

Appendix 1

Community Forest Agreement
signed with the Ministry of Forest and Range

1071
6305-01



File: 19460-25/K2D

OCT 15 2009

Alberni Valley Community Forest Corporation
4850 Argyle Street
Port Alberni, British Columbia
V9Y 1V8

On October 14, 2004, the Minister of Forests and Range invited the City of Port Alberni to apply for a Community Forest Agreement. The Minister has indicated his satisfaction with the application for the agreement and pursuant to Section 43.51(1)(b) of the *Forest Act*, I am pleased to offer for your consideration, Community Forest Agreement (CFA) K2D.

The CFA will be for a term of 25 years. In accordance with the *Forest Act* and the Community Tenures Regulation a replacement agreement will be offered following the ninth anniversary of the CFA.



If satisfied with the enclosed CFA document, please have both copies of the agreement signed by an authorized representative, witnessed, dated and returned to the Regional Manager of the Coast Forest Region. When fully executed, an original CFA agreement will be returned to the Alberni Valley Community Forest Corporation.

Subsequent to the issuance of the agreement, annual rent will be invoiced in the amount of \$6,717.72 (\$0.37 per m³ X 18,156 m³ allowable annual cut) for the CFA.

Please contact Neil Edwards, Tenures Forester, Coast Forest Region, at (250) 751-3136 should you have any questions.

Yours truly,

Jim Gowriluk RPF
Regional Manager
Coast Forest Region

Enclosure(s): Two (2) copies of Community Forest Agreement K2D

pc: Paul Knowles, District Manager, South Island Forest District
Ron Greschner, Senior Tenures Forester, Resource Tenures Branch
Neil Edwards, Tenures Forester, Coast Forest Region



COMMUNITY FOREST
AGREEMENT K2D



THIS AGREEMENT, dated for reference November 2, 2009.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the REGIONAL MANAGER ,
MINISTRY OF FORESTS AND RANGE
2100 LABIEUX ROAD
NANAIMO, BRITISH COLUMBIA
V9S 6E9
Phone: 250 751-7001 Fax: 250-751-7196
(the "Regional Manager")

AND:

ALBERNI VALLEY COMMUNITY FOREST CORPORATION
4850 ARGYLE STREET
PORT ALBERNI, BRITISH COLUMBIA
V9Y 1V8
Phone: 250-723-2146 Fax: 250-723-1003
(the "Agreement Holder")

WHEREAS:

- A. By letter, dated October 14, 2004, the Minister of Forests and Range invited the City of Port Alberni to make application for a Community Forest Agreement
- B. Alberni Valley Community Forest Corporation submitted an application and the Minister accepted the application for a Community Forest Agreement.
- C. The parties have entered into this Community Forest Agreement pursuant to section 43.51(1)(b) of the *Forest Act*.

“The Table of Contents and headings in this Agreement are included for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.”

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THE PARTIES agree as follows:

1.00 GRANT OF RIGHTS AND TERM

- 1.01 The term of this Agreement is **25 years**, beginning on November 2, 2009
- 1.02 Subject to this Agreement, the Minister grants the Agreement Holder during the term of this Agreement:
- (a) the exclusive right to harvest Crown timber from Schedule "B" Land;
 - (b) the right to manage Schedule "B" Land according to:
 - (i) this Agreement;
 - (ii) the management plan in effect under this Agreement; and
 - (iii) operational plans approved in respect of this Agreement;
 - (c) the right to harvest, manage and charge fees for botanical forest products and other prescribed products as listed in Schedule "C", from Schedule "B" Land.
- 1.03 The Agreement Holder must not harvest timber:
- (a) from Schedule "A" Land except under a cutting permit; or
 - (b) from Schedule "B" Land except under a cutting permit or road permit.
- 1.04 Subject to paragraph 1.05, the Agreement Holder will not enter, use or occupy Schedule "B" Land:
- (a) except under and in accordance with a cutting permit, road permit associated with the Agreement, special use permit, as well as an activity described in an approved management plan; or
 - (b) as otherwise authorized under the forestry legislation.
- 1.05 Paragraph 1.04 does not apply to temporary use or occupation for the purpose of:
- (a) carrying out silviculture treatments;

- (b) collecting inventory information;
- (c) doing engineering layouts and surveys;
- (d) carrying out protection activities under the forestry legislation; or
- (e) fulfilling other obligations or conducting other activities incidental to the operations of the Agreement Holder under or associated with this Agreement.

1.06 Subparagraph 1.03 (a) does not apply to:

- (a) a reserve as defined under the *Indian Act (Canada)*; or
- (b) a road clearing width on private land.

2.00 OTHER CONDITIONS AND REQUIREMENTS

- 2.01 The Agreement Holder must not fell standing timber, or must not buck or remove felled or dead and down timber, as the case may be, if the timber is specified as reserved timber in a cutting permit.
- 2.02 The Agreement Holder must comply with the other conditions and requirements specified in Schedule "D" in addition to any special conditions set out in a cutting permit or a road permit associated with the Agreement.

3.00 TIMBER VOLUME CHARGED TO THE AGREEMENT

- 3.01 The definition of the volume of timber harvested in part 4, division 3.1 of the *Forest Act* applies to this Agreement.
- 3.02 The determination of the volume of timber harvested will incorporate the volume of waste determined under part 5.00.
- 3.03 The Coast timber merchantability specifications in the Provincial Logging Residue and Waste Measurement Procedures Manual that was in effect on the date of issuance of the cutting permit or road permit, shall govern.

4.00 CUT CONTROL

- 4.01 The provisions of cut control that apply to "Forest Licences that specify an allowable annual cut greater than 10 000 m³ and have a term of more than 5 years" under Part 4, Division 3.1 of the *Forest Act*, apply to this Community Forest Agreement

5.00 WASTE ASSESSMENT

- 5.01 The Agreement Holder must conduct a waste assessment of the volume of merchantable timber, whether standing or felled, that was authorized to be cut and removed under the Agreement but, at the Agreement Holder's discretion, was not cut and removed.
- 5.02 A waste assessment conducted under paragraph 5.01 must be in accordance with the Provincial Logging Residue and Waste Measurement Procedures Manual, as amended or replaced from time to time.
- 5.03 A waste assessment made under paragraph 5.01 must be:
- (a) done within 60 days of the Agreement Holder declaring that primary logging on the area has been completed for each cutblock, allowing for ground to be sufficiently free of snow to permit an adequate assessment to be carried out; or
 - (b) if primary logging on the area is not completed before the expiry of the cutting permit, within 60 days after the expiry of the cutting permit, allowing the ground to be sufficiently free of snow to permit for an adequate assessment to be carried out.
- 5.04 If the Agreement Holder fails to comply with paragraph 5.01 the District Manager may, after the expiry of the term of a cutting permit or Agreement, conduct a waste assessment of the volume of merchantable timber that could have been cut and removed under the Agreement but, at the Agreement Holder's discretion, is not cut and removed.
- 5.05 A waste assessment conducted under paragraph 5.04 must be in accordance with the Provincial Logging Residue and Waste Measurement Procedures Manual, as amended from time to time.
- 5.06 If the District Manager carries out a waste assessment under paragraph 5.04, the District Manager, in a notice given to the Agreement Holder, may require the Agreement Holder to pay the costs incurred by the District Manager in carrying out the assessment.

6.00 MANAGEMENT PLAN

- 6.01 The Agreement Holder must submit a proposed management plan to the Regional Manager or District Manager on a date specified by the Regional Manager or District Manager in a notice given to the Agreement Holder.
- 6.02 A proposed management plan submitted under paragraph 6.01 or subparagraph 6.04(b) must:

- (a) be prepared in accordance with any directions of the Regional Manager or District Manager;
- (b) be consistent with:
 - (i) this Agreement;
 - (ii) the forestry legislation;
 - (iii) higher level plans under the *Forest and Range Practices Act*; and
 - (iv) commitments made in the Community Forest Agreement application package or as agreed to by both parties to this agreement.
- (c) include existing inventories:
 - (i) for the timber in the Community Forest Agreement area; and
 - (ii) for botanical forest products and other prescribed products listed in Schedule "C";
- (d) include any other inventories and information regarding the development, management and use of the Community Forest Agreement area that the Regional Manager or District Manager requires to determine the allowable annual cut for the Community Forest Agreement area and rate of harvest of botanical forest products and other prescribed products listed in Schedule "C";
- (e) propose a allowable annual cut for the Community Forest Agreement area which considers the following:
 - (i) inventories and other information referred to in subparagraph 6.02 (c) and (d);
 - (ii) timber specifications proposed for the timber resources in the Community Forest Agreement area;
 - (iii) reductions that are necessary to facilitate the management and conservation of non-timber resource values in the Community Forest Agreement area, including visual quality, biological diversity, soils, recreation resources, cultural heritage resources, range land, wildlife, water and fish habitats;

- (iv) silviculture practices and forest health factors that may impact on timber production;
 - (v) the anticipated impact of the reductions to the productive portion of the Community Forest Agreement area due to permanent roads, landings, pits and trails; and
 - (vi) any other factors that may impact on the allowable annual cut during each year;
- (f) contain a rationale for the allowable annual cut referred to in subparagraph 6.02 (e) prepared in accordance with any directions of the Regional Manager or District Manager;
 - (g) propose management objectives for the Community Forest Agreement area regarding the harvesting, management of, and the charging fees for prescribed products listed in Schedule "C",
 - (h) specify measures to be taken by the Agreement Holder to identify and consult with persons using the Community Forest Agreement area for purposes other than timber production and harvesting of prescribed products listed in Schedule "C", including:
 - (i) trappers, guide outfitters, range tenure holders, and other Agreement resource users;
 - (ii) an aboriginal group who may be exercising or claiming to hold aboriginal interest or treaty rights; and
 - (iii) community members, local governments, and government agencies.
 - (i) include a summary statement outlining how the Provincial CFA Program Objectives will be managed for,
 - (j) include a statement that describes the agreement holder's guiding principles and social, economic and broad resource management goals proposed for the CFA, and
 - (k) include a Performance Measures Table that will form the basis for annual reporting out to the community.

6.03 The Regional Manager or District Manager within 90 days of receiving a proposed management plan submitted under paragraph 6.01 or subparagraph 6.04 (b), will, in a notice given to the Agreement Holder, approve the proposed management plan, subject to such conditions as the Regional Manager or District Manager considers necessary or appropriate, if the Regional Manager or District Manager is satisfied the proposed management plan meets the requirements of paragraph 6.02.

- 6.04 If the Regional Manager or District Manager does not approve a proposed management plan under paragraph 6.03:
- (a) the Regional Manager or District Manager, within 90 days after the date on which the Regional Manager or District Manager receives the proposed management plan, will specify in a notice given to the Agreement Holder the reason why the proposed management plan was not approved; and
 - (b) the Agreement Holder, within 30 days, or an alternative period of time specified by the Regional Manager or District Manager in a notice to the Agreement Holder, after the date on which the Agreement Holder is given the notice referred to in subparagraph 6.04 (a), must submit a new or revised proposed management plan to the Regional Manager or District Manager.
- 6.05 Subject to paragraph 6.06, the management plan in effect under this Agreement expires three months after the date upon which the Agreement Holder is required to submit a proposed management plan pursuant to a notice given to the Agreement Holder under paragraph 6.01.
- 6.06 If:
- (a) the Regional Manager or District Manager, within three months after the date on which the Regional Manager or District Manager receives a proposed management plan submitted under paragraph 6.01, has neither:
 - (i) approved the proposed management plan under paragraph 6.03; nor
 - (ii) given the Agreement Holder a notice referred to in subparagraph 6.04 (a); and
 - (b) there is a management plan in effect under this Agreement;
- then the term of the management plan referred to in subparagraph (b) is deemed to be extended until such time as the Regional Manger or District Manager approves the proposed management plan under paragraph 6.03, or gives the Agreement Holder a notice referred to in subparagraph 6.04 (a), as the case may be.
- 6.07 The Agreement Holder must manage Schedule "A" Land and Schedule "B" Land in accordance with the management plan in effect under this Agreement.
- 6.08 A management plan approved by the Regional Manager or District Manager under paragraph 6.03 is deemed to be part of this Agreement during the period the management plan remains in effect.

- 6.09 The Regional Manager or District Manager, in a notice given to the Agreement Holder, may require the Agreement Holder to submit an amendment to the management plan.

7.00 CUTTING PERMITS

- 7.01 Subject to paragraphs 7.02 through 7.04 inclusive, the Agreement Holder may submit an application to the District Manager for a cutting permit or for an amendment to a cutting permit to authorize the Agreement Holder to harvest timber from one or more proximate areas of land within the Community Forest Agreement area, meeting the requirements referred to in parts 1.00 and 2.00 and the Appraisal Manual in effect on the date of submission of the application for a cutting permit, an application to amend a cutting permit, or a road permit that are:

- (a) exempted under the *Forest and Range Practices Act* from the requirement for a forest stewardship plan; or
- (b) located within a forest development unit of an approved forest stewardship plan.

- 7.02 For those areas to be included in the application under paragraph 7.01, the Agreement Holder must ensure that data submitted is gathered and compiled according to that Appraisal Manual.

- 7.03 An application under paragraph 7.01 must:

- (a) be in a form established by the District Manager;
- (b) state a proposed term that does not exceed four years;
- (c) include:
 - (i) a map to a scale acceptable to the District Manager showing the areas referred to in the application; and
 - (ii) the information referred to in paragraph 7.02; and
 - (iii) a description acceptable to the District Manager of any timber that is reserved from cutting.

- 7.04 The areas of land shown on the map referred to in clause 7.03 (c) (i) must be:

- (a) the areas referred to in subparagraph 7.01 (a); or

- (b) located within a forest development unit referred to in subparagraph 7.01 (b) allowing for any difference in scale between maps used in the forest stewardship plan, or exemption and the map referred to in clause 7.03 (c) (i).
- 7.05 Subject to paragraphs 7.06 through 7.09 inclusive, 7.04 and 9.01, upon receipt of an application under paragraph 7.01, the District Manager will issue a cutting permit to the Agreement Holder if the District Manager is satisfied that:
- (a) there is a management plan in effect under this Agreement;
 - (b) the requirements of paragraphs 7.01, 7.02, 7.03, and 7.04 have been met;
 - (c) the areas of land referred to in the application for the cutting permit meet the requirements referred to in Schedule "D"; and
 - (d) the District Manager is satisfied that activities and operations under or associated with the cutting permit will be consistent with this Agreement, higher level plans, the management plan referred to in subparagraph 7.05 (a), and any operational plans approved in respect of the areas of land referred to in the cutting permit.
- 7.06 The District Manager may consult aboriginal group(s) who may be exercising or claiming to hold an aboriginal interest(s) or proven aboriginal right(s), including aboriginal title, or treaty right(s) if in the opinion of the District Manager, issuance of the cutting permit or an amendment to a cutting permit as submitted and/or operations under the cutting permit may result in:
- (a) an impact to an aboriginal interest(s) that may require consideration of accommodation; or
 - (b) an infringement of a proven aboriginal right(s), including aboriginal title, or treaty right(s) that may require justification.
- 7.07 The District Manager may impose conditions in a cutting permit to address an aboriginal interest(s), or proven aboriginal right, including aboriginal title, or a treaty right(s) if in the opinion of the District Manager, issuance of the cutting permit as submitted would result in:
- (a) an impact to an aboriginal interest(s) that would require consideration of accommodation; or
 - (b) an infringement of a proven aboriginal right(s), including aboriginal title, or treaty right(s) that would require justification.

- 7.08 The District Manager may refuse to issue a cutting permit or to amend a cutting permit if in the opinion of the District Manager issuance of the cutting permit or an amendment to a cutting permit would result in:
- (a) an impact to an aboriginal interest(s) or treaty right(s) that could not be reasonably accommodated; or
 - (b) an impact to a proven aboriginal right(s), including aboriginal title, or a treaty right(s) that could not be justified.

7.09 If the District Manager:

- (a) determines that a cutting permit may not be issued because the requirements of paragraph 7.05 have not been met;
- (b) is carrying out consultations under paragraph 7.06; or
- (c) refuses to issue a cutting permit under paragraph 7.08;

the District Manager will notify the Agreement Holder within 45 days of the date on which the application for the cutting permit, or an amendment to the cutting permit was received.

7.10 A cutting permit must:

- (a) identify the boundaries within the Community Forest Agreement area upon which, subject to this Agreement and the forestry legislation, the Agreement Holder is authorized to conduct operations;
- (b) specify the term stated in the application;
- (c) specify a timber mark to be used in conjunction with the timber removal carried on under the cutting permit;
- (d) specify whether, for the purpose of determining the amount of stumpage payable in respect of timber removed under the cutting permit, the volume and quantity of timber is to be determined using information provided by:
 - (i) a scale of the timber; or
 - (ii) a cruise of the timber conducted before the timber is cut;
- (e) specify any timber that is reserved from cutting; and

- (f) include such other provisions, consistent with this Agreement, as determined by the District Manager.
- 7.11 The District Manager may amend a cutting permit only with the consent of the Agreement Holder.
- 7.12 The Agreement Holder may only make application to the District Manager for a cutting permit extension at least 45 days before the expiry of the cutting permit and in a form acceptable to the District Manager.
- 7.13 A cutting permit is deemed to be part of this Agreement.

8.00 ACCESS

- 8.01 Nothing in this Agreement authorizes the Agreement Holder to in any way restrict the Crown's right of access to Crown lands.
- 8.02 Any Ministry employee may:
 - (a) enter onto Schedule "A" Land; and
 - (b) use roads owned or deemed to be owned by the Agreement Holder;for the purpose of inspecting the Agreement Holder's activities under or associated with this Agreement, and for the purpose of fulfilling an obligation or exercising a right under this Agreement.
- 8.03 The Agreement Holder will allow any person who has been granted rights to timber referred to in paragraph 4.10 to use any road referred to in subparagraph 8.02 (b) for the purpose of gaining access to timber within the Community Forest Agreement area.

9.00 COURT DETERMINED ABORIGINAL RIGHTS AND/OR TITLE

- 9.01 Notwithstanding any other provision of this Agreement, if a court of competent jurisdiction:
 - (a) determines that activities or operations under or pursuant to this Agreement will unjustifiably infringe an aboriginal right and/or title or treaty right;
 - (b) grants an injunction further to a determination referred to in subparagraph 9.01 (a); or

- (c) grants an injunction pending a determination of whether activities or operations under or pursuant to this Agreement will unjustifiably infringe an aboriginal right and/or title or treaty right;

the Regional Manager or District Manager, in a notice given to the Agreement Holder, may vary or suspend, in whole or in part, or refuse to issue a cutting permit, road permit or other permit issued to the Agreement Holder, so as to be consistent with the court determination.

9.02 Subject to this Agreement and the forestry legislation, if:

- (a) under paragraph 9.01, the Regional Manager or District Manager has varied a cutting permit, road permit or other permits issued to the Agreement Holder;
- (b) a court of competent jurisdiction subsequently overturns, sets aside or dissolves the determination or injunction referred to in that paragraph; and
- (c) it is practical to do so;

the Regional Manager or District Manager, at the request of the Agreement Holder, will vary the permit to reflect as closely as possible, for the remainder of its term, the terms and conditions of the permit prior to the variation under paragraph 9.01.

9.03 Subject to this Agreement and the forestry legislation, if:

- (a) under paragraph 9.01, the Regional Manager or District Manager has suspended a cutting permit, road permit or other permits issued to the Agreement Holder;
- (b) a court of competent jurisdiction subsequently overturns, sets aside or dissolves the determination or injunction referred to in that paragraph; and
- (c) it is practical to do so;

the Regional Manager or District Manager, at the request of the Agreement Holder, will reinstate the permit for the remainder of its term.

9.04 Subject to this Agreement and the forestry legislation, if:

- (a) under paragraph 9.01, the Regional Manager or District Manager has refused to issue a cutting permit, road permit or other permits issued to the Agreement Holder;

- (b) a court of competent jurisdiction subsequently overturns, sets aside or dissolves the determination or injunction referred to in that paragraph; and
- (c) it is practical to do so;

the Regional Manager or District Manager, at the request of the Agreement Holder, will issue the permit.

10.00 REPORTING

10.01 The Regional Manager or District Manager, in a notice given to the Agreement Holder, may at any time, require the Agreement Holder to carry out audits and submit reports containing such information as the Government requires concerning:

- (a) the Agreement Holder's performance of its obligations under or in respect of this Agreement, the approved management plan and conditions from the Regional Manager or District Manager's management plan approval letter;
- (b) the processing, use or disposition of timber and the products listed in Schedule "C" which are harvested under this Agreement;
- (c) the levies or fees collected by the Agreement Holder for any types of activities conducted or occurring on Schedule "B" Land;
- (d) the services or opportunities provided by the Agreement Holder such as wildlife viewing, hiking, and nature interpretation; and
- (e) financial statements prepared by a qualified accountant capturing economic activity attributable to the operation of this Agreement;

in the previous calendar year if the information is not included in any other reports which the Agreement Holder must submit under the forestry legislation.

10.02 Upon receipt of a notice referred to in paragraph 10.01 the Agreement Holder, on or before the date specified in the notice, must submit a report to the Regional Manager or District Manager containing the required information.

10.03 Subject to the *Freedom of Information and Protection of Privacy Act*, the Regional Manager or District Manager will not disclose information provided in confidence by the Agreement Holder in any reports submitted under paragraph 10.02.

- 10.04 Subject to paragraph 10.03, the Regional Manager or District Manager may include the information contained in a report submitted under paragraph 10.01 in any reports prepared by the Ministry for public review.
- 10.05 Subject to paragraph 10.03, the Regional Manager or District Manager may require the Agreement Holder to make available to the public information required under paragraph 10.01 and carry out consultation activities with the public concerning matters relating to this Agreement.

11.00 FINANCIAL

11.01 In addition to any money payable in respect of this Agreement or a road permit under the forestry legislation, the Agreement Holder must pay to the Crown, immediately upon receipt of a notice, statement or invoice issued on behalf of the Crown:

- (a) stumpage under part 7 of the *Forest Act* in respect of timber removed:
 - (i) under a cutting permit from Schedule "B" Land; or
 - (ii) under a road permit;at rates determined, redetermined and varied under section 105 of that Act;
- (b) any payments required under part 5.00, and
- (c) annual rent at a rate in accordance with the schedule found in the Annual Rent Regulation.

12.00 REPRESENTATIONS

12.01 The Agreement Holder represents and warrants that the Agreement Holder:

- (a) is a corporation established by or under an enactment, or registered as an extraprovincial company under the *Business Corporations Act*.

13.00 LIABILITY AND INDEMNITY

13.01 Subject to paragraph 13.03, the Agreement Holder must indemnify the Crown against and save it harmless from all claims, demands, suits, actions, causes of action, costs, expenses and losses faced, incurred or suffered by the Crown as a result, directly or indirectly, of any act or omission of:

- (a) the Agreement Holder;
- (b) an employee of the Agreement Holder;
- (c) an agent of the Agreement Holder;
- (d) a contractor of the Agreement Holder who engages in any activity or carries out any operation, including but not restricted to the Agreement Holder's operations, under or associated with this Agreement or a cutting permit or a road permit; or
- (e) any other person who on behalf of or with the consent of the Agreement Holder engages in any activity or carries out any operation, including but not restricted to the Agreement Holder's operations, under or associated with this Agreement or a cutting permit or a road permit.

13.02 For greater certainty, the Agreement Holder has no obligation to indemnify the Crown under paragraph 13.01 in respect of any act or omission of:

- (a) an employee, agent or contractor of the Crown, in the course of carrying out his or her duties as employee, agent or contractor of the Crown; or
- (b) a person, other than the Agreement Holder, to whom the Crown has granted the right to occupy Crown land, in the course of exercising those rights.

13.03 The Crown is not liable to the Agreement Holder for injuries, losses, expenses, or costs incurred or suffered by the Agreement Holder as a result, directly or indirectly, of an act or omission of a person who is not a party to this Agreement, including but not restricted to an act or omission of a person disrupting, stopping or otherwise interfering with the Agreement Holder's operations under this Agreement by road blocks or other means.

13.04 Any payments required under part 5.00, and payments required further to the indemnity referred to in paragraph 13.01 are in addition to and not in substitution for any other remedies available to the Crown in respect of a default of the Agreement Holder.

14.00 TERMINATION

14.01 If this Agreement expires or is not replaced under section 43.4 of the *Forest Act*, or is surrendered, cancelled or otherwise terminated:

- (a) all cutting permits will immediately terminate; and
- (b) timber, including logs, special forest products or prescribed products listed in Schedule "C", cut under the authority of this Agreement and which are still located on Crown land, vest in the Crown, without right of compensation to the Agreement Holder; and
- (c) unless otherwise agreed to between the District Manager and the Agreement Holder prior to the surrender, cancellation or termination of this Agreement, title to all improvements, including roads and bridges, constructed by the Agreement Holder on Crown land under the authority of this Agreement vest in the Crown, without right of compensation to the Agreement Holder; and
- (d) subject to subparagraphs 14.01 (b) and (c) the Agreement Holder may continue to enter and use Crown Land for a period of one month after the expiry or termination of this Agreement for the purpose of removing the Agreement Holder's property.

14.02 The Agreement Holder will not take away any improvements or remove any timber referred to in subparagraph 14.01 (b), unless authorized to do so by the Regional Manager.

14.03 If the Agreement Holder commits an act of bankruptcy, makes a general assignment of its creditors or otherwise acknowledges its insolvency the Agreement Holder is deemed to have failed to perform an obligation under this Agreement.

15.00 WAIVER

15.01 No waiver by the Government of any default non-compliance by the Agreement Holder in the strict and literal performance of or compliance with any provision of the Agreement will be deemed to be a waiver of the strict and literal performance of or compliance with any other provision, condition or requirement of the Agreement or to be a waiver of, or in any manner release the Agreement Holder from compliance with any provision, condition or requirement in the future, nor will any delay or omission by the Government in the exercising of any right hereunder in any manner with respect to non-compliance impair the exercise of any such rights in the future.

16.00 NOTICE

16.01 A notice given under this Agreement must be in writing.

16.02 A notice given under this Agreement may be:

- (a) delivered by hand;
- (b) sent by mail; or
- (c) subject to paragraph 16.05, sent by facsimile transmission;

to the address or facsimile number, as applicable, specified on the first page of this Agreement, or to such other address or facsimile number as is specified in a notice given in accordance with this part.

16.03 A notice given under this Agreement, is deemed to have been given:

- (a) if it is given in accordance with subparagraph 16.02 (a), on the date it is delivered by hand;
- (b) if it is given in accordance with subparagraph 16.02 (b), subject to paragraph 16.04, on the eighth day after its deposit in a Canada Post Office at any place in Canada; and
- (c) if it is given in accordance with subparagraph 16.02 (c), subject to paragraph 16.05, on the date it is sent by facsimile transmission.

16.04 If, between the times a notice is mailed in accordance with subparagraph 16.02 (b) and the time it is actually received, there occurs a postal strike, lockout or slowdown that might reasonably affect delivery of the notice, the notice is not deemed to be given until the party actually receives it.

16.05 If a notice is sent by facsimile transmission, the party sending the notice must take reasonable steps to ensure that the transmission has been successfully completed.

17.00 MISCELLANEOUS

17.01 This Agreement will enure to the benefit of, and be binding on, the parties and their respective heirs, executors, successors and permitted assigns.

17.02 The laws of British Columbia will govern the interpretation of this Agreement and the performance of the Agreement Holder's obligations under this Agreement.

17.03 Any power conferred or duty imposed on the Regional Manager or District Manager under this Agreement may be exercised or fulfilled by any person authorized to do so by the Regional Manager or District Manager.

- 17.04 The schedules attached to this Agreement are deemed to be part of this Agreement.
- 17.05 Nothing in this Agreement or a cutting permit issued under this Agreement is to be construed as authorizing the Agreement Holder to engage in any activities or carry out any operations otherwise than in compliance with the requirements of the forestry legislation.
- 17.06 The Agreement Holder must:
- (a) comply with the forestry legislation; and
 - (b) ensure that its employees, agents and contractors comply with the forestry legislation when engaging in or carrying out activities or operations under or associated with the Agreement.
- 17.07 Nothing in this Agreement entitles the Agreement Holder to have an area of Schedule "B" Land replaced with another area, or to have rights awarded under another Agreement under the *Forest Act*, in the event:
- (a) timber is damaged or destroyed by pests, fire, wind or other natural causes;
 - (b) an area of land is deleted from the Community Forest Agreement area under the forestry legislation, or under any other Act or regulation; or
 - (c) this Agreement expires, is surrendered, is cancelled or otherwise terminated.
- 17.08 At the request of the Regional Manager or District Manager, the Agreement Holder will survey and define on the ground any or all boundaries of the Community Forest Agreement area.
- 17.09 Where harvesting of timber has been authorized under this Agreement, the District Manager in a notice to the Agreement Holder, may require the Agreement Holder to carry out a legal survey on the portions of the area to be operated upon that are adjacent to any Community Forest Agreement area boundaries.

18.00 INTERPRETATION & DEFINITIONS

18.01 This Agreement is divided into parts, paragraphs, subparagraphs, clauses and subclauses, illustrated as follows:

- 1.00 part;
- 1.01 paragraph;

- (a) subparagraph;
- (i) clause;
- (a) subclause;

and a reference to a subparagraph, clause or subclause is to be construed as a reference to a subparagraph, clause or subclause of the paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

18.02 In this Agreement, unless the context otherwise requires:

“aboriginal interest” means a potential aboriginal right and/or aboriginal title that has not been proven through a court process;

“allowable annual cut” means the allowable annual cut set under the management plan for the Agreement;

“botanical forest product” means any or all flora and fungi of the forest other than timber that occurs naturally on Crown forest land

“Community Forest Agreement area” means the area of lands identified in Schedules “A” and “B”;

“cut control period” means the cut control period determined for this Agreement under part 4.00;

“cutting permit” means a cutting permit issued under this Agreement or an amendment for a cutting permit as the context requires;

“District Manager” means:

- (a) a District Manager appointed under the *Ministry of Forests Act*, for a forest district in which all or part of the Agreement is situated; and
- (b) any person authorized by the District Manager to exercise a power or fulfill a duty under this Agreement;

“*Forest Act*” means the *Forest Act*, R.S.B.C. 1996, c. 157, as amended from time to time, or the successor to that Act, if it is repealed;

“*Forest and Range Practices Act*” means the *Forest and Range Practices Act*, S.B.C. 2002, c. 69 as amended from time to time, or the successor to this Act, if it is repealed;

“forest stewardship plan” means a forest stewardship plan referred to in the *Forest and Range Practices Act*, that is prepared or approved by the Minister in respect of the Agreement;

“forestry legislation” means the statutes and regulations, to which the Agreement is subject including:

- (a) the *Forest Act*;
- (b) the *Forest and Range Practices Act*; and
- (c) the *Wildlife Act*.

“Government” means the Government of the Province of British Columbia;

“harvest” means:

- (a) cut;
- (b) remove;
- (c) cut and remove;

“management plan” means the management plan prepared and approved for this Agreement in accordance with part 6.00 of this Agreement;

“merchantable timber” means timber that meets or exceeds the timber merchantability specifications described in the Provincial Logging Residue and Waste Measurements Procedures Manual, as amended or replaced from time to time;

“Minister” means the Minister responsible for administering the *Forest Act*;

“Ministry” means the Ministry of Forests and Range;

“*Ministry of Forests Act*” means the *Ministry of Forests Act* R.S.B.C. 1996, c. 300;

“Ministry officer” means an employee of the Ministry;

“non-Crown land” means land that is private land or in a reserve as defined in the *Indian Act (Canada)* as described in the Schedule “A” to this Agreement;

“person” includes a corporation and a partnership, unless the context requires otherwise;

“pest” means any animal, insect, fungus, bacteria, virus, nematode, or other organism which is detrimental to effective forest management;

“primary logging” includes felling timber and yarding or forwarding the timber to central landings or road-sides, but not including the removal of the timber from these landings or road-sides;

“Regional Manager” means:

- (a) a Regional Manager appointed under the *Ministry of Forests Act*, for a forest region in which all or part of the Community Forest Agreement area is situated; and
- (b) any person authorized by the Regional Manager to exercise a power or fulfill a duty under this Agreement;

“remove” means the removal of timber from the Community Forest Agreement area and “removed”, “removal” and “removing” have the corresponding meanings;

“resource agencies” means any governmental agency, Ministry or department having jurisdiction over a resource which may be affected by any activity or operation, including but not restricted to activities or operations, engaged in or carried out under or associated with this Agreement or a road permit;

“road permit” means a road permit entered into under the *Forest Act* which provides access to timber removed or to be removed, under this Agreement;

“Schedule “A” Land” means the non-Crown lands managed as part of the Community Forest Agreement area described in the Schedule “A” to this Agreement;

“Schedule “B” Land” means the Crown land described in Schedule “B” to this Agreement;

“special use permit” means a special use permit issued under the applicable forestry legislation, to authorize the Agreement Holder to use or occupy Crown land within the Community Forest Agreement area;

“timber merchantability specifications” means those found in the most current Provincial Logging Residue and Waste Procedures Manual, as amended or replaced from time to time;

“waste” means merchantable Crown timber that could have been cut and removed under this Agreement but that the Agreement Holder is not cut and removed as defined in the Provincial Logging Residue and Waste Measurements Procedures Manual, as amended or replaced from time to time.


DISTRICT

IN WITNESS WHEREOF this Agreement has been executed by the [redacted] Manager and the Agreement Holder on the date first written above.

SIGNED by the)
[redacted] District Manager)
on behalf of Her Majesty)
the Queen in Right of)
the Province of)
British Columbia)
in the presence of:)


Signature)

PAT BELL)
Printed Name)


PAUL KNOWLES, DISTRICT Manager)
[redacted])
[redacted])
SOUTH ISLAND FOREST DISTRICT)
November 2, 2009.)
Dated

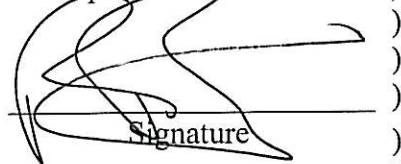
THE COMMON SEAL of)
the Agreement Holder was)
affixed in the presence of:)
)
)

Signature)


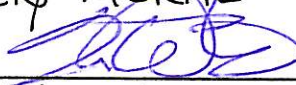
Printed Name)

(or)


SIGNED, by the)
Agreement Holder)
in the presence of:)
)
)


Signature)

Russell Dyan)
Printed Name)


KEN MCRAE)

KEN WATSON)


JACK MCLEMAN)


GARY SWANN Agreement Holder)

Printed Name and Title)

November 2, 2009)
Dated

18.03 Unless otherwise provided in paragraph 18.02, if a word or phrase used in this Agreement is defined in the *Forest Act*, or the *Forest and Range Practices Act* the definition in the Act applies to this Agreement, and where the word or phrase in the Act is replaced by a new word or phrase, this Agreement is deemed to have been amended accordingly.

18.04 If a provision of the *Forest Act*, or the *Forest and Range Practices Act* referred to in this Agreement is renumbered, the reference in this Agreement is to be construed as a reference to the provision as renumbered.

18.05 In this Agreement, unless the context otherwise requires:

(a) the singular includes the plural and the plural includes the singular; and

(b) the masculine, the feminine and the neuter are interchangeable.

SCHEDULE "A"

1.00 DESCRIPTION OF NON-CROWN LANDS

1.01 NIL

SCHEDULE "B"

1.00 DESCRIPTION OF CROWN LANDS

1.01 Refer to attached Exhibit A map

SCHEDULE "C"

1.00 BOTANICAL FOREST PRODUCTS AND OTHER PRESCRIBED PRODUCTS

1.01 Nil

SCHEDULE "D"

1.00 OTHER CONDITIONS AND REQUIREMENTS

- 1.01 The Agreement Holder must conduct at least one formal public meeting each calendar year in a format satisfactory to the District Manager for the purposes of informing the general public of the activities the Agreement Holder proposes to undertake with respect to this Agreement.

- 1.02 Notwithstanding paragraph 1.01 above, the Agreement Holder, in conducting a formal public meeting(s), and in informing the general public of the activities the Agreement Holder proposes to undertake, will:
 - a) actively promote ongoing public awareness of the community forest activities and governance processes, and
 - b) report on performance measures table included in the management plan.

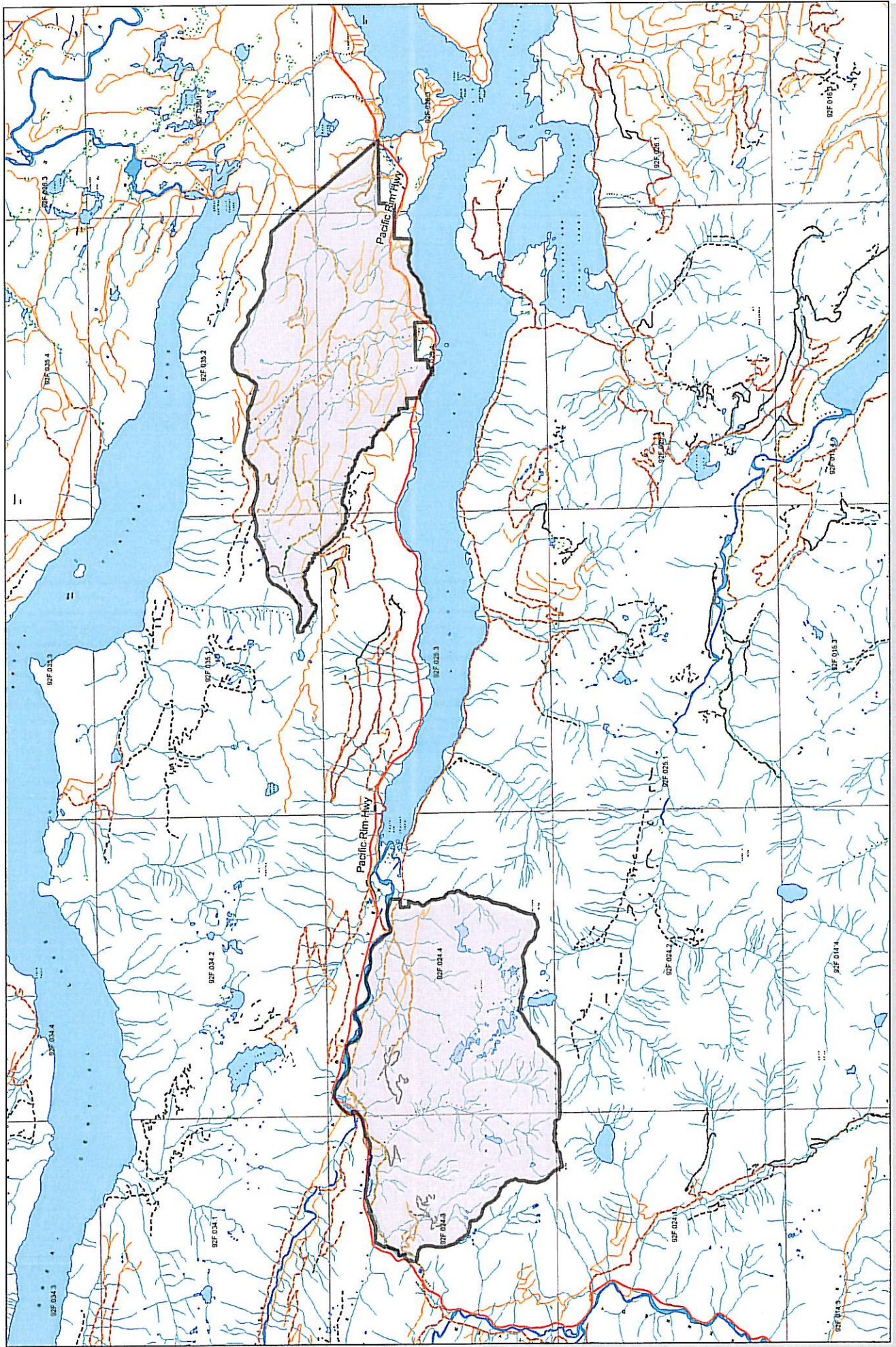


MINISTRY OF FORESTS
AND RANGE



EXHIBIT A

MAP OF : Alberni Community Forest Agreement - K2D <small>(shown in bold black)</small>	
FOREST REGION : RCO	TSA : 38
FOREST DISTRICT : DBI	LAND DISTRICT : Alberni - Clayoquot
UTM : 10	SCALE : 1:60,000
MAD : 03	AREA (HA) : 6773.3
DATE : 2009-05-21	DRAWN BY : JG



19460-50 / K2D

May 26, 2009

Ken McRae, Mayor
City of Port Alberni
Alberni Valley Community Forest Corporation
4850 Argyle Street
Port Alberni, BC
V9Y 1V8

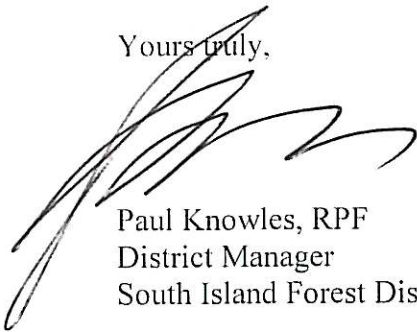
Dear Ken:

I have reviewed the Management Plan for the Alberni Valley Community Forest and the accompanying Allowable Annual Cut (AAC) calculation.

I hereby approve Management Plan No. 1 for the Alberni Valley Community Forest. I have determined the AAC to be 18,156m³ / year.

This letter forms an integral part of Management Plan No. 1 for the Alberni Valley Community Forest and should be attached thereto.

Yours truly,



Paul Knowles, RPF
District Manager
South Island Forest District

pc. Neil Edwards, Tenures Forester, CFR
Cindy Hutchison, Consulting Forester



**RATIONALE FOR THE APPROVAL OF
MANAGEMENT PLAN NO. 1 – ALBERNI VALLEY COMMUNITY FOREST**

Objectives of this Document

This document is the rationale for the approval of the Management Plan for the Alberni Valley Community Forest Agreement (AVCFA) and an accounting of the considerations used to determine an appropriate harvest volume for the AVCFA. The AVCFA encompasses 6378 hectares of Crown Land located in two operating to the north and west of Sproat Lake in the South Island Forest District.

Authority for the Ministry of Forests and Range to approve a Management Plan

- Section 43.3 (f) of the *Forest Act* states that a Community Forest must require its holder to:
 - (i) submit for the approval of the regional manager or the regional manager's designate, at the times specified in the agreement, a management plan that meets the requirements of the community forest agreement, and
 - (ii) implement management plans approved by the regional manager or the regional manager's designate,
- Section 6.02 of the Long Term Community Forest Agreement stipulates the content and requirements of the Management Plan. The AVCFA will be offered once the Management Plan is approved. The licensee is the Alberni Valley Community Forest Corporation.

I have reviewed the plan and have given consideration to the following:

- I have reviewed the Management Plan as it relates to the AVCFA License document and note the Plan is consistent with the requirements.
- The CFA is within the traditional territory of the Hupacasath and Tseshaht First Nation, who have both provided letters of support of this Management Plan and both have permanent seats on the Community Forest Advisory Committee and the Board of Directors of the Alberni Valley Community Forest Corporation. The licensee has also committed to consult with both First Nations on a cutblock by cutblock basis with the intention of adhering to the overall cultural and forest management objectives contained in the Hupacasath Land Use Plan.
- The licensee has gathered public input for the plan and the operation of the CFA by holding 3 open houses, creating a website, having a booth at the National Forest Week event, and by conducting a community survey. Ongoing public participation will occur through annual public meetings, website updates, the Community Forestry Advisory Board and through the board of directors for the AVCFD who will update city council at regular intervals.

Model Information

- The program used to do timber supply forecasts was FSP-ATLAS, which is a forest level simulation model that is designed to schedule harvests according to a range of spatial and temporal objectives.
- The Variable Density Yield Prediction (VDYP) and the Table Interpolation Program for Stand Yields (TIPSY) models were used to estimate timber volumes for this analysis. VDYP incorporates percent losses due to decay, waste and breakage and was used for estimating timber volumes for all existing coniferous and deciduous stands as well as managed deciduous stands. TIPSY was used on all existing managed and future managed stands. In TIPSY, Operational Adjustment Factors (OAF) are applied to account for losses in timber volume due to unproductive areas (OAF1) and age dependant factors such as disease, decay, waste and breakage (OAF2). OAF1 was set at 15 percent based on forest cover information and OAF2 was set at the standard 5 percent.
- The data used for the timber supply input is a subset of the data used for the timber supply analysis component of Management Plan #4 for TFL 44 from 2002. All other assumptions are based on the Arrowsmith Timber Supply Review of 2001.
- The presence of fish and community watersheds has been recognized in this analysis as an additional netdown of 1% was made as an additional allowance for these values.
- The minimum harvest age for this analysis was set to the greater of:
 - Estimated age for stand to reach required stand volume (300m³/ha)
 - The age at which the stand achieves a mean diameter at breast height of 25cm.
 - The age at which the stand achieves 90% of the maximum mean annual increment (MAI).
- All harvesting was modeled as a clearcut silviculture system.

Determination of Annual Allowable Cut


- The licensee has indicated that they will be utilizing a variable retention silviculture system and will be experimenting with a selection silviculture system. The Timber Supply Analysis modeled a clear cutting silviculture system and did not model the implications of the proposed silviculture systems on regeneration. I note that there are still uncertainties associated with silvicultural systems to be used on the CFA and that there remains uncertainties around the magnitude of volume losses to assume in the regenerating stems. With a retention/ selection system, regeneration is expected to suffer edge effects. I recognize this uncertainty will only be resolved through ongoing monitoring of the impacts of use of these systems. There is no past performance and I expect this to be monitored and modeled in future timber supply analysis. The long term impact of this strategy is a potential downward pressure on the timber supply.

- The licensee has noted that the community has placed a high emphasis on protecting values such as water quality, recreation, old growth, and cultural heritage resources. Protecting these values to the level desired by the community may add additional constraints to the existing legislated FRPA constraints. At this time the level of additional constraints is unknown and will have to be re-evaluated once the community priorities become more apparent on an operational level.
- Incremental Silviculture practices, such as fertilization and aggressive brush control, can create upward pressures by reducing the green-up time and increasing yield. Since there has been no field performance to date, no increases have been applied at this time.
- The licensee had indicated that there is a potential that the Site Index (SI) for the Community Forest is low, as landscape level SI's have been found to be consistently lower than cruised SI's. If the licensee can conduct a Site Index Adjust project that shows the average SI is indeed higher it will create an upward pressure for the AAC. For instance, a recent Site Index Adjustment project on the Arrowsmith TSA found that there was a 24% increase over inventory SI.

Summary

- Upward pressures could result in increases to the allowable cut. However, this is a new CFA, the licensee has no proven track record and these factors cannot be substantiated with existing information.
- Downward pressures could be applied for other factors such as retention/selection silviculture systems and additional constraints in implementing forestry practices based on community values but again since this is a new CFA the magnitude of these pressures are unknown at this time.
- FSP-ATLAS shows the harvest as 18,156 m³/year; based on inventory data collected by the MFR.

I have determined that an appropriate level of cut for this five year period is 18,156 m³/year. The proponent is aware that based on current information this will result in a step-up to the long run sustainable yield (LRSY) of 21,263 m³/year. The AAC will be subject to a re-evaluation concurrent with the approval of Management Plan No. 2.



Paul Knowles
District Manager
South Island Forest District

May 26, 2009