

Tseshahht Forest Agreement
(the "Agreement")

Between:

Tseshahht First Nation
As represented by the Tseshahht First Nation Chief and Council
(Tseshahht)

And

Her Majesty the Queen in Right of the Province of British Columbia
As represented by the Minister of Forests
(the "Government of British Columbia")

(collectively the "Parties")

Whereas:

- *Tseshahht* has Aboriginal Interests within its Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development and related economic benefits arising from this development within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and/or seek Interim Workable Accommodation with *Tseshahht* on forest development activities proposed within the Traditional Territory that may lead to the infringement of *Tseshahht's* Aboriginal Interests.
- *Tseshahht* agree to participate in consultation initiated by the Government of British Columbia or a Licensee, in relation to forest resource development activities proposed within the *Tseshahht* Traditional Territory, that may lead to an infringement of *Tseshahht's* Aboriginal Interests.
- The Parties have an interest in seeking Interim Workable Accommodation of *Tseshahht's* Aboriginal Interests where forest development activities are proposed with *Tseshahht* Traditional Territory that may lead to the infringement of *Tseshahht's* Aboriginal Interests.

- The Parties wish to resolve issues related to forest resource development where possible through negotiation as opposed to litigation.

Therefore the Parties agree as follows:

1.0 Definitions:

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

- 1.1 "Aboriginal Interests" means asserted aboriginal rights and/or aboriginal title.
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under the *Forest Act*.
 - 1.2.1 decisions that set or vary Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
 - 1.2.2 the replacement of Forest Tenures or Range Tenures;
 - 1.2.3 the disposition of volumes arising from undercut decisions on a Forest Tenure;
 - 1.2.4 AAC apportionment and reallocation decisions;
 - 1.2.5 transfer or change in control of Forest Tenures, including any associated reductions to Forest Tenure AAC and exchange of rights between or among tenure holders;
 - 1.2.6 the issuance or subdivision of a Forest Tenure;
 - 1.2.7 the conversion of Timber Sale Licenses to other forms of tenure;
 - 1.2.8 Timber License term extensions; and,
 - 1.2.9 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.
- 1.3 "Cultural Component of Aboriginal Interests" means the cultural values and traditional practices of the Tseshaht.
- 1.4 "Economic component of Aboriginal Interests" means the financial or commercial aspects of Aboriginal Interests.

- 1.5 "Forest Tenure" means an agreement granting rights to harvest Crown Timber as defined in the *Forest Act*.
- 1.6 "Licensee" means a holder of a Forest Tenure under the *Forest Act*.
- 1.7 "Response Period" means a period of 60 days from initiation of the processes set out in Sections 4.0 and 5.0 of this Agreement, where the initiation date is the date on which *Tseshaht* is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which *Tseshaht* receives the complete form of the Operational plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.
- 1.8 "Interim Workable Accommodation" means accommodation of the potential infringement of *Tseshaht's* Aboriginal Interests arising from or a result of forest development, prior to the full reconciliation of these interests through a land claim settlement or other processes.
- 1.9 "Operational Decision:" means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan, a Forest Stewardship Plan, or a Woodlot Licence Plan that has an effect in the Traditional Territory.
- 1.10 "Operational Plan" means a Forest Development Plan, a Forest Stewardship Plan, or a Woodlot Licence Plan that has an effect in the Traditional Territory.
- 1.11 "Traditional Territory" means *Tseshaht's* asserted traditional territory as shown on bold black on the map attached in Appendix A.

2.0 Purpose:

- 2.1 The purposes of this Agreement are to:
- 2.1.1 increase *Tseshaht's* opportunity for participation in the forest sector;
- 2.1.2 provide economic benefits to *Tseshaht* by directly inviting *Tseshaht* to apply for a Forest Tenure and by sharing of

revenues received by the Government of British Columbia from forest resource development;

2.1.3 address consultation requirements and to provide a Interim Workable Accommodation, as set out in this Agreement with regard to any infringements of Tseshah't's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the *Tseshah't* Traditional Territory during the term of this Agreement; and,

2.1.4 provide a period of stability to forest resource development on Crown lands within *Tseshah't's* Traditional Territory during the term of this Agreement, while longer term interests are addressed through other processes.

2.2 The Parties differ on the question of the existence or extent of any duty or duties of consultation and/or accommodation owed by Licensees to *Tseshah't*. Nothing in this Agreement, or the fact that the Parties have entered into this Agreement, is intended to limit or prejudice the position that either Party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by Licensees or other third parties to *Tseshah't*.

3.0 Economic Benefits to *Tseshah't*

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Section 4.0 and 5.0 of this Agreement and will provide one or more of the following economic benefits to *Tseshah't* to address consultation and to provide an Interim Workable Accommodation, as set out in this Agreement, in respect of any infringements of *Tseshah't's* Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the *Tseshah't* Traditional Territory.

3.1 Forest Tenure

3.1.1 After the execution of this Agreement, by the Parties, the Minister of Forests will invite Tseshah't to apply for a non-replaceable licence (the "licence") in accordance with Section 47.3 of the Forest Act to harvest a total of up to 105,000 cubic metres over 5 years from Tree Farm Licence #44.

- 3.1.2 After the execution of this Agreement by the Parties and after the Minister has determined that sufficient volume of timber is available for disposition to the *Tseshaht* as a result of the implementation of the Forestry Revitalization Act, the Minister will invite *Tseshaht* to apply under section 47.3 of the Forest Act for a non-replaceable licence (the “second licence”) for up to 131,250 cubic metres over a 5 year term in Tree Farm Licence #44.
- 3.1.3 For greater certainty, the maximum volume that may be available under the licences referred to in Section 3.1.1 and 3.1.2 will be up to 236,250 cubic metres over five years. An invitation to apply for a licence (an “invitation”) and any licence(s) entered into as a result of a(n) invitation(s) will be subject to the policies, regulations and statutes of the Government of British Columbia as amended from time to time.
- 3.1.4 An invitation:
- 3.1.4.1 Will be subject to a condition that prior to *Tseshaht* making an application for the licence, the *Tseshaht* must contact and work together with Ministry of Forests personnel to identify the location of an operating area for the licence, which to the extent that it is operationally feasible will be within the Traditional Territory; and in the case of the licence referred to in 3.1.1 the volume is to be identified from the east side of Alberni Inlet within Tree Farm Licence #44. For the licence referred to in 3.1.2 the volume is to be identified on the Sproat Lake side (the west side of Alberni Inlet) within Tree Farm Licence #44.
- 3.1.4.2 Will contain terms and conditions required by the Minister.
- 3.1.5 A licence entered into as a result of an invitation:
- 3.1.5.1 Will be for a term of no longer than five years, as determined by the Minister;
- 3.1.5.2 Will contain other terms and conditions required by law, including the condition that *Tseshaht* must comply with this agreement; and,

LS
29/7/04

- 3.1.5.3 Will include other terms and conditions as may be required by the regional manager including a term that *Tseshaht* may not divide, subdivide, transfer, or otherwise dispose of the licence or an interest in the licence.

- 3.1.6 If the term of either licence entered into as a result of an invitation to apply for a licence(s) under this Agreement exceeds the term of this Agreement, then that licence may be referenced and considered to be an economic benefit that addresses consultation and provides a Interim Workable Accommodation in respect of any infringement of *Tseshaht's* Aboriginal Interests, in any subsequent forestry agreement between the *Tseshaht* and the Government of British Columbia for the purposes described in Section 3.0.

- 3.1.7 Subject to:
 - 3.1.7.1 The Government of British Columbia and *Tseshaht* entering into another interim measures agreement providing for an invitation to apply for a licence; and,
 - 3.1.7.2 The Minister determining that there is sufficient volume of timber available for disposition to *Tseshaht*,

The minister may invite *Tseshaht* to apply for a subsequent licence under the Forest Act for a term that would commence after the expiry of this Agreement.

3.2 Revenue Sharing

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to *Tseshaht* \$436,627 annually for purposes described in Section 3.0.
- 3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount set out in Section 3.2.1 will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.3 The funding commitment in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.

- 3.2.4 Upon signing of this Agreement, *Tseshaht* will be paid the full revenues for the quarter in which the Agreement is signed, with subsequent payments being made at the end of each quarter.
- 3.2.5 *Tseshaht* will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.2.6 Upon request, *Tseshaht* will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Government of British Columbia agrees to consult with *Tseshaht* on Operational Plans that may potentially infringe *Tseshaht's* Aboriginal Interests within the Traditional Territory, except for any economic component of those interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, *Tseshaht* agree that the Government of British Columbia has fulfilled its duties to consult and to seek Interim Workable Accommodation with respect to the economic component of potential infringements of *Tseshaht's* Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and the development activities that may be carried out under an Operational Plan in the Traditional Territory.
- 4.3 *Tseshaht* agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest development within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, *Tseshaht* will, within the Response Period, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may result from forestry development activities within the Traditional Territory, other than the economic component of those Interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0.

LS
28/9/04

- 4.5 Upon receiving the response from *Tseshaht* as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with *Tseshaht* any site specific operational impacts on *Tseshaht's* Aboriginal Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.6 If no response is received from *Tseshaht* within the Response Period, then the Government of British Columbia may assume that *Tseshaht* does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from *Tseshaht*, whether received directly or through a Licensee, and will consider whether concerns identified by *Tseshaht* have been addressed.
- 4.8 The Government of British Columbia will provide the *Tseshaht* with a copy of its final decision on an Operational Plan at the same time it is provided to the Licensee. Within 60 days of making a final decision, the Government of BC will also inform the *Tseshaht* of the ways in which the *Tseshaht's* concerns have been considered and sought to be addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to *Tseshaht* on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of *Tseshaht* or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to *Tseshaht* an updated list.
- 5.2 The Government of British Columbia will meet with *Tseshaht* at mutually agreed times when requested by either Party to provide an opportunity for *Tseshaht* to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.
- 5.3 The Government of British Columbia will include *Tseshaht* in public Timber Supply Review processes that will lead to AAC

determinations made pursuant to Section 8 of the *Forest Act* for the Arrowsmith Timber Supply Area and Tree Farm Licence #44.

- 5.4 *Tseshaht* agrees to fully participate within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 5.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 5.6 If after considering the concerns and comments of *Tseshaht*, the statutory decision-maker is of the opinion that an Administrative Decision creates a potential infringement of the Cultural Component of *Tseshaht's* Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0 then, the statutory decision maker will seek to either:
 - (a) address the comments and concerns in the Administrative Decision where reasonably possible, or,
 - (b) address the comments and concerns through the process in Section 4.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a response in a timely manner to *Tseshaht* as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 *Tseshaht* agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an Interim Workable Accommodation with respect to the economic component of potential infringements of *Tseshaht's* Aboriginal Interests resulting from Administrative Decisions made by statutory decision-makers from time to time during the term of this Agreement.
- 5.9 *Tseshaht* further agrees that, in consideration of Sections 5.1 to 5.7 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and Interim Workable Accommodation process with respect to potential infringements of their Aboriginal Interests resulting from

LS
28/9/04

Administrative Decisions made by statutory decision-makers from time to time during the term of this Agreement that may go beyond the economic component of *Tseshaht's* Aboriginal Interests.

6.0 Stability within *Tseshaht's* Traditional Territory

- 6.1 *Tseshaht* will respond immediately to any discussions initiated by the Government of British Columbia and work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by *Tseshaht* members with provincially authorized activities related to forestry and/or range resource development including timber harvesting or other forestry economic activities occur.

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and *Tseshaht* regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 7.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and *Tseshaht*.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

8.0 Term

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or
 - 8.2.2 the coming into effect of a treaty; or,
 - 8.2.3 the mutual agreement of the Parties; or

- 8.2.4 the Government of British Columbia cancels economic benefits under this Agreement pursuant to Section 9.0; or
 - 8.2.5 upon written notice of withdrawal from this Agreement by either Party, which will take effect 90 days following receipt of the notice by the other party. In the event that notice to terminate is given by either party, then the Government of British Columbia agrees that it will not seek to accelerate decisions that are contemplated by terms of this agreement for the purpose of trying to ensure that such decisions are made prior to the termination date.
- 8.3 If this agreement is terminated in accordance with section 8.2.2, section 8.2.3 or 8.2.5 then the minister may terminate the economic benefits under this Agreement.

9.0 Suspension or Cancellation of Economic Benefits by the Minister

- 9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence or licences entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that *Tseshaht* is not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to *Tseshaht* of any alleged contravention of this Agreement that may lead *Tseshaht* being determined to not be in compliance with this Agreement.
- 9.3 If during the term of this Agreement, *Tseshaht* challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or, by way of legal proceedings or otherwise on the basis that the economic benefits set out in Section 3.0, and the consultation/accommodation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:
 - 9.3.1 Provide adequate consultation, substantially address *Tseshaht's* concerns and to provide an Interim Workable Accommodation in respect of any potential infringements of *Tseshaht's* Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory; or

9.3.2 substantially address the economic component of *Tseshaht's* Aboriginal Interests with regard to Operational Decisions relating to forest resource development within the Traditional Territory;

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.

9.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

10.0 Renewal of the Agreement

10.1 Prior to this Agreement terminating in accordance with Section 8.2.1, and subject to Section 10.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and *Tseshaht* will seek their necessary authorities and approvals to renew this Agreement.

10.2 Any subsequent forestry agreement between the Government of British Columbia and *Tseshaht* may provide for an opportunity to acquire a Forest Tenure, and/or other economic benefits and other terms and conditions that are agreed to by the Parties.

10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and *Tseshaht* has agreed to accept as an interim measure for the term of this Agreement.

11.0 Amendment of Agreement

11.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.

11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

12.0 Entire Agreement

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

13.0 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 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. If received after 4:00 p.m., it will be deemed to have been received on the next business day.

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

British Columbia

Deputy Minister
Minister of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-3656
Facsimile (250) 387-7065

Tseshahat

Chief Councillor Les Sam
Tseshahat First Nation
P.O. Box 1218
5000 Mission Road
Port Alberni, B.C. V9Y 7M1
Telephone: (250) 724-1225
Facsimile: (250) 724-4385

14.0 Miscellaneous

- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.
- 14.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.
- 14.3 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions, including treaty negotiations.
- 14.4 This agreement does not address or affect any claims by *Tseshaht* arising from past interference with or infringement of its Aboriginal Interests or any future treaty settlement related to aboriginal right or claim.
- 14.5 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement even if that infringement is a result of an Administrative Decision that was made during the term of the Agreement.
- 14.6 The parties differ on the existence or the extent of any duty or duties of consultation and/or accommodation owed by the forest licencees to the *Tseshaht* First Nation. Nothing in this agreement, or the fact that the Parties have entered into this agreement, is intended to limit or prejudice the position that either Party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by any forest licencees or other third parties to the *Tseshaht* First Nation.
- 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 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

14.9 The applicable laws of British Columbia and Canada shall govern this Agreement.

14.10 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 fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

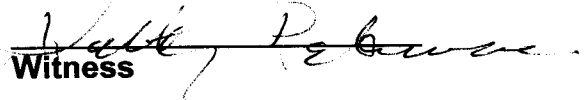
Signed on behalf of:

Tseshaht First Nation

Date: Oct. 15, 2004



Chief Les Sam


Witness


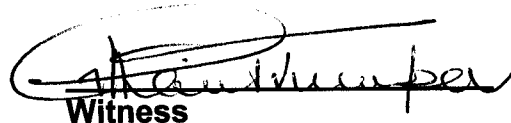
Vice Chief Deb Foxcroft


Witness

Signed on behalf of:

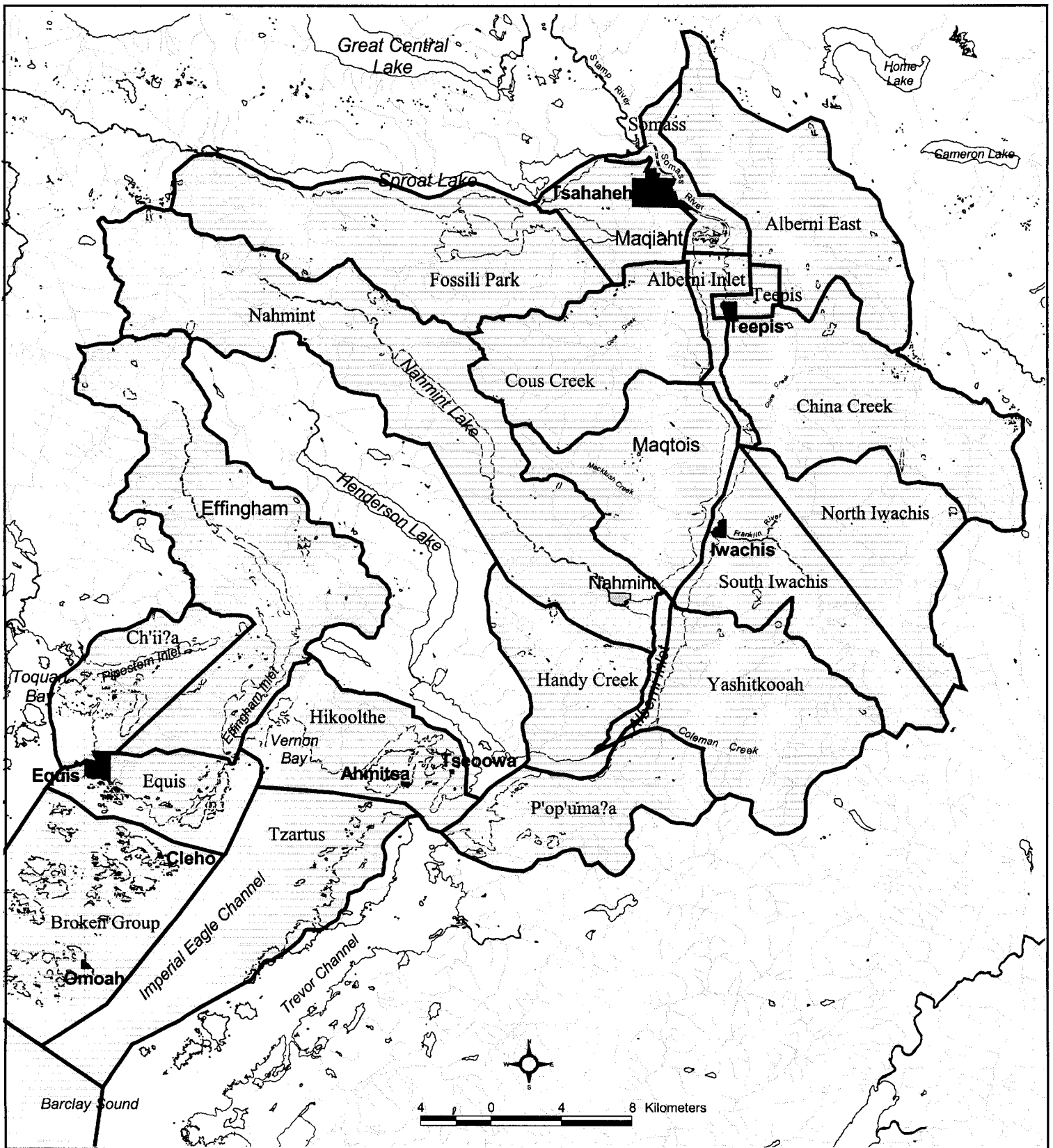
Government of British Columbia

Date: Oct. 15, 2004


Michael de Jong
Minister of Forests
Witness

APPENDIX "A"



**THE ASSERTED TRADITIONAL TERRITORY
OF TSESHAHT FIRST NATION**



Tseshaht First Nation Traditional Territory



Projection: UTM Datum: NAD 83
Zone: 10 Date: September 27, 2004

-  Tseshaht Territory including Watersheds
-  Tseshaht Reserves

This boundary map is for information sharing only. The collection of evidence of traditional use and occupancy within Tseshaht traditional territory is ongoing. The Tseshaht First Nation expressly reserves the right to modify the boundary of its traditional territory as further information is obtained.