: 250-720-6687

## Jager, Brenda CSNR:EX

---

**From:** s.22  
**Sent:** Wednesday, December 11, 2013 10:35 PM  
**To:** garygallinger@capfor.ca  
**Cc:** BFraser@cvr.d.bc.ca; Morris, Rhonda M FLNR:EX  
**Subject:** Woodlot plan: W0030: Review and comment

December 11, 2013

Gary Gallinger RPF  
MTHL MP & WLP Review and Comment  
C/o Capacity Forest Management Ltd  
1761A Redwood St.  
Campbell River, BC V9W 3K7

### Re Woodlot Licence W0030, Block A

I am writing both to address the issue of balance in the forestry plan for Block A, but also to suggest that the current plan violates the very notion of all of the last 120 years of settlement since the shores of Shawnigan Lake were first subdivided and lots began to be sold in 1892. The two issues are related. The draft plan does not acknowledge at all that the woodlot is also Blk 228 in the BC Land registry and has been zoned Park (P1) since Shawnigan Lake's first modern Land Use Plan adopted by the Cowichan Valley Regional District Board in 1975. The reasons for the park zoning still apply today. Park and institutional uses are the only use recommended for Block 228 (Coterminus with Woodlot W0030, BlockA) by the 1975 Plan. That recommendation has been repeated by each and every review of Shawnigan Lake's land use plan since 1975, including the adoption of a new bylaw in the summer of 2013. The lack of consideration of the site's recent use is reflected in the lack of mention of a Canada National Monument at mile 25 of the Railway where then Prime Minister John A. Macdonald drove the last spike on August 13, 1886, across from the southeast corner of our lot. The site was commemorated by a 2<sup>nd</sup> plaque as recently as 1986.

I will also comment on the potential impact on my own lot with the postal address of s.22, Shawnigan Lake, BC s.22. Our lot is bounded to the east s.22, on the other side of which is the proposed woodlot.

Trail system: The proposed woodlot currently contains a labyrinth of trails that appear to have been used continuously as hiking trails since modern settlement was initiated in the 1890s. Many of these trails appear as dotted lines on the base used for the woodlot plan, but are unacknowledged by the plan itself. The plan acknowledges two trails through the area. However, even those two trails seem not to be in the precise locations highlighted in the draft plan. The main trail commences immediately across the railway from our lot, but is shown as commencing a bit to the north of our lot. The draft plan calls for a 10 metre strip of forest to be preserved on each side of these trails. This is far from sufficient and is but one example of the lack of balance in the draft plan. Far more of the trails and wider corridors – not less than 30 metres on each side of trails - should be preserved. There is one trail parallel to the railway (distance from the railway varies from 20 to 50 metres), and this trail and the space between it and the railway should be preserved in its entirety. Not much potential harvest from these reserves would be lost in any event in the case of this trail.

Stream protection: Many small streams are not shown on the base map. Each and every stream needs to be mapped and standard corridors on each side of such streams preserved from clearing. With respect to our lot, one stream flows beneath the railway through a 12" culvert and then s.22 ultimately flowing to a ditch on the south side of the Verlon Road right-of-way. That ditch frequently floods during extreme water events. As well, s.22 s.22 are barely above the ditch and would be vulnerable to additional water flows, especially following extreme water/snow fall events. All streams, seasonal and year-round need to be mapped, paying careful attention to those flowing across or beneath the railway, and the impact of clearing on the streams assessed.

Hydrology: As an extension of the need to protect streams running through the woodlot, there is a need to understand the hydrology of the woodlot and the impact of this hydrology on the settled area between the woodlot and Shawnigan Lake.

As shown on the base map, much of the woodlot is characterized by steep topography. Removal of the forest cover will potentially result in hundred of thousands of litres of additional water flowing from the woodlot through the lots between the E & N Railway and the Lake. Even under current flows and s.22 the trail east from the railway meets the railway at grade and water sluices down the hill side and over the lot. s.22

Hydrological studies of the entire woodlot need to be undertaken by the proponent before a final plan is adopted.

Conclusion: The need to provide jobs to members of the Malahat First Nation is understandable. Harvesting of woodlots on BC Crown lands is one way for this to occur. At the very least, however, the rate and extent of logging on parcels immediately adjacent to long-time settlements needs to be recognized by the forestry plan. The forestry plan in this case should not be just about logging. It needs to be tempered by the impact of logging on the adjacent settlement. There is a need to reach a different balance between the requirements of the settled area and the need to satisfy needs of the nearby First Nation. Block A of woodlot W0030 is also Block 228 in Malahat District and the single Crown parcel in the vicinity that has been designated as a park in the Shawnigan Lake Land Use Plan since planning began in the region. The draft management plan ignores this history, as well as the use of the parcel by residents and visitors alike.

It also ignores the potential impact of forestry activities on the adjacent properties valued at millions of dollars. Hydrological impacts are chief amongst these. Streams have not been adequately inventoried or mapped. The lot is characterized by steep slopes immediately above the nearby homes. The railway lies at an elevation of approximately 160 metres (Shawnigan Lake level is 138 metres). Land elevations above are as high as 460 metres (Old Baldy Mountain). Many hill tops are only of slightly lesser elevation. As much as 15% of the lot is characterized by steep slopes. The draft forestry plan neither recognizes this hydrological impact nor that many homes are immediately impacted by any change in run-off as a result of forestry activities. Detailed hydrological studies by the proponent must precede any final plan.

A better balance between the needs of the nearby residents and properties and any benefit of forestry activity must be sought.

s.22

Shawnigan Lake, BC s.22

## Jager, Brenda CSNR:EX

---

**From:** MacGregor, David M FLNR:EX  
**Sent:** Wednesday, December 18, 2013 9:12 AM  
**To:** Neill, Emma FLNR:EX  
**Cc:** Bauto, Mary FLNR:EX; Proteau, James FLNR:EX; Morris, Rhonda M FLNR:EX  
**Subject:** RE: CVRD Letter Re: W0030 Block A  
**Attachments:** 20131217141908389.pdf

Hi Emma,

We will organize telecom today after responses from you and Rhonda. s.22  
s.22 . What is your availability on Friday if required? Jim Simpson will also  
be in the office on Friday to deal with Addison Woodlot and offer any other input on the Malahat WL. Talk to you soon.

Regards,  
D  
250-731-3089

-----Original Message-----

From: Neill, Emma FLNR:EX  
Sent: Tuesday, December 17, 2013 5:18 PM  
To: MacGregor, David M FLNR:EX  
Subject: RE: CVRD Letter Re: W0030 Block A

I am willing to discuss but please include Rhonda, you can set up a call for tomorrow. s.14  
s.14  
s.14

Emma Neill, RPF  
Senior Tenures Forester, FTB  
Ministry of Forests, Lands and Natural Resource Operations

Phone: 250.387-4371  
Home Office Phone: 250.725.2245

---

From: MacGregor, David M FLNR:EX  
Sent: December 17, 2013 4:25 PM  
To: Neill, Emma FLNR:EX  
Subject: FW: CVRD Letter Re: W0030 Block A

Hi Emma,

Can you call to discuss this letter with me. Let me know if you are still around. You can probably save me some digging  
around through old archives. Talk soon.

Regards,  
David MacGregor

250-731-3089

-----Original Message-----

From: Gary Gallinger [<mailto:GaryGallinger@capfor.ca>]

Sent: Tuesday, December 17, 2013 2:39 PM

To: MacGregor, David M FLNR:EX

Subject: CVRD Letter Re: W0030 Block A

Dave,

This looks like something you will have to deal with.

Gary Gallinger, RPF

Operations Planner | Capacity Forest Management Ltd. | 1761 A Redwood Street

Campbell River, BC | V9W 3K7 | 250-287-2120 ext 310 (office) | 250-715-8377 (Mobile)

<http://www.capfor.ca/>



175 Ingram Street  
Duncan, BC V9L 1N8  
www.cvrld.bc.ca

Office: 250.746.2500  
Fax: 250.746.2513  
Toll Free: 1.800.665.3955

December 12, 2013

MTHL MP & WLP Review and Comment  
c/o Capacity Forest Management Ltd.  
1761A Redwood Street  
CAMPBELL RIVER BC V9W 3K7

RECEIVED DEC 17 2013

**Attention: Gary Gallinger, RPF**

Dear Gary Gallinger:

**Re: Woodlot Management Plan W0030**

It has come to our attention that one of the main crown blocks allocated to the Malahat First Nation as a woodlot component lies within a zone that does not permit forestry. Block 228 on the east side of Shawnigan Lake has been designated P-1 (Parks and Institutional) since the first zoning bylaw for the area, Bylaw No. 162, was adopted in 1975. The permitted uses of the P-1 zone as specified in current Zoning Bylaw No. 985 are:

- 1) Institution;
- 2) Assembly uses;
- 3) Civic use, transportation facility including airport;
- 4) Ecological reserve, public park, greenbelt;
- 5) Public botanical garden;
- 6) Personal care facility;
- 7) Public school, private school including boarding facilities;
- 8) One single family dwelling or mobile home per parcel, accessory to a use permitted above

At the time of designation in 1975, Zoning Bylaw No. 162 was subject to a public hearing and the zoning designations were given provincial government approval. The P-1 zoning was placed on this block along with a few others at that time due to the fact that these properties were purchased by BC Parks with the intent of preserving and protecting these lands for future park use.

As well, and specific to the site in question, the historic Cliffside Station is located on the E&N Railway corridor adjacent to Block 228, which is the site of the "Last Spike". The Last Spike refers to Cliffside Cairn where the Last Spike in the E&N railway was driven by Sir John A. MacDonald in 1886. As such, this block has true historical significance to the Shawnigan area and Vancouver Island.

The Cowichan Valley Regional District (CVRD) permits timber harvesting on lands designated F-1 (Primary Forestry), where a principal permitted use of this Zone is *"management and harvesting of primary forest products excluding sawmilling and all manufacturing and dry land log sorting operations."*

.../2

All the blocks included within Shawnigan Lake woodlot W0030 except for Block 228 (shown as Block A on the attached map) are zoned F-1 Primary Forestry. Unless the zoning designation for Block 228 is changed from its current P-1 Zoning to a zone that would permit forestry operations, any forest harvesting in the area would contravene the zoning and would expose the operator to bylaw enforcement. It is also likely that there would be considerable public concern if land designated for park and institutional use were to be treated as commercial forestland.

It is clear that the intent of all parties to the woodlot allocation is to provide the Malahat First Nation with long overdue economic opportunities, an intent that is fully shared by the Cowichan Valley Regional District.

Rezoning all or part of Block 228 from its current P-1 designation to one that would permit woodlot forestry would require public consultation, a public hearing and concurrence of the CVRD Board with a zoning change.

We are prepared to work with the Ministry of Forests Lands and Natural Resource Operations, the Malahat First Nation and their forestry contractor to address this issue. May we suggest an early meeting to review possible options.

Sincerely,

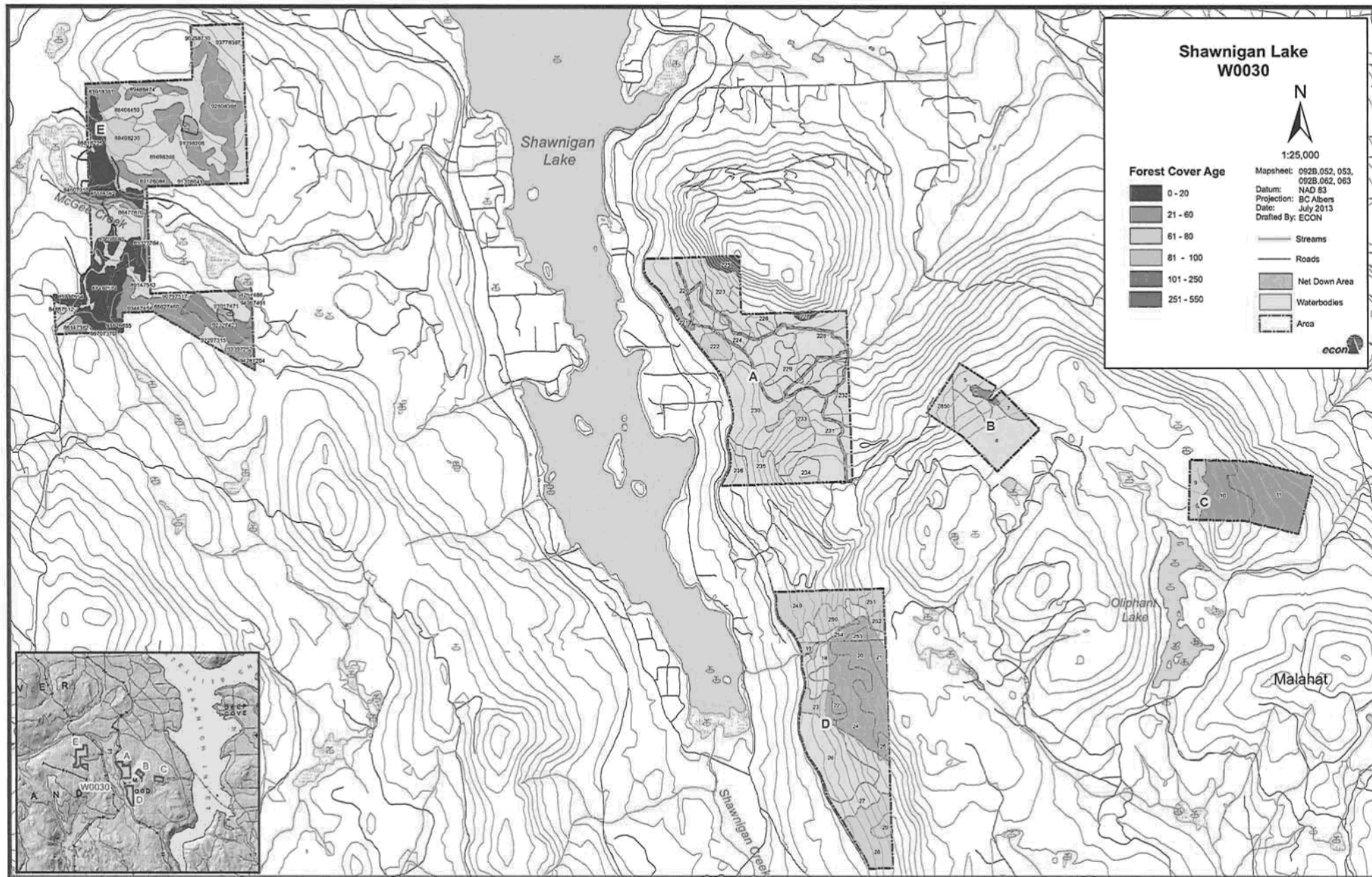


FR: Rachelle Rondeau, MCIP, RPP  
Planner I  
Development Services Division  
Planning & Development Department

RR/lar

Attachment

pc: Director B. Fraser, Electoral Area B – Shawnigan Lake  
Jim Simpson, Woodlot License Coordinator, Ministry of Forests, Lands and Natural Resource Operations





## Jager, Brenda CSNR:EX

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**From:** Neill, Emma FLNR:EX  
**Sent:** Thursday, December 19, 2013 8:17 AM  
**To:** Morris, Rhonda M FLNR:EX  
**Cc:** MacGregor, David M FLNR:EX  
**Subject:** FW: BI 228, Malahat

Rhonda, I think it may be helpful to have Cheryl on the call, she has some history with CVRD.

---

**From:** Wirsz, Cheryl FLNR:EX  
**Sent:** Thursday, December 19, 2013 8:15 AM  
**To:** Neill, Emma FLNR:EX  
**Subject:** BI 228, Malahat

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<u>PIN</u>	<u>Subpin</u>	<u>Row</u>	<u>Legal Description</u>	<u>Area (ha)</u>	<u>Status</u>	<u>Comments</u>	<u>ET Office</u>		
708170			BLOCK 228, MALAHAT DISTRICT	222.6	Active				
Interest Summary									
<u>PIN</u>	<u>Tantalis ID</u>	<u>File #</u>	<u>Document #</u>	<u>Interest</u>	<u>Sur/Under</u>	<u>Effective Date</u>	<u>Location</u>	<u>Status</u>	<u>Area</u>
708170	831034	1409185		<u>Inventory</u>			Shawnigan Lake	Active	157.
708170	876450	1413278	R091021	<u>Reserve/Notation</u>		10-Nov-2009	T'Souke, Beecher Bay, Malahat, Songhees, Nanoose	Active	1496
708170	876450	1413278	R091021	<u>Reserve/Notation</u>		10-Nov-2009	T'Souke, Beecher Bay, Malahat, Songhees, Nanoose	Active	1218
708170	146305	0327093		<u>A/Reserve/Notation</u>		14-Dec-1989	SHAWNIGAN LAKE	Inactive	0
708170	146304	0327093	891102	<u>Reserve/Notation</u>		01-Dec-1989	SHAWNIGAN LAKE	Active	0
708170	146304	0327093	891102	<u>Reserve/Notation</u>		01-Dec-1989	SHAWNIGAN LAKE	Active	0
708170	146303	0327093	74166	<u>Reserve/Notation</u>		31-Jul-1974	SHAWNIGAN LAKE	Inactive	0
708170	3399			<u>Reversion</u>	S	10-Sep-1930		Absolute	0
708170	63796	0000000	E&N	<u>Crown Grant</u>	B	21-Apr-1887	VAN ISL	Active	0

Emma

It was a reversion and four ministries have a notation [FLNR, MARR, Env and Agriculture].  
The regional district does not have a tree cutting bylaw thus their argument is fairly weak.

C

Cheryl Wirsz, MCIP, RPP, RI (BC)

Land Acquisition Officer - Forest Land Acquisitions

Forest Tenures Branch, Ministry of Forests, Lands and Natural Resource Operations

Tel 250 356 6816 Fax 250 387 6445 Toll Free - 1-800-663-7867

PO Box 9510 Stn Prov Gov. Victoria, BC V8W 9C2 1810 Blanshard Street, 3rd floor

Commissioner for Taking Affidavits for British Columbia No. 2011-0115

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Page 128 to/à Page 132

Withheld pursuant to/removed as

s.14



175 Ingram Street  
Duncan, BC V9L 1N8  
www.cvr.bc.ca

Office: 250.746.2500  
Fax: 250.746.2513  
Toll Free: 1.800.665.3955

December 12, 2013

MTHL MP & WLP Review and Comment  
c/o Capacity Forest Management Ltd.  
1761A Redwood Street  
CAMPBELL RIVER BC V9W 3K7

RECEIVED DEC 17 2013

**Attention: Gary Gallinger, RPF**

Dear Gary Gallinger:

**Re: Woodlot Management Plan W0030**

It has come to our attention that one of the main crown blocks allocated to the Malahat First Nation as a woodlot component lies within a zone that does not permit forestry. Block 228 on the east side of Shawnigan Lake has been designated P-1 (Parks and Institutional) since the first zoning bylaw for the area, Bylaw No. 162, was adopted in 1975. The permitted uses of the P-1 zone as specified in current Zoning Bylaw No. 985 are:

- 1) Institution;
- 2) Assembly uses;
- 3) Civic use, transportation facility including airport;
- 4) Ecological reserve, public park, greenbelt;
- 5) Public botanical garden;
- 6) Personal care facility;
- 7) Public school, private school including boarding facilities;
- 8) One single family dwelling or mobile home per parcel, accessory to a use permitted above

At the time of designation in 1975, Zoning Bylaw No. 162 was subject to a public hearing and the zoning designations were given provincial government approval. The P-1 zoning was placed on this block along with a few others at that time due to the fact that these properties were purchased by BC Parks with the intent of preserving and protecting these lands for future park use.

As well, and specific to the site in question, the historic Cliffside Station is located on the E&N Railway corridor adjacent to Block 228, which is the site of the "Last Spike". The Last Spike refers to Cliffside Cairn where the Last Spike in the E&N railway was driven by Sir John A. MacDonald in 1886. As such, this block has true historical significance to the Shawnigan area and Vancouver Island.

The Cowichan Valley Regional District (CVRD) permits timber harvesting on lands designated F-1 (Primary Forestry), where a principal permitted use of this Zone is *"management and harvesting of primary forest products excluding sawmilling and all manufacturing and dry land log sorting operations."*

.../2

All the blocks included within Shawnigan Lake woodlot W0030 except for Block 228 (shown as Block A on the attached map) are zoned F-1 Primary Forestry. Unless the zoning designation for Block 228 is changed from its current P-1 Zoning to a zone that would permit forestry operations, any forest harvesting in the area would contravene the zoning and would expose the operator to bylaw enforcement. It is also likely that there would be considerable public concern if land designated for park and institutional use were to be treated as commercial forestland.

It is clear that the intent of all parties to the woodlot allocation is to provide the Malahat First Nation with long overdue economic opportunities, an intent that is fully shared by the Cowichan Valley Regional District.

Rezoning all or part of Block 228 from its current P-1 designation to one that would permit woodlot forestry would require public consultation, a public hearing and concurrence of the CVRD Board with a zoning change.

We are prepared to work with the Ministry of Forests Lands and Natural Resource Operations, the Malahat First Nation and their forestry contractor to address this issue. May we suggest an early meeting to review possible options.

Sincerely,

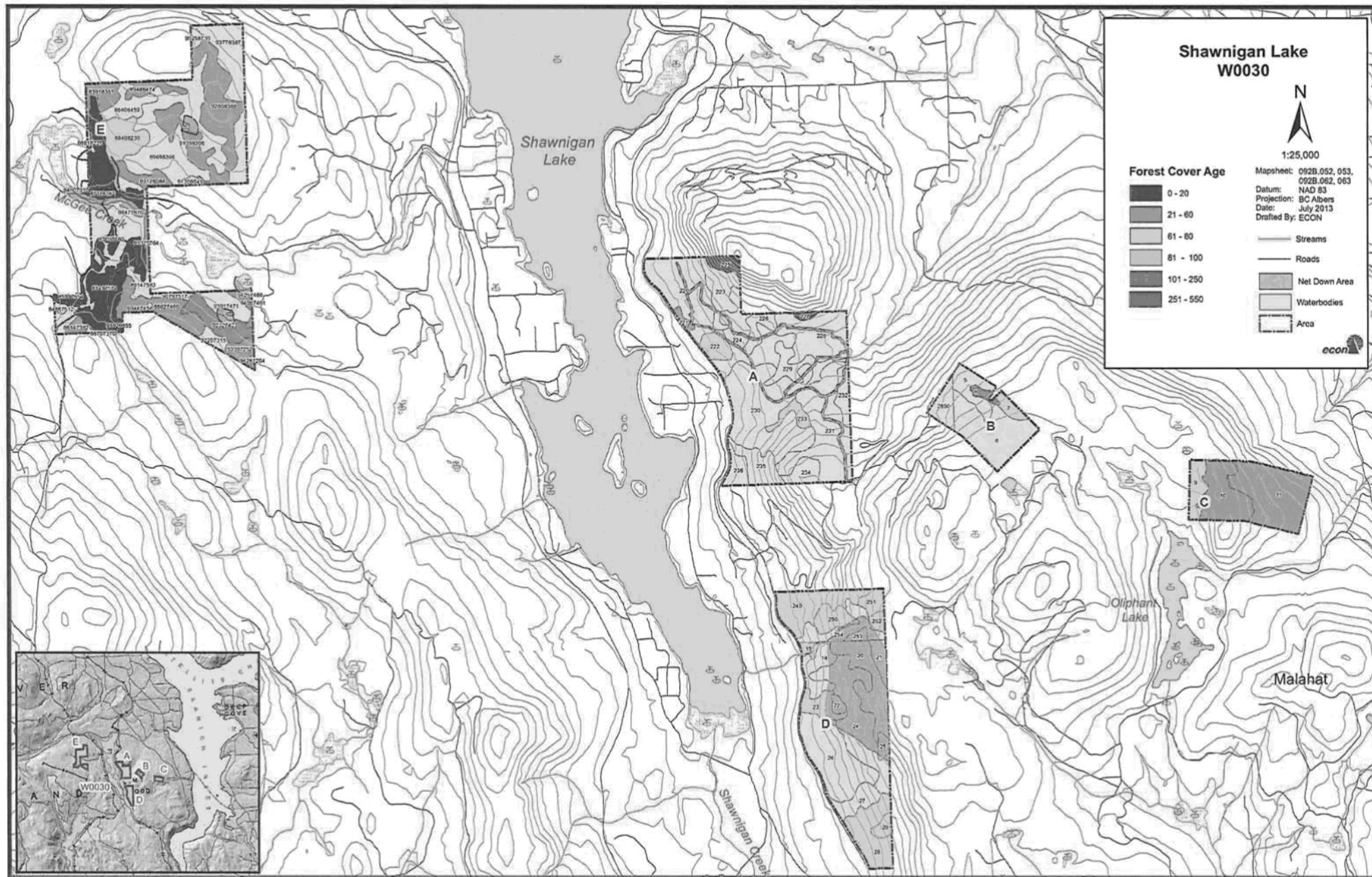


FR: Rachelle Rondeau, MCIP, RPP  
Planner I  
Development Services Division  
Planning & Development Department

RR/lar

Attachment

pc: Director B. Fraser, Electoral Area B – Shawnigan Lake  
Jim Simpson, Woodlot License Coordinator, Ministry of Forests, Lands and Natural Resource Operations



Page 136 to/à Page 138

Withheld pursuant to/removed as

s.14

## Jager, Brenda CSNR:EX

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**From:** MacGregor, David M FLNR:EX  
**Sent:** Tuesday, December 24, 2013 11:23 AM  
**To:** s.22  
**Cc:** 'Gary Gallinger'; Morris, Rhonda M FLNR:EX  
**Subject:** FW: woodlot 0030 - Malahat FN

Hello s.22 ,

I am following up on your recent telephone call with Rhonda Morris (District Manager) as noted below. I have called one of the numbers below to obtain your email address and left a message for you to call me if you wish. I am providing the following answers and comments to the questions you raised with Rhonda Morris via telephone. I am also aware that you provided Gary Gallinger of Capacity Forest Management (cc'd Rhonda Morris) with a similar, more formal set of questions and comments regarding the Woodlot Plan and Management Plan for Woodlot W0030. These two plans are currently out for review and comment.

We offer the following comments and answers regarding your telephone call to Rhonda.

- What is the current status of the Woodlot?? W0030 is currently "proposed" and has not yet been issued to the Malahat First Nation. The Malahat First Nation has been invited to apply for a woodlot by the BC Government in response to the Malahat's desire to obtain a long term renewable and sustainable Woodlot Licence within their traditional territory. The Malahat First Nation has hired a consulting firm to help them with the next step in the process which includes first developing a Woodlot Management Plan and proposed Annual Allowable Cut (AAC) for the District Manager's consideration/approval, and a subsequent Woodlot Licence Plan, also for DM approval.
- Will Timber Harvesting exacerbate existing flooding that you are experiencing on your property during peak rain events?  
During our telephone conversation you noted that there is an ongoing history regarding existing hydrological problems on your property during periods of peak flow. Some of these issues appear to be simply a reflection of the local geography and others a result of inadequate drainage structures in existing infrastructure below and outside the boundary of Block A of the proposed woodlot. Nevertheless, the Licensee has stated they are in favour of conducting a hydrological assessment for any cutblock or road development within Block A of the Woodlot. As discussed , the Licensee is required to meet the Forest and Range Practices Act, the Forest Planning and Practices Regulation, including the Objectives Set by Government; specifically as they pertain to water and soils. See the following link [http://www.bclaws.ca/Recon/document/ID/freeside/14\\_2004#section8.2](http://www.bclaws.ca/Recon/document/ID/freeside/14_2004#section8.2). and the draft Woodlot Licence Plan for W0030.

Portions of Woodlot W0030 are also located within the Shawnigan Lake and Sooke Community Watersheds. Block A is located within the Shawnigan Community Watershed and as such must additionally meet the Objectives Set By Government for Water In Community Watersheds as shown in sections 8.2 and sections 60.0 to 63.0 of the Forest Planning and Practices Regulation. See the following link.  
[http://www.bclaws.ca/Recon/document/ID/freeside/14\\_2004](http://www.bclaws.ca/Recon/document/ID/freeside/14_2004)

In addition, the Province of B.C. Woodlot Program is designed to be small scale in nature. The planned annual harvest for this woodlot will be between 3.5 and 5 hectares annually. This harvesting regime will ensure the whole woodlot (559 hectares), not just Block A, will always be in good hydrological condition. In addition the planned visual restrictions associated with Block A will ensure the hillside will always show very low levels of

disturbance. The Visual Quality Objective for Block A is Retention (R) which translates to a viewscape where activities are not visually evident.

- Has the Cowichan Valley Regional District (CVRD) been “referred” the Woodlot License Plan, Woodlot Management Plan? No the plans have not yet been referred to the CVRD for their review and comment, but will be shortly . Having said that, we are already in receipt of some comments from the CVRD and are expecting to have future conversations with them regarding the two plans. The subject plans have been advertised in the local papers for public review and comment.
- “It appears the CVRD has Block A of the proposed Woodlot zoned as “Park” (P-1)” The CVRD zonation and corresponding bylaws for Block A will be further discussed with the Regional District. It is important to understand that the P-1 Zonation is designated as Park and Institutional which includes as permissible activities major developments such as an airport and a school . It is also important to note that Block A is Crown land, managed by the provincial government and designated as Provincial Forest land since 1965. This area contributes to the timber supply of the greater Arrowsmith Timber Supply Area. Having Block A managed as a Woodlot will not only provide important economic and employment opportunities to the Malahat First Nation and revenue to the Crown, but will also ensure the area will continue to have forests of various ages over time that will maintain hydrological condition and local recreation opportunities.

Your knowledge and input on these plans is appreciated. I would like to encourage you to continue to talk directly to Gary Gallinger regarding specific information, comments or questions you may have about the Woodlot Licence Plan and Management Plan. If you have any additional questions about Proposed Woodlot W0030 or forestry in general, please do not hesitate to call me to discuss.

Regards,

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