

OUTLINE OF PROBLEM: FILE NOTES

DOCUMENT 1

1. Basic Issue

The Kitkatla First Nation is alleging infringement of its claimed aboriginal rights and title by industrial logging and related activities authorized by the provincial Ministry of Forests. The area in question is a previously unlogged area on Bankes Island on the north coast of British Columbia that falls within the traditional territory claimed by the Kitkatla.

2. Overview of Fact Scenario

Bankes Island is subject to a claim of aboriginal title by the Kitkatla First Nation. The North Coast District of the Ministry of Forests (the Ministry) proposes to authorize logging for the first time in parts of the island. The problem deals with a Timber Sale Licence (TSL) issued by the Ministry for an area on Bankes Island near Donaldson Lake. Kitkatla claims that various aspects of its exercise of aboriginal rights and title will be infringed by the proposed logging within the TSL area. The Ministry asserts that the only viable logging road route into the cutting permit area requires loggers to fall a particular culturally modified tree (CMT) with the modifications estimated to date from 1609. The tree is referred to as CMT #4.

3. The SBFEP and the FDP

The proposed logging has been planned as part of the Small Business Forest Enterprise Program (SBFEP) established under the provincial *Forest Act*. This program gives a Ministry of Forests District Office the authority to create a logging business plan, known as a Forest Development Plan (FDP), for a designated area of forestland. An FDP usually covers a period of five to seven years and includes maps and time schedules describing the areas (cutblocks) that will be logged under the Plan during the period. It also includes plans for access roads and sets out the logging methods (usually clear cutting) and silvicultural systems (usually tree planting) that are to be used when the timber is cut.

Once an FDP is finalized and approved, the Ministry tenders the timber for sale, accepting bids from small logging companies that have previously registered with the SBFEP. Bids are evaluated on the basis of stumpage (resource rents to government) that will be paid as well as jobs created and, in some cases, other benefits. The successful bidder receives a Timber Sale Licence (TSL) that authorizes the cutting of the timber subject to the provisions of relevant legislation and the contractual terms of the licence.

The specific area on Bankes Island that is in question is described in a brief extract from a document titled: *North Coast Forest District Small Business Forest Enterprise Program Forest Development Plan October 1, 1998 to September 30, 2004* [See Appendix A, referred to as "the FDP"]. Maps of the proposed cutting blocks showing their boundaries are found at pp. 22-23 of the File Materials in the document titled: *Archaeological Inventory & Impact Assessment, Burns Bay, Mink Trap Bay and Bankes Island Ministry of Forests SBFEP, North Coast Forest District Prince Rupert, B.C.* (July, 2000). [See Appendix B, referred to as the A.I.I.A.].

The Ministry met with the Kitkatla First Nation at the Village of Kitkatla on November 17, 2000 as part of its aboriginal rights and title consultation obligations regarding the FDP and its

application to Banks Island and other areas. The discussion regarding Banks Island is recorded in the *Transcript of the Consultation between the Kitkatla First Nation and the Ministry of Forests regarding the SBFEP held on November 17, 2000* [See Appendix C, referred to as the Consultation Transcript].

4. Culturally Modified Trees

There are three culturally modified trees (CMTs) within the proposed cutting and road construction areas. CMT is a legal and archaeological term for a tree, usually cedar on the coast, that has had bark or planks of wood removed from it, usually by aboriginal people. The modifications may not have killed the tree, in which case the modifications can be dated by dendrochronological (tree ring counting) methods. The CMTs in this case are described and discussed, and their locations shown, in the A.I.I.A. at pp. 24-29 of the File Materials. The CMT receiving the most attention in the planning and consultation process has been dated as culturally modified in 1609 and is referred to as CMT #4 (FiTm-1 under the official B.C. archaeological site classification scheme). The Ministry has determined that this tree must be removed in order to construct the logging road into the cutting blocks area. [See Appendix D, titled "File Note" describing a Field Trip to Banks Island on August 11, 2000.]

Since this tree is protected as an archaeological site under the provincial *Heritage Conservation Act*, the Ministry is required to secure a Site Alteration Permit under that *Act* before the tree can be removed. The Ministry applied for such a permit on September 24, 2000. It was granted on November 9, 2000. [See Appendix E, correspondence from Ray Kenny to Gary Adolph dated November 9, 2000, and copy of Alteration Permit # 1999-333, referred to as "the site alteration permit"]. The Site Alteration Permit allows FiTm-1 (CMT #4) to be removed, subject to the condition that after it is cut down, the dendrochronological samples required of the Ministry are to be offered to the Kitkatla Band after they have been analyzed.

There were no formal consultations with the Kitkatla Nation prior to the issuance of the Site Alteration Permit. A letter was sent to the Band Office on October 1, 2000, stating that a permit had been applied for and asking for Kitkatla input, but nothing further was received until the permit was issued. This matter was discussed at the Consultation Meeting: see Consultation Transcript at pp. 33-35 of the File Materials. (The Kitkatla Nation did not respond to the October 1st letter.)

5. The Kitkatla Peoples and Aboriginal Rights

The archaeological consultant's view of the cultural background of the Tsimshian people and the Kitkatla First Nation in particular can be found in the A.I.I.A. which includes a selected ethnography of the people in question. This document describes the Kitkatla people and their activities at the time of contact at pp. 10-20 of the File Materials. This description uses dated sources and emphasizes resource use and physical artifacts at the expense of Tsimshian oral history, legal and jurisdiction systems and their exercise in pre- and post-contact times.¹

1. See e.g. R. Galois, "The History of Upper Skeena Region, 1850 to 1927." (1994-5) *Native Studies Review* 113; Marsden & R. Galois, "The Tsimshian, the Hudson's Bay Company, and the Geopolitics of the Northwest Fur Trade, 1787-1840." (1995) 29:2 *Canadian Geographer* 169;

Specific information about Bankes Island is found in the A.I.I.A. (File Materials pp. 21-27) where the permit area is described and the culturally modified trees are discussed. Maps showing the location of culturally modified trees appear at pp. 22-23 of the File Materials.

In addition, the Consultation Transcript (at pp.40-42 of the File Materials) contains statements by elders and members of the Council of the Kitkatla First Nation regarding Bankes Island. These statements provide more information regarding the nature of the aboriginal title and rights claimed in the area.

6. Sequence of Events

- i. **March 31, 2000:** FDP proposed by North Coast District SBFEP under the Code
- ii. **July 30, 2000:** Archaeological Impact Assessment for Bankes Island completed [See A.I.I.A.]
- iii. **August 11, 2000:** Bankes Island Field Trip by Ministry officials to look at the forest road design in relation to the culturally modified trees on the road right of way. Engineers determine that CMT #4 (FiTm-1) cannot be avoided and must be removed in order to build the road. [See File Note - File Materials p.42]
- iv. **September 24, 2000:** Ministry Applies for Site Alteration Permit under the *Heritage Conservation Act*.
- v. **October 1, 2000:** Letter sent to Kitkatla Nation Band Office advising of the application for the Site Alteration Permit without further consultation.
- vi. **November 9, 2000:** Site Alteration Permit # 1999-333 granted. [See Site Alteration Permit]
- vii. **November 17, 2000:** Consultation Meeting held between Ministry of Forests and Attorney General and Kitkatla First Nation regarding the FDP. [See Consultation Transcript – Appendix C]

SUBSEQUENT EVENTS

1. **December 1, 2000:** Lawyers for the Kitkatla First Nation send written submissions to North Coast District Manager reiterating the First Nation's opposition to any logging in the area and more specifically to the removal of any culturally modified trees. They argue that further consultations are necessary and that the aboriginal rights and title interests, and the level of infringement proposed by the Ministry, are such that the consent of the Kitkatla First Nation is required before the FDP can be approved, the timber can be put up for bid, the bids accepted, the TSL issued, the road built, and the trees (including CMT#4) cut.
2. **December 31, 2000:** the District Manager approves the FDP without further consultation.

3. **January 4, 2001:** the timber is put up for bid and is sold to Hutchinson Logging Ltd. A Timber Sale Licence (TSL) is issued that permits the Company build the necessary access road into the area (and to remove CMT #4 in order to do so). The costs of the road construction were factored into the licence agreement between the Ministry of Forests and Hutchinson Logging Ltd. As well, the TSL authorizes Hutchinson to engage in clear-cutting. Both the Company and Ministry of Forests proceeded on that basis in entering into the TSL.

4. **January 4-12, 2001:** Hutchinson Logging immediately begins preparations to harvest the timber. It intends to begin preliminary work in the permit area during February, 2001. One of the first steps to be undertaken is construction of the logging road and removal of CMT #4 (FiTm-1).

5. **January 15, 2001:** Lawyers for the Kitkatla First Nation commence an action in which they are seeking.

- (i) a declaration of aboriginal title to the land in question
- (ii) in the alternative, a declaration of site specific or other aboriginal rights in relation to the land
- (iii) a declaration that the issuance of the TSL and the site alteration permit constitute an unjustifiable infringement of the aboriginal title and rights claimed
- (iv) damages

6. The Kitkatla lawyers have also served a Notice of Motion seeking an interlocutory injunction to enjoin the logging and the construction of the logging road, pending the determination of the merits of the action. On the injunction application, the test from *RJR Macdonald* will apply. This application does not prevent the possibility that the parties could reach a negotiated settlement. It merely positions the Kitkatla to seek an injunction should the negotiations fail.

7. Both the Ministry of Forests and the Company take the position that FDP and the TSL are valid under the *Forest Act*, *The Forest Practices Code of British Columbia Act*, and that what has been done is consistent with the *Delgamuukw* decision. Hence, they say the logging should go ahead.

8. The application for the injunction is dismissed.

9. End of January 2001. There is an unusually harsh winter and Hutchinson cannot begin logging.

The Haida Nation and Taku River Tlingit Decisions: Clarifying Roles and Responsibilities for Aboriginal Consultation and Accommodation

John Olynyk¹

DOCUMENT 2

In November, 2004, the Supreme Court of Canada released its decisions in *Haida Nation*² and *Taku River Tlingit*³, two important cases which dealt with aboriginal consultation and accommodation obligations related to resource development. The two decisions have provided greater clarity regarding the role and responsibilities of government, aboriginal groups and industry in consultations with aboriginal communities and accommodation of aboriginal concerns. This article highlights some key points in the decisions for the oil and gas industry.

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Background

The two cases arose out of disputes between the Province of British Columbia and two B.C. First Nations — the Haida Nation and the Taku River Tlingit First Nation. In the first case, the Haida Nation challenged decisions by the Province in the early 1990s to approve the transfer of a tree farm licence from one forestry company to another. In the second case, the Taku River Tlingit challenged a decision by the Province in 1994 to grant a project approval certificate under the B.C. *Environmental Assessment Act* to Redfern Resources for an access road to an old mine site.

In both cases, the First Nations asserted that they had aboriginal rights and title to the lands and resources affected by the government's decisions, but they had not proved those rights either by litigation or by treaties with government. The two First Nations took the position that the decisions would affect their aboriginal rights and title, and so the Province had to consult with them about those decisions. The Province, on the other hand, took the position that it did not have to consult with either First Nation unless and until the First Nations had proved the existence of their rights.

In both instances, the B.C. Court of Appeal agreed with the First Nations' arguments, and held that the Province should have consulted with the First Nations

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² *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73.

³ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74.

about the decisions, even though the First Nations had not legally proved the existence of their aboriginal rights and title. In the *Haida Nation* case, the Court of Appeal went even further, holding that Weyerhaeuser, the private company that held the tree farm licence in question, shared the Province's duty to consult with the Haida Nation. This aspect of the *Haida Nation* decision was very controversial.

Both decisions were appealed to the Supreme Court of Canada, and represented the first time the Supreme Court considered governments' duty to consult when making land and resource use decisions that could affect aboriginal rights and title.

Asserted Rights Can Trigger Crown Consultation Obligations

In the *Haida Nation* case, the Supreme Court held that asserted aboriginal rights can trigger government's obligation to consult. The Court said that the duty to consult arises when government knows about, or ought to know about, the potential existence of an aboriginal right or title and contemplates a decision that might adversely affect it. It is not necessary for an aboriginal group to prove the legal existence of its rights before the duty arises. The Court held that consultation obligations may be triggered by decisions ranging from the granting of tenures and project approvals to permitting and licensing decisions. This underscores the tremendous volume of consultation that may be required of governments and aboriginal groups as a consequence of the Supreme Court's decisions. The onus will be on governments to develop approaches to consultation that are proportionate to decisions being made and that do not impose unworkable burdens on government decision-makers, aboriginal groups being consulted or oil and gas companies.

Scope of Duty to Consult is Proportionate to Impact of Decision

The Supreme Court did not try to define how much consultation is required of governments in all circumstances where a duty to consult is triggered. Instead, the Court stated that governments will have to determine how much consultation is required on a case-by-case basis. The Court said in *Haida Nation* that the "scope of the duty [to consult] is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect [of the proposed decision] upon the right or title".⁴ At one end of the spectrum, the duty to consult may be met through notifying the First Nation about the proposed decision and discussing concerns; at the other end, "deep consultation" is required. In most cases, the consultation required will be somewhere in the middle of the spectrum; the key for government will be to determine correctly

⁴ *Haida Nation*, at ¶39.

in each case how strong the asserted right is and consequently how much consultation is required.

Duty to Consult Rests Solely with Crown

In *Haida Nation*, the Supreme Court also settled the controversy over the B.C. Court of Appeal's extension of the government's duty to consult to industry. The Supreme Court indicated in no uncertain terms that the duty to consult is not shared by industry, stating that the "Crown alone remains legally responsible for the consequences of its actions and interactions with third parties that affect Aboriginal interests",⁵ that "the ultimate legal responsibility for consultation and accommodation rests with the Crown" and cannot be delegated,⁶ and that third parties "cannot be held liable for failing to discharge the Crown's duty to consult and accommodate".⁷ The Supreme Court put to rest with finality any notion that industry shares government's obligation to ensure that infringements of aboriginal rights are justified.

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While this was one of the more newsworthy aspects of the Supreme Court's decision in *Haida Nation*, its practical impact on oil and gas companies may not be great in the short term. As is discussed below, the oil and gas industry consults with aboriginal communities and other stakeholders for a variety of other reasons not directly connected to government's duty to consult. The Supreme Court's limiting of the duty to consult to government will therefore likely not reduce in a significant way the amount of consultation that oil and gas companies carry out with aboriginal communities in the short term.

In addition, while oil and gas companies may not be directly liable to aboriginal groups for government's failure to consult adequately, it must be remembered that tenures and approvals granted by government to oil and gas companies remain vulnerable to challenge on grounds of inadequate consultation. The industry therefore continues to have a very strong interest in ensuring that governments comply with their newly defined consultation obligations.

Crown Can Delegate Procedural Aspects of Consultation to Third Parties

While confirming that the duty to consult rests solely with government, the Supreme Court stated that it is open to governments to delegate "procedural aspects" of consultation to third parties, drawing a parallel to the manner in which environmental impact assessments are carried out.⁸ This appears to make it possible for

⁵ *Haida Nation*, at ¶53.

⁶ *Haida Nation*, at ¶53.

⁷ *Haida Nation*, at ¶56.

⁸ *Haida Nation*, at ¶53.

government to rely on industry consultations with aboriginal communities to help determine whether any government obligations to consult and accommodate may be triggered.

The Supreme Court's express provision for delegation of procedural aspects of consultation could lead to more cost-effective consultation processes by avoiding unnecessary duplication of government and industry consultation activities. Many oil and gas companies — particularly the larger ones — have the capacity and the expertise to engage aboriginal communities in effective project-specific consultations. It is also primarily these companies who have the ability to implement mitigation measures through changes to project design and planning, and to provide economic benefits to the aboriginal community that offset to some degree the impacts experienced by the community. Particularly where governments' and aboriginal groups' resources are stretched to capacity dealing with consultations and with other important community issues, it makes sense to avoid needless duplication of efforts. In this sense, the Supreme Court's recognition of industry's potential role in consultation is helpful.

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At the same time, this delegation carries risks for oil and gas companies as well. In an era of government restraint and cut-backs, governments may try offload as much as possible of the work and the costs of government consultations onto oil and gas companies.

Government Can Design Consultation Processes

Another very significant aspect of the decisions is the Supreme Court's recognition that government may determine how aboriginal consultation and accommodation should be carried out in relation to government decision-making. In *Taku River Tlingit*, the Supreme Court rejected the argument that government must develop a separate process for consultation with First Nations, outside of the normal statutory process. Governments may determine how best to integrate consideration of aboriginal interests into government decision-making. The Supreme Court indicated that it will not hold government to a standard of perfection in judging the adequacy of consultation processes. Instead, the standard is reasonableness: the process selected by government must be a reasonable means of considering aboriginal rights in government decisions, and must represent a reasonable effort to consult and inform.

This is a very significant point. While governments now have significant consultation obligations as a result of these decisions, the Supreme Court has also provided governments with the power to design and implement effective consultation processes that are integrated into governmental decision-making processes in a manner that makes sense to governments. Governments now have to support that power with the necessary resources for and commitment to consultation.

Duty to Accommodate Rests with Crown

The Supreme Court distinguished between the duty to consult and the duty to accommodate. In some cases, once government consults with an aboriginal group no further action may be required. But in other cases, a separate duty to accommodate may be triggered.

The duty to accommodate — or “seeking compromise in an attempt to harmonize conflicting interests and move further down the path of reconciliation”⁹ — arises when government consultations with an aboriginal group show a strong likelihood that the asserted aboriginal right does in fact exist, and when the proposed government decision would affect that right in a significant way. As with the duty to consult, the duty to accommodate applies only to the government making the decision affecting the asserted right. The duty cannot be delegated to third parties like oil and gas companies. While the Supreme Court recognized that procedural aspects of consultation could be carried out by third parties, no such provision was made with respect to accommodation. The effect of this is unclear.

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In a practical sense, two very tangible kinds of accommodation are commitments to mitigation measures by a company, and the provision of employment and contract opportunities and other project-related benefits by the company to the affected aboriginal group and its members. There has been uncertainty in the past as to whether such measures by industry can be considered by government in assessing whether aboriginal interests have been adequately accommodated. The Supreme Court’s omission of any reference to delegation of any aspects of accommodation to industry means this question may remain unsettled.

No Aboriginal Veto over Resource Decision Making

The Supreme Court said that the duty to consult is based in the honour of the Crown, and does not arise out of any fiduciary duty. This has clarified another important area of uncertainty. It is now clear that government need not make resource management decisions based solely on what is in the best interests of the affected aboriginal groups. Rather, government is entitled to balance other societal interests against aboriginal interests in making those decisions.

A consequence of government’s ability to balance societal and aboriginal interests is that government need not obtain the consent of affected aboriginal groups to a proposed decision, or to proposed accommodation measures, prior to making the decision. The Supreme Court is clear that aboriginal groups have no veto over

⁹ *Haida Nation*, at ¶49.

government decisions. If government consults with an aboriginal group through a reasonable process, and gives appropriate consideration to the aboriginal rights asserted by the aboriginal group and the potential impact of the government's decision on those rights, the Supreme Court has indicated that the courts should not interfere with the resulting decision, even if the aboriginal group does not support it.

While the honour of the Crown requires government to participate in meaningful consultations with aboriginal groups with the intention of substantially addressing aboriginal concerns, the Supreme Court recognized that meaningful consultation is a two-way street. The Court held that aboriginal groups cannot frustrate good-faith attempts at consultation by government by taking unreasonable positions in the consultation process.¹⁰ The Court did note that hard bargaining is not inconsistent with good faith consultations.

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Potential Implications for Oil and Gas Companies

Limited Short-term Impact on Oil and Gas Companies

Perhaps the single most important effect of the decisions is to reduce substantially uncertainty around key aspects of consultation obligations. By making it clear that the obligation to consult is government's alone, that it can be triggered by asserted rights, and that government can structure consultation processes and make decisions without requiring aboriginal consent, the Supreme Court has resolved many procedural uncertainties which have complicated consultations in recent years. Uncertainty is usually expensive for developers, so this additional certainty will be welcomed by developers.

Although the two decisions have provided much-needed clarification around the parameters and responsibilities for aboriginal consultations respecting infringements of aboriginal rights and title, it is unlikely that they will cause developers to change their consultation practices in the short term. This is because developers' consultation activities with aboriginal communities have not been driven by the need to consult in respect of infringements of rights.

Oil and gas companies consult with aboriginal communities (and others affected by their activities) for three main reasons:

- it is their corporate policy to consult with aboriginal groups and other stakeholders;

¹⁰ *Haida Nation*, at ¶42.

- they are required to consult with aboriginal communities and other stakeholders by statute, regulations, or terms of their tenures from government; or
- they have entered into agreements with the aboriginal communities which provide for consultations.

In recent years, oil and gas companies have also relied on direct consultations with aboriginal groups, and agreements resulting from those consultations, as a means of managing project risks associated with governments' failure to consult, or consult adequately, with aboriginal groups about those projects. The increased clarity provided by the *Haida Nation* and *Taku River Tlingit* decisions has perhaps reduced project risks related to adequacy of government consultation efforts, but has not reduced the need for companies to consult to discharge statutory and regulatory obligations, corporate policy requirements or contractual obligations.

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Oil and gas companies will therefore continue to have a strong interest in developing and maintaining good relationships with the aboriginal communities affected by their activities.

Longer Term Issue: How Will Governments Respond

In the longer term, the impact of the decisions on developers will depend on how provincial and federal governments respond to the direction provided by the Supreme Court. The two decisions have made it clear that governments have the power to make land and resource use decisions necessary to maintain the health of provincial and national economies, even in the face of disagreement from aboriginal groups. The Supreme Court was very clear in placing the onus on government to ensure adequate consultation and accommodation occurs around those decisions, but has given government the legal tools needed to develop or adapt the necessary consultation processes.

It is now up to government to respond to those challenges. Government will have to determine whether existing decision-making processes provide for adequate consultation. Where changes are necessary, government will have to decide whether to integrate aboriginal consultations into the duties of existing statutory decision-makers, or to lay new processes focused solely on aboriginal consultations over the current regulatory structure (as was typically done with environmental assessment processes). Government will have to ensure that the staff, resources and commitment is put in place to allow effective consultations. Government may also have to consider whether funding is required for First Nations for consultation and capacity building, both to discharge any duties arising from the honour of the Crown and to ensure that First Nations can provide input to decision-makers in a timely manner. Government will

also have to decide whether — or which — procedural aspects of consultation should be delegated to developers.

As well, governments will have to decide whether to limit new consultation processes to geographic areas where aboriginal rights and title have not been established, or whether to provide for similar consultation in areas covered by the historic treaties. The two decisions arose in the context of asserted aboriginal rights, as opposed to treaty rights, and the Supreme Court gave no indication as to whether they should be taken to apply more broadly. If governments believe that the logic behind the two decisions applies equally well in historic treaty areas, they may implement appropriate consultation and accommodation processes in historic treaty areas without waiting for courts to consider the issue. 5h

It is in the oil and gas industry's interest to ensure that government does respond appropriately to these decisions. While the Supreme Court was very clear in stating that industry cannot be liable to aboriginal groups for the Crown's failure to consult adequately, Crown tenures and authorizations granted to developers in breach of that duty remain subject to legal challenge. This is a much more significant concern to the industry. As a result, there is an important role for industry in encouraging governments to implement consultation and accommodation processes that comply with the Supreme Court of Canada's decisions as quickly as possible.

APPENDIX A

DOCUMENT 3

North Coast Forest District
Small Business Forest Enterprise Program
Forest Development Plan
October 1, 1998 to September 30, 2004



6.2 Banks Island

This undeveloped chart area is located on the east side of Banks Island approximately 95 km south of Prince Rupert. The development area is centered around three drainages including Donaldson Lake which empties into the Principe Channel at Patsey Cove.

This chart area falls within the Coastal Western Hemlock, very wet hyper-maritime (CWHvh2) biogeoclimatic zone /sub-zone. Cedar and western hemlock are the predominant timber species with a small component of cypress.

6.2.1 Harvest/Development

A small TSL was previously approved for harvest and sold in the late 1980s. The TSL expired without any harvest activity. Development for this section 21 chart area is at the resource inventory and analysis stage. Harvest progression is anticipated to be completed in one pass. . . .

6.2.2 Fisheries

Donaldson Lake has a lake class of L1 and is known to support a resident fish population. Stream classification is part of the development planning currently underway by Coast Forest Management Ltd. for A53187.

A foreshore dive assessment was carried out by Eric White, R.P. Bio. in February 1997, to examine the potential impacts by the proposed log dump and barge ramp developments. . . .

6.2.3 Cultural/Heritage

Banks Island was outside the study area for the Cultural Heritage Mapping Project completed for the district in March 1997. However, an AIA is expected to be completed during the summer of 2000.

6.2.5 Other

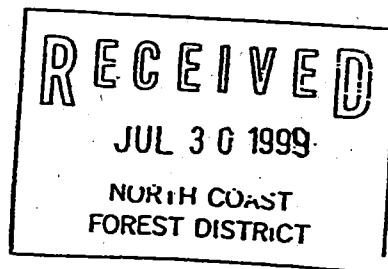
The island is not within a designated scenic area. Reviews of the proposed developments by the district's recreational planner resulted in "no visual concerns" with the proposed developments. . . .

APPENDIX B

Archaeological Inventory & Impact Assessment
Burns Bay, Mink Trap Bay and Banks Island
Ministry of Forests SBFEP, North Coast Forest District
Prince Rupert, B.C.

Heritage Conservation Act Permit 2000-120

Prepared for
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North Coast Forest District
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3. BACKGROUND

3.1 Ethnography

The proposed developments lie within Kitkatla (Tsimshian) traditional territory. Brief background information on these people and their activities at the time of contact is outlined below. The following sections on ethnography, environment, seasonal round and archaeology are taken from Shortland (1997b-e).

The Tsimshian consist of four major subdivisions: the Coast Tsimshian, the Southern Tsimshian, the Nishga and the Gitksan. The Coast Tsimshian are further subdivided into ten local subdivisions: the Gitwilgyots, Gitzaklalth, Gitsees, Ginakangeek, Ginadoiks, Gitandau, Gispakloats, Gilutsau, Gitlan, and Gitwilkseba (Duff 1964:19). All of these subdivisions maintained winter villages on the lower Skeena River. During the late prehistoric period, the Coast Tsimshian expanded coastward and constructed new villages in the area of Venn or Metlakatla Pass. They continued to return to their traditional fishing territories on the Skeena in the summers to take part in salmon fishing.

When the Hudson's Bay Company moved Fort Simpson (later Port Simpson) to its present location in 1834, nine of the ten Coast Tsimshian groups moved to the area surrounding the fort (the Gitwilkseba were extinct by this time). The Native settlement at Port Simpson is today known as Lax-kw'alaams. In 1857, William Duncan reports that there were approximately 2,300 Indians living in the area around Fort Simpson. The greatest volume of published work on the Tsimshian refers to the Port Simpson peoples (Boas 1896, 1906; Barbeau 1917; Barnett 1941, 1942; Beynon 1941; and Garfield 1939, 1966).

The Southern Tsimshian are known to have inhabited three historic villages including Kitkiata, Kitasoo and Kitkatla. Each of these villages formed a politically autonomous local group, described today as a band. Lineage heads or House Chiefs within the village owned or controlled access to individual resource areas and their associated base camps. The base camps were numerous and scattered throughout the traditional territory.

At the time of European contact, each Coastal or Southern Tsimshian village was an autonomous political entity, with lineage heads within the village owning or controlling access to individual resource areas and their associated base camps. Typically, each base camp was a small encampment with simply constructed, small plank houses as well as

associated structures such as smoke houses and drying racks. In contrast, the winter villages had large houses (as much as 18 m by 10 m) constructed from massive red cedar timbers and planking, usually with an excavated pit lined with sand and beach cobbles in the centre.

3.2 Environment

The traditional territory of the Tsimshian lies entirely within the Coastal Western Hemlock biogeoclimatic zone. Known for mild winters and cool summers, this is a region of dense climax forests, heavy undergrowth and high precipitation. The land rises steeply from coastal fjords in all but a few favourable areas, normally associated with river or creek mouths. Winter villages are generally located in the best of these locations, taking advantage of:

- the supply of fresh water;
- the relatively easy access to land based resources provided by the low slope of the surrounding hinterland;
- the presence of a suitable canoe beaching area;
- a nearby defensible position; and
- shelter from wind and heavy weather (Halpin and Seguin 1990:269).

Transportation in the region for most activities was by canoe due to the difficulty in overland traverse caused by the dense understorey, often overlying deadfall (Halpin and Seguin 1990:269) and the precipitous slopes.

3.3 Seasonal Round

Based on Boas' (1916) early ethnographic work for the Coastal Tsimshian and supplemented by information collected from the Southern Tsimshian (Mitchell 1981; Seguin 1984), McDonald (1985:98) reconstructs a simplified seasonal round of activities for the Tsimshian.

In late winter (February to April), before the river ice breaks up, large groups would leave their winter villages to take eulachon on the rivers, later returning to the winter village to store the eulachon and the processed grease.

In spring (May), seaweed was gathered from the rocks along the coast and dried at special seaweed camps. During this season men would fish halibut which were thinly sliced and then dried by women. Large quantities of herring spawn were also gathered, either from kelp and grass or from branches submerged for this purpose. Spring was also the time when red cedar bark was stripped for winter weaving, and the cambium of hemlock, spruce and pine were stripped for processing and later consumption. Various roots and shoots were also gathered. During this time the first salmon arrived and were caught by trolling.

In early summer (June) the eggs of gulls and oyster catchers were gathered and abalone were collected during the lowest tides of summer. At roughly this time salmon begin to enter the rivers and the people moved to traditional seasonal fish camps. Women harvested berries, beginning in early summer with salmonberries and continuing until autumn when high bush cranberries and crab-apples were gathered and stored.

In early autumn (September and October) the river fishing camps were the scene of intense activity as salmon were caught and preserved by smoke drying to provide the winter's main sustenance. Chum salmon and other low fat content species were preferred due to their better preservational qualities. Once the winter's supply of salmon had been preserved, hunting was undertaken on a sporadic basis by small numbers of individuals in the group's traditional hunting territories. McDonald (1985:105) lists the following game as regularly hunted by the Kitsumkalum of the Skeena River: deer, elk, seal, sea lion, sea otter, mountain goat, mountain sheep, bear, porcupine, racoon, eagle, marmot, caribou, moose, mountain lion, hare, lynx, swan, goose, duck and other waterfowl. While hunting of sea and land mammals was an option in the winter, the majority of the people remained at the winter village collecting the abundant shellfish in nearby coastal waters. The large coastal shell middens attest to both the abundance of shellfish collected and their importance as food.

3.4 Archaeology

3.4.1 Introduction

Archaeological research in the north coastal region has been relatively limited. Much of the work that has been undertaken has been concentrated in the Prince Rupert harbour area and the Kitselas Canyon, 125 km up the Skeena River. Recently, a number of small scale and specific archaeological impact assessments have added new information to this

relatively limited database (see Wilson, 1992, 1993, 1994 and 1995 for examples). Most, if not all of the most recent archaeological survey and assessment work within the vicinity of the project areas on the north coast has been driven by proposed forestry developments (Shortland 1996, 1997a-g; Shortland and Wilson 1997, 1998).

No archaeological materials recovered on the mainland north coast predate 5,000 years ago. The reasons for this lack of early materials is not clear, particularly in light of much earlier sites located in the surrounding coastal areas (in southern Alaska to the north, on the Queen Charlottes to the west, and on the central coast of B.C. to the south). Fladmark *et al.* (1990) list a variety of possible reasons for the absence of recorded early sites in this area:

- sites may be submerged;
- sites may be elevated and obscured by dense forest cover;
- sites may be missed due to the archaeological sampling technique employed; and
- the north coast may not have been inhabited at this time.

The latter is considered to be possible, but most unlikely (Fladmark *et al.* 1990:231).

The ability to predict the location of early sites along this part of the coast is complicated by a poorly understood history of environmental change linked to fluctuating sea levels in the last 10,000 years. Geological information regarding sea levels is particularly scarce and is further complicated by differential degrees of land mass rebound in the north coast region as the weight of the 2 km thick Cordilleran ice sheet was reduced by melting. As an example, the sea level in the never fully glaciated Queen Charlottes 10,000 years ago was 30 m below its present level. In contrast, the Skeena River estuary indicates that sea levels were as much as 200 m above the present level 10,500 years ago (Fladmark *et al.* 1990: 229-230). Geological evidence indicates the sea may have achieved its present level in the Skeena River Valley as early as 8,000 years ago. It is relatively certain the mainland coast achieved sea level stability by at least 5,000 years ago and that this part of the north coast has unquestionably been continuously occupied since. However, the composition of the coastal biotic communities fluctuated along with fluctuations in sea level, temperature and precipitation.

Plant and animal communities cannot react instantaneously to environmental changes, and thus there will have been a substantial time lag before the present familiar biotic community developed. Hebda and Mathewes (1984) argue, while the modern outline of the coast may be 5,000 years old, the modern climax forest is unlikely to have become fully mature before 3,000 years ago. In a similar vein, Fladmark (1975) argues the stabilization of the mainland coastal sea level is the critical factor in the origin of the development of the areas rich salmon runs. The timing of these events is roughly paralleled by changes in the archaeological record. The prehistory of the Northwest Coast archaeological region can be divided into two distinct periods. The division point between the two is based upon the first appearance of shell middens on the mainland coast at approximately 5,000 years ago. The Early Period, (10,000 to 5,000 years ago) is not yet represented in north coastal sites although some material from the inland coast Paul Mason site in Kitselas Canyon of the Skeena River dates to the transition between the Early and Recent period. Excavated sites are confined primarily to eleven sites in the Prince Rupert harbour area and two sites in Kitselas Canyon. All of the Prince Rupert harbour sites date from the Recent Period (5,000 years ago to European contact) as does the bulk of the Kitselas Canyon material. Table 1 presents an abbreviated cultural sequence for these two areas.

3.4.2 Inland Coast Cultural Sequence

The inland cultural sequence has been reconstructed from only two excavated sites, Paul Mason and Gitaus. The Bornite phase is the earliest (5,000 to 4,300 years ago), and is found only at the Paul Mason site. This phase is of particular interest as it contains the only cultural materials assigned to the Early Period yet found on the north coast. The artifacts recovered consist almost entirely of stone tools and flakes and the cores from which these tools were produced. Ground stone tools, produced by grinding slate or slate-like material, are present but relatively rare. Bifacially flaked tools, produced by removing flakes from a large blank of crystalline or semi-crystalline stone, are absent. Cobble tools and cobble flakes dominate the cultural materials recovered. Microblades, which are small, long, thin blades of crystalline or semi-crystalline stone removed from a core, are also plentiful.

Table 1: Comparison of North Coast Cultural Sequences

Prince Rupert Harbour represents the mainland coast archaeological sequence, and Kitselas Canyon, 125-150 km up the Skeena River, represents an inland riverine sequence (modified from Fladmark *et al.* 1990:230-238).

Prince Rupert Harbour		Kitselas Canyon	
Phase	Description	Phase	Description
Recent Period (European contact roughly 1830 A.D.)	I	?	<ul style="list-style-type: none"> - 1,500 years ago to contact - no sites excavated in the coastal interior containing artifacts representative of this time period - presumed to be similar to early historic or contact period
	II	Kleanza	<ul style="list-style-type: none"> - 2,700 - 1,500 years ago - repetition of earlier phases in the cultural material - net sinkers, polished slate mirrors and daggers, as well as labrets indicate differentiation in status - similar to Prince Rupert harbour II in many respects, bone and antler tools
		Paul-Mason	<ul style="list-style-type: none"> - 3,200 - 2,700 years ago - rectangular houses, with depressions - sedentary village - reduced bifaces, increase in ground stone, cobble tools
		Skeena	<ul style="list-style-type: none"> - 3,600 - 3,200 years ago - leaf shaped projectile points increase, ground stone, cobble tools - greater emphasis on hunting economy
		Gitaus	<ul style="list-style-type: none"> - 4,300 - 3,600 years ago - ground stone, microblades absent, leaf shaped projectile points, cobble tools
		Bornite	<ul style="list-style-type: none"> - 5,000 - 4,300 years ago - obsidian microblades and cobble tools, no bifaces, ground stone rare - no structures - no faunal remains - interpreted as seasonal hunting camp - believed to represent Early Period despite late age
	III		
Early Period	?		<ul style="list-style-type: none"> - no sites recorded or excavated for this time period

The predominance of microblades and cobble tools at the Paul Mason site allows for comparison to similar tool making traditions from southern Alaska, the central B.C. coast and the Queen Charlotte Islands, all of which are older than the Bornite phase and date securely to the Early Period. In particular, this tool making tradition is very similar to the Moresby tradition from the Queen Charlottes which is dated to between 8,000 and 5,000 years ago. Because of these similarities, the Bornite phase is considered both to represent the Early Period on the north coast, despite its relatively young age, and to be offered as evidence the north coast was occupied during the Early Period despite the scarcity of evidence (Fladmark *et al.* 1990: 229-239).

The Bornite phase artifacts recovered at the Paul Mason site suggest this was a temporary, seasonal hunting map (Coupland 1985). Due to the lack of organic preservation, the precise nature of these peoples' economic and social structure cannot be reconstructed with any degree of precision. However, their technology appears to be directed towards maximum flexibility in resource procurement. They are believed to have been mobile hunter-fisher-gatherers possessing water craft (Fladmark *et al.* 1990:238).

The Gitaus phase (4,300 to 3,600 years ago) is found at both the Paul Mason and Gitaus sites. The artifacts recovered are primarily stone tools, due to the lack of organic preservation in the highly acidic soils of coniferous forests. Microblades have virtually disappeared by this time period, but ground stone tools have increased in frequency and type, as have the abraders used in their manufacture. There are ground stone projectile points as well as slate saws, the latter suggesting an increased reliance on wood in addition to bone and antler. Bifacially flaked, leaf shaped projectile points have been recovered, but they are rare. Coupland (1985) and Allaire (1978) suggest that the artifacts recovered from this phase at the two sites indicate temporary seasonal camps, likely fishing camps. Both authors stress the similarity between these artifacts and those found during the earliest phase of Prince Rupert harbour (phase III, 5,000 to 3,500 years ago). This may indicate these two canyon sites were used as seasonal fishing camps by the people of the Prince Rupert harbour area.

The Skeena phase (3,600 to 2,200 years ago) is found at Gitaus in the Kitselas Canyon and at Hagwilget, a site 120 km further up the Skeena River from the canyon sites. As Hagwilget is so far removed from the present study area, it will not be discussed further.

The primary difference in artifacts recovered from this phase, as compared to the preceding Gitaus phase, is the marked increase in both bifacially flaked, leaf shaped projectile points and shaped abraders. Interpretation of this phase at the Gitaus site demonstrates a marked increase in projectile points which is thought to be indicative of an increased reliance on hunting land animals. Allaire (1978) suggests the increased land based hunting represents the movement of interior peoples into the canyon to occupy it on a year round basis, whereas Coupland (1985) sees the change in tool types as reflective of coastal peoples adjusting their subsistence strategy to the canyon environment and occupying it on a seasonal basis. Cobble tools and ground stone tools continue, but microblades are absent.

The Paul Mason phase (3,200 to 2,700 years ago) is found only at the Paul Mason site. This phase shows the first evidence of structures in the canyon. A village of ten rectangular houses aligned in two rows has been dug into the side of a steep embankment producing distinct depressions. The largest house measures 6.6 m by 11 m. Artifacts recovered indicate a reduction in bifacially flaked stone tools, particularly projectile points, suggesting in turn a reduction in reliance on land animal hunting (Coupland 1985). Cobble tools and ground stone tools continue to dominate the assemblage of recovered artifacts, with ground stone tools increasing in number and type. The Paul Mason phase is crucial to understanding the development of social changes occurring on the north coast during the past 5,000 years (Fladmark *et al.* 1990). The appearance of a sedentary village, likely inhabited year round, may point to the formation of multi-generational extended kin groups as well as the intense exploitation of salmon. The layout of the village in two rows indicates the general pattern of village organization observed at European contact was already in place. The lack of both differential house sizes and status related artifacts seems to indicate status and prestige differences between individuals and/or lineages was either not present or not well developed at this time (Coupland 1985).

The Kleanza phase (2,700 to 1,500 years ago) has been found only at the Gitaus site. The artifact assemblage recovered indicates a basic continuation of the Paul Mason phase with important new additions (Fladmark *et al.* 1990). Net sinkers are found for the first time, suggesting further reliance upon fishing as well as an advancing fishing technology. Labrets, slate daggers and polished slate mirrors are also found, which attest to either ritual items or the presence of high status individuals or lineages. No structural

components have been found with the exception of what may have been a single post mold. This post mold, or space where a post may have been once set, may indicate that houses of the type present in the Paul Mason phase continue to be built (Coupland 1985). The Kleanza phase artifacts are comparable to the artifact assemblages found at the end of the Prince Rupert Harbour phase II approximately 1,500 years ago.

There are no systematically excavated sites in the lower Skeena River canyon which date from 1,500 years ago to the present. It is assumed the material culture of this time period would be a further elaboration and refinement of that recovered from the Kleanza phase, culminating in the rich and complex culture of the Tsimshian peoples at the time of European contact.

3.4.3 Coastal Cultural Sequence

The coastal cultural sequence has been reconstructed from eleven excavated sites in the Prince Rupert harbour area. The Prince Rupert III phase is the earliest (5,000 to 3,500 years ago) and can be found at four sites. Contrary to the inland coastal sites, the preservation of organic materials is enhanced in the shell middens found on the coast due to the high amounts of carbon leaching out of the accumulated shell. Wooden artifacts are rarely or poorly preserved in shell middens, but bone, horn, teeth and antler preserve well. The shell middens that date to this phase are small with low densities of artifacts recovered. Stone tools excavated include a preponderance of cobble tools, rare ground slate points and rare bifacially flaked tools. Microblades are absent in the Prince Rupert harbour area. Other tools include bone and antler wedges, beaver and porcupine incisor tooth adzes or chisels, shell adzes and bone awls and needles. There are also bird bone tubes and beads, canine tooth pendants and pigments used for personal adornment. With the exception of the bone and antler wedges, heavy duty wood working tools are absent, but cobble tools may have fulfilled their functions. The tool kit represented here is highly similar to the Tsimshian tool kit as it existed at the time of European contact, but it is not yet as complex or refined. Evidence of structures is absent with the exception of a few small post molds. Analysis of faunal remains and material culture indicates a broad based flexible economy based on fishing and hunting. Land animal hunting, including deer and wapiti, was more important than marine animal, primarily seal, hunting. The evidence indicates that the inhabitants of these sites were mobile hunter-fisher-gatherers (Fladmark *et al.* 1990).

The Prince Rupert II phase (2,500 to 1,500 years ago) contains evidence for rapid population growth and social change, and a corresponding increase in both the breadth of the resources used and the intensity to which those resources are utilized. Midden accumulations dating to this phase are thick and rapidly accumulated with high artifact densities, which suggests a rapidly expanding population. Reliance on sea animal hunting rises at the expense of land animal hunting, but a much wider variety of animal resources including birds, eggs, fish, and marine invertebrates are being utilized. In general, subsistence has come to rely most heavily on fishing, sea animal hunting and shell fish collecting, but virtually every micro-environment is exploited to some extent.

The presence of eulachon remains suggests the seasonal round as known from the historic period may be in place at this time, with at least some of the people moving to the Nass River in early spring. The presence of large amounts of salmon remains also indicates that river fishing, likely on the Skeena River, is also taking place.

There is no direct evidence of house structures. However, a variety of indirect evidence indicates that plank houses were being constructed at this time. This includes:

- the presence of heavy duty woodworking tools, such as stone adzes and chisels,
- evidence for year round occupation of the sites by at least part of the population, and
- the presence of house structures in the Kitselas Canyon, indicating the ability to build similar structures.

The presence of heavy duty wood working tools at this time suggests an increasing role for wooden objects in the material culture of this period. Water logged sites have yielded a wide variety of wooden objects including kerfed boxes, numerous examples of basketry and carved objects highly similar to examples from the historic period.

Stone bark shredders and bark peelers have also been added to the tool kit at this time which are indicators of bark collection and cambium processing. Differential status is evident as attested by the wide variety of personal adornment items that have been recovered including shell and amber beads, copper, gorgets, labrets, ground and flaked and ground stone daggers, pendants and sea otter teeth. The presence of dentalia shells, copper, amber and obsidian are evidence for wide spread contact and trade networks (Fladmark *et al.* 1990). MacDonald and Inglis (1981) suggest that ranked social status and matrilineal house groups are likely developed during this phase.

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The Prince Rupert I phase (1,500 years ago to European contact, circa 1830) is basically a continuation of the Prince Rupert II phase with some expansions and refinements. These include additions to the tool kit, a slowing of population growth and more substantial evidence for house structures. Large hafted mauls and grooved splitting adzes are added to the woodworking tool kit along with shell knives, carving and cutting tools. There is a substantial increase in decorative artifacts. Many of the large woodworking tools are decorated with zoomorphic designs. Houses of the massive cedar plank type are present in the middens. Shell midden accumulation slows indicating a probable stabilization of population levels. Changes to sea animal hunting technology suggest a decline in its importance and a resulting further intensification of fishing. The Coast Tsimshian social organization, including ranked social status and matrilineal house groups is fully developed during this time.

Table 11 continued

CMT	SP	CL	TP	FEAT	DBH	SLP	LEN	WID	DEP	HAG	SDE	TMK	NT
15	C	BS	T	1	92	36.4	300	50	10	90	U	—	—
16	C	BS	T	1	47	108.7	450	13	10	0	U	—	—
17	C	BS	R	1	160	0	280	40	38	90	S	—	—
18	C	BS	T	1	50	36.4	300	29	7	112	U	—	—
19	C	BS	T	1	83	100	550	17	7	0	U	—	—
20	C	BS	R	1	93	100	217	64	5	124	U	—	—
21	C	BS	R	1	80	57.8	158	22	25	0	U	—	—
22	C	BS	T	1	64	84	550	16	5	0	U	—	—
(all measurements in cm); (slope expressed as %)													
SP=species (C=cedar, CY=yellow cedar); CL=class (BS=bark strip); TP=Type (T= taper, R= rectangular); FEAT=number of features/scars; DBH=diameter at breast height of tree; SLP=slope of terrain; LEN=length of scar; WID=width of scar; DEP=depth of scar; HAG=height above ground; SDE=side of tree (U=upslope, D=downslope, S=sideslope); TMK=tool marks; NT=nursing tree (H=hemlock)													

4.3 Banks Island Developments

The study area on Banks Island consisted of several small proposed oceanfront developments, 2783 m of proposed road right-of-way (830 m leading to the block, the remainder within the cut block) and a proposed cut block divided into two segments, block 1 and 2. The cut blocks, located west of Donaldson Lake, total 35.4 ha in area. The proposed oceanfront developments include a log dump, a log sort and a barge ramp, all connected by the proposed Salty Bear Mainline haul road (Figures 3, 9 and 10). Unlike the A-frame blocks, Ministry of Forests' surveyors and technicians did not note any CMTs in the proposed Banks Island developments. Donaldson Lake is illustrated in Plate 10.

The oceanfront developments and the Salty Bear Mainline leading to the cut block were examined systematically by a crew of two archaeologists and one Kitkatla field assistant. Terrain in this area of proposed development is generally steep, sloping down to Principe Channel and Patsey Cove. The shoreline of Banks Island is characteristically rugged and rocky. The vegetation in the area is consistent with the Coastal Western Hemlock biogeoclimatic zone with dominate tree types being cedar, hemlock, balsam, cypress and spruce. Understorey is very dense with salal, huckleberry, blueberry, salmonberry, ferns and sparse devil's club. Ground cover consists of grass, moss and skunk cabbage.

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PRINCE CHANNEL

Log Dump/Sort

FTm-2

Barge Ramp

PATSEY COVE

FTm-1

A53437, Salty Bear Mainline

A53187, Block 1

A53187, Block 2

DONALDSON LAKE

North Coast SBFEP
Salty Bear Mainline - Transects and
Site Locations FTm-1,2

Block Boundary

Proposed Road

Transect

Culturally Modified Tree

Stream

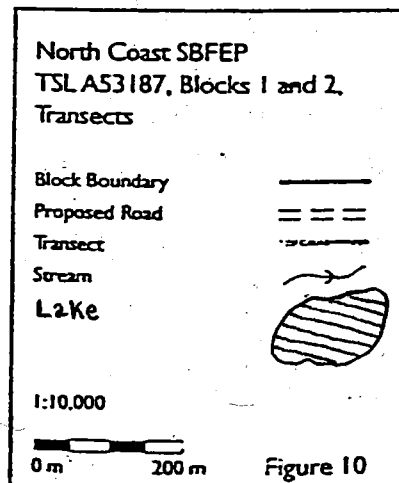
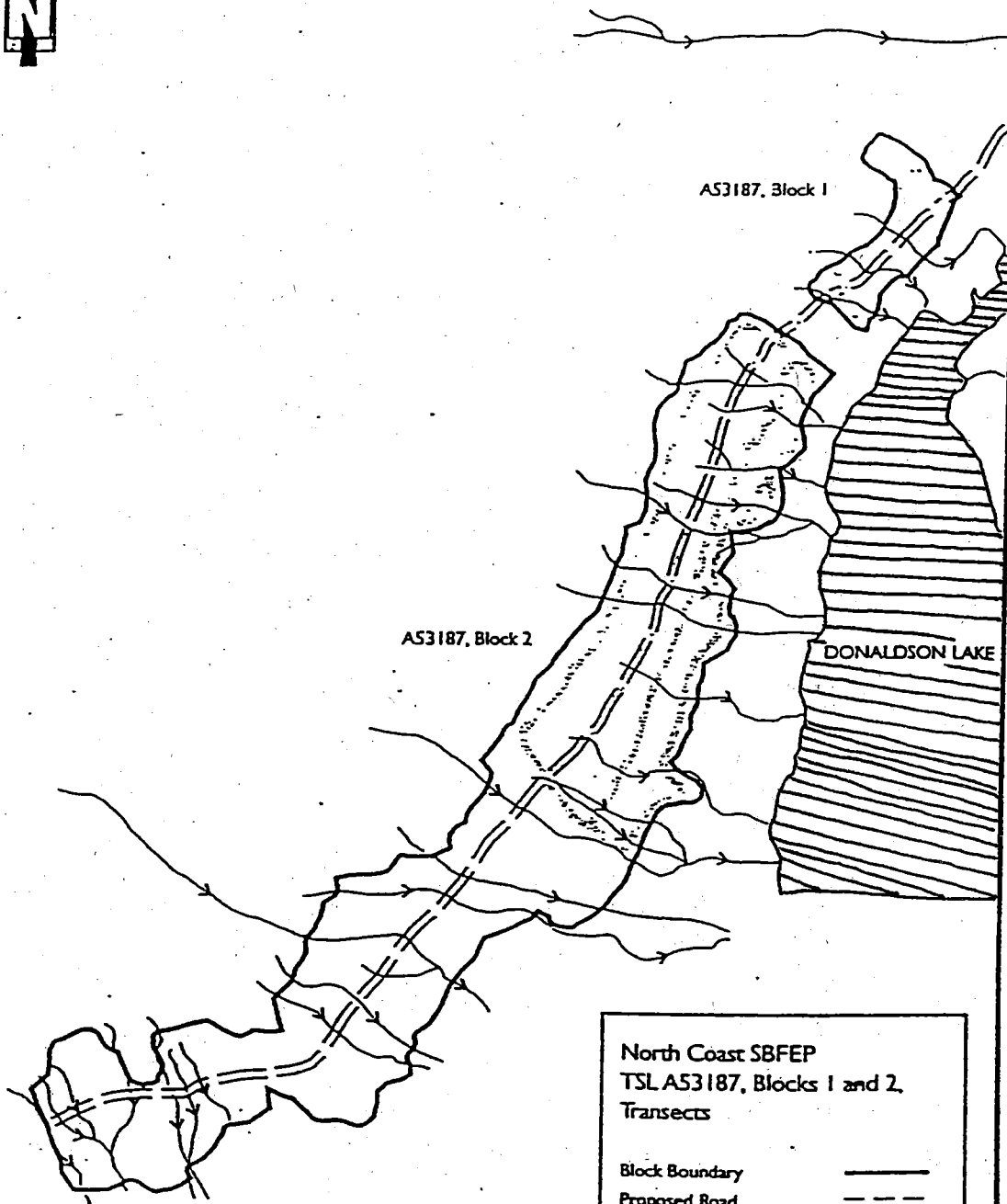
Water Edge

1:5,000

0 m 100 m

Figure 9

23



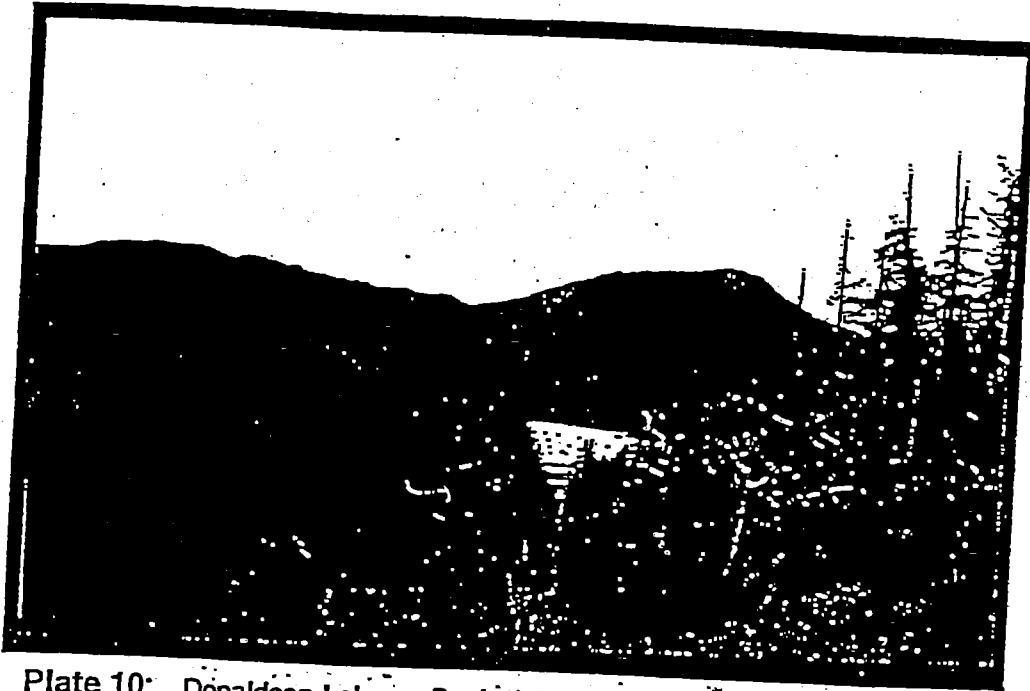


Plate 10: Donaldson Lake on Banks Island, facing south. Photo was taken along Salty Bear Mainline as it approaches the cut blocks. Note the poorly drained and marshy terrain characterized by stunted trees and shrubs.

Two culturally modified trees (CMTs 3 and 5) located within the first 100 m of the road right-of-way, were identified and recorded as archaeological site FITm 2 (Figure 9). CMT 3 is a rectangular barkstripped cedar tree located 5 m at 13° from road marker 0+066 m (Plate 11). The CMT, on a slight slope of approximately 17%, has a diameter at breast height of 126 cm. The scar is on the up-slope side of the tree and measures 2.2 m in length, 12 cm in width, 10 cm in depth and begins at ground surface. An increment bore of the tree lobe indicated a date of modification of about 67 years ago. CMT 5 is a tapered barkstripped cedar tree located 13 m at 106° from 0+083 along the proposed Salty Bear Mainline. The CMT has a diameter at breast height of 65 cm and is on a slight slope of about 10°. The scar is on the up-slope side of the tree and measures 6 m in length, 23 cm in width, 14 cm in depth and begins at ground surface. The tree was too rotted to sample with an increment bore.



Plate 11: CMT 3 of FiTm 2 on Banks Island is a rectangular barkstripped cedar tree.

No additional cultural resources were identified in the vicinity of FiTm 2. Shovel tests were not excavated as the generally steep terrain and abundance of exposures provided good subsurface exposure. To the north of FiTm 2, additional CMTs were identified but left unrecorded as they were clearly well outside the proposed development area.

Between stations 0+100 m and 0+800 m, the Salty Bear Mainline haul road traverses poorly drained wetlands and swamps while continuing to gain elevation. The proposed road right-of-way crosses a small creek at 0+477 m. The creek is approximately 1 to 2 m in width and flows over a cobble and occasional boulder bottom. Creek banks are small and are closely bordered by the swampy terrain that dominates in the area. There is a proposed bridge crossing at this point. The vegetation cover in the area is typified by stunted cedar and pine trees with low lying shrubs and thick grass. The wet, swampy

ground is moss covered, transected by numerous small, sluggish creeks in the duff and pools of standing water.

A single rectangular barkstripped cedar tree was identified on the north side of the creek at the proposed bridge crossing site and constitutes archaeological site FiTm 1 (Plate 12). The CMT, marked in the field as CMT 4, is located 4 m at 82° from 0+474 m along the Salty Bear Mainline. The tree measures 69 cm in diameter at breast height and is on a slight slope of about 9%. The scar measures 3 m in length, 22 cm in width, 5 cm in depth and begins at the ground surface. An increment bore of the tree lobe suggested a date of approximately 389 years ago for the modification. No other cultural resources were identified.



Plate 12: FiTm 1 on Banks Island. The archaeologist is standing beside the single rectangular barkstripped cedar. A date of modification of 389 years B.P. was obtained by increment boring the lobe adjacent to the scar face.

At approximately 0+830 m, the Salty Bear Mainline enters block 1, and terrain begins to slope moderately to very steeply down to Donaldson Lake to the east. The lower portions of the blocks closest to the lake tend to be more level but marshy, while sections above the Salty Bear Mainline are very steep. The proposed cut block has been divided into two segments, blocks 1 and 2, separated by a slide approximately 60 m wide. The slide area consists of loose rock and a dense understorey of berry bushes, salal and devil's club. The only tree type present in the slide area is red alder. Forest cover within the two blocks is dominated by cedar, spruce, hemlock and balsam. Understorey is dense with salal, huckleberry, blueberry, salmonberry and devil's club. The ground cover consists of grass, moss, ferns and skunk cabbage.

Block survey commenced on the road right-of-way traversing steep to very steep slopes and continued to the 1+800 m marker. At this point the road begins to climb in elevation and the block boundaries turn west, further removed from Donaldson Lake. Based on the increasing steepness and greater distance from the lake and the generally low archaeological potential observed in the area, survey did not continue further into the block. Instead, a return transect followed the eastern block boundary in the moderately sloping and marshy area closest to the lake. Block transects are shown in Figure 10.

Overall, the area was deemed to have low archaeological potential due to its distance inland from the coast, the steepness of the terrain and the distance from Donaldson Lake. It is anticipated that cultural resources, particularly CMTs, would more likely be found in closer proximity to the lakeshore. No cultural resources were identified within the divided cut block on Banks Island.

4.4 Summary

Seven archaeological sites were recorded during the archaeological assessment of the proposed North Coast SBFEP developments in Burns Bay, Mink Trap Bay and Banks Island. Sites are addressed separately below.

FITI 4 consists of 23 CMTs. Only two increment bore samples were successful in providing dates of modification: CMT 1 at 80 years ago and CMT 11 at 130 years ago. Although this does not place the dates of modification prior to 1846, it is anticipated, based on increment bore dates from the other A-frame sites, that other CMTs from FITI 4 likely pre-date 1846. Exact dates from increment boring are difficult to obtain, as decay

and tree anomalies can interfere with accurate ring identification and counting. The most accurate methods of dating CMTs are through obtaining wedge samples which damage the tree or stem round samples which require falling of the tree.

FiTI 5 consists of 32 CMTs. Increment bore samples provided dates of modification of 120 years ago (CMT 7), 151 years ago (MoF CMT 4), 180 years ago (MoF CMT 6), 200 years ago (CMT 14) and 270 years ago (MoF CMT 3).

FiTI 6 consists of 34 CMTs. Increment bore samples provided dates of modification of 80-100 years ago (CMT 4 and CMT 5), 130 years ago (CMT 14), 152 years ago (CMT 15) and 188 years ago (CMT 27).

FiTI 7 consists of 34 CMTs. Increment bore samples provided dates of modification of 90 years ago (CMT 12), 155 years ago (CMT 20) and 200 years ago (CMT 13 and MoF CMT 6).

FiTk 5 consists of 21 CMTs. Increment bore samples provided dates of modification of 91 years ago (CMT 5), 125 years ago (CMT 2) and 200 years ago (MoF CMT 7).

The number and density of CMTs recorded above indicate that the Burns Bay/Mink Trap Bay area was an important resource locale for aboriginal peoples. The range in modification dates from 80 to 270 years ago provides evidence that the area was revisited for cedar barkstripping from at the least the early 1700s to the early parts of this century. The absence of additional cultural resources is most likely due to the steep, rugged and rocky terrain along the coastline. More complex site types, such as habitation sites, are more likely to be in flatter, more easily accessible locales in proximity to larger, more consistently running fresh water sources. Previously recorded site FiTk 3, located to the south of the current project areas at the head of Patterson Inlet, is in such a geographic locale (see Figure 2).

The boundaries of all archaeological sites associated with the A-frame blocks were defined by proposed developments as they were flagged in the field. Additional CMTs were noted outside all the A-frame block boundaries. FiTI 4, FiTI 5, FiTI 6, FiTI 7 and FiTk 5 are clearly larger in area than the mapped site boundaries would suggest. It is

likely additional cultural resources would be recorded if survey was to continue outside the block boundaries in Burns Bay and Mink Trap Bay.

FiTm 1 consists of a single CMT. An increment bore sample provided a date of modification of 389 years ago.

FiTm 2 consists of two CMTs. An increment bore sample from CMT 3 yielded a date of modification of 67 years ago. The second feature, CMT 5, was too decayed to increment bore.

5. IMPACT ASSESSMENT

All proposed A-frame forestry developments within Burns Bay and Mink Trap Bay are in conflict with archaeological sites containing culturally modified trees. CMTs within TSL A57725 block 1 (FiTI 4), block 12 (FiTI 5) and block 13 (FiTI 6), and within TSL A57727 block 2 (FiTI 5) and block 18 (FiTI 7) will be impacted as a result of harvesting if present plans remain unchanged.

FiTm 1, a single CMT located 4 m at 82° from 0+474 m on the Salty Bear Mainline, will be impacted as a result of road right-of-way construction.

FiTm 2 consists of two CMTs. CMT 3 is located 5 m at 13° from 0+066 m along the Mainline and CMT 5 is located 13 m at 106° from 0+083 m. Both features will likely be impacted as a result of road right-of-way construction.

6. RECOMMENDATIONS

In general terms, avoidance of all CMTs in possible conflict with development is recommended. It is recommended that at least a 5 to 10 m buffer zone be maintained around all CMTs to ensure that there is no damage to roots and to minimize the danger of blow down.

Where CMTs cannot be avoided by a proposed development, it is recommended that stem round samples be collected from a percentage of the CMTs and analyzed by an archaeologist familiar with CMT research. This requires the proponent to be in receipt of a *Heritage Conservation Act Site Alteration Permit* from the Archaeology Branch, Ministry of Small Business, Tourism and Culture.

When impact to a CMT is unavoidable, stem round samples can provide additional information through laboratory analysis. CMTs will eventually decay and the dating information that field study is unable to obtain will be lost. Analysis of stem round samples from living CMTs can reveal the age of the tree and the date of the cultural modification. In most cases, stem round samples can provide a much more accurate date of modification than increment boring. Analysis of stem round samples from stumps, felled logs, or standing dead CMTs cannot yet reveal a date for the cultural modification, but samples can be set aside until such time as a dendrochronological sequence for the North Coast has been developed.

Because all CMTs recorded within the boundaries of the A-frames (FITI 4, FITI 5, FITI 6, FITI 7, FITk 5) and along the proposed Salty Bear Mainline (FITm 1 and FITm 2) will be adversely affected by development unless avoided, removal and analysis of stem round samples is recommended. It is recommended that all CMTs on Banks Island that are in conflict with proposed forestry operations be subject to stem round sampling and analysis if avoidance is not feasible. For the recorded sites in conflict with the proposed A-frame developments, it is recommended that 25% of the CMTs be sampled. Attempts should be made to take stem rounds of CMTs that were increment bored, thus providing comparisons between the two dating techniques. A list of recommended CMTs to sample is included as Appendix 1. The appropriate method(s) of removing CMT stem round samples is described in *Culturally Modified Trees of British Columbia* (Stryd 1997).

BRITISH COLUMBIA

17 November, 2000

Held at the village of Kitkatla, B.C.

IN THE MATTER OF: The Consultation between the
Kitkatla First Nation and the Ministry of
Forests regarding the proposed Small Business
Forest Enterprise Plan.

PROCEEDINGS AT MEETING

APPEARANCES:

Mr. J. Woodward
Robbins D.

For the Kitkatla

Ms. W. McKttrick
Brian Wesleyson
Ms. M. Cuthill

For the Attorney General

Shawn Hedges
John Scott
Merva Lyons

For the Min. of Forests

Mike Wilson
Anna Hill
John Charlie
Alan Robinson
Harry Stone
George Robinson
Jake Peters
Bill White

Chief
Band Council

Band Elders

1 MS. CUTHILL: Yes.
 2 MR. WOODWARD: Okay. Thank you.
 3 MS. CUTHILL: Will we move north.
 4 MR. WOODWARD: Yes.
 5 MS. CUTHILL: Next on the overview plan is Banks
 6 Island. The development proposal we also refer
 7 to Donaldson Lake.
 8 MR. WOODWARD: Yes.
 9 MS. CUTHILL: This was a new beach start operation
 0 meaning that we will be starting a new log dump
 1 and new road into the area in 2001. The
 2 assessments for the first two blocks and the road
 3 that are shown in the 2001 blocks have been
 4 completed on the block and during the
 5 archaeological --
 6 MR. WOODWARD: Which kind of assessments?
 7 MS. CUTHILL: We have done for shore dive
 8 assessment for the log dump and we have also done
 9 a DUA application for land, the terrain
 0 assessment has been done for that road in the two
 1 blocks as well as the archeological impact
 2 assessment are completed. They have been working
 3 on them over the summer and they were just
 4 recently submitted into us.
 5 MS. HEDGES: You should have a copy of this Jack,
 6 we sent a detailed refer page to you, I believe a
 7 binder.
 8 MR. WOODWARD: When?
 9 MR. WESLEYSON: That would have been sent out
 0 sometime in early September about a month and a
 1 half ago.
 2 MR. WOODWARD: Sent to our office?
 3 MR. WESLEYSON: I believe so. I believe we
 4 sent two copies, one directly to you and one to
 5 the Band Office.
 6 MR. HEDGES: I am guessing about the Band Office
 7 but we certainly sent one master copy to your
 8 office.
 9 MR. WOODWARD: A DUA, what is a DUA?
 0 MS. CUTHILL: Designated use application. That is
 1 basically the lands, they designate an area for
 2 our log dump area, barge unload area.
 3 CHIEF WILSON: In the Donaldson Bay area, they are
 4 going to be doing other modifying in the bay for
 5 this.
 6 MS. CUTHILL: This is Donaldson Lake and this is
 7 Principe Channel, the only one I know of is the

3 Patsy Cove and there is basically no alterations
4 below the high water mark. They will put some
5 barge ramps down to unload the equipment and that
6 is about it for there.

7 So, the archeological impact assessment
8 which was forwarded to you was identified three
9 CMT's, identified three CMT's during the
0 process. We were able to relocate the barge ramp
1 and avoid one of them and buffer it out of the
2 way. One of the CMT's though we were not able to
3 relocate the bridge crossing and for that one we
4 did apply and received an alterations permit for
5 it.

6 MR. WOODWARD: Much to our surprise. We didn't
7 know you had applied for the said alteration
8 permit until we received the permit itself, just
9 last week. I thought that kind of thing would
0 end by now. The letter went from Mr. Hedges to
1 the Heritage Conservation Act people without
2 sending a copy to us, as far as I know.

3 MS. CUTHILL: I believe the Archeology Branch sent
4 you a copy because I received the carbon copy. I
5 don't know that they are --

6 MR. WOODWARD: But Mr. Hedges didn't send us a
7 copy.

8 MR. HEDGES: No, because the application was made
9 to the Archeology Branch for the permit.

0 MR. WOODWARD: That is right, on September 24th,
1 that's right. Why would you not send us a copy
2 of that application, send the Kitkatla First
3 Nations a copy?

4 MR. HEDGES: Because the Archeology Branch was an
5 integral part of their process did inform you of
6 the application. So, that is the Minister of
7 Archeology Branch, it is basically their
8 responsibility, not ourselves.

9 In this case here we did send you copies of
0 the Archeology Impact Assessment. This gentleman
1 and I were just chatting, his son was one of the
2 men involved in the field review of the area and
3 looked at the trees in question, and extensively
4 walked and covered the whole area. Then, of
5 course, this information was forwarded to you in
6 the detailed referral package that clearly
7 indicated that the archeology or alteration
8 permit was to be applied for in the short-term
9 period.

1 MR. WOODWARD: Now, one of the, well the tree that
2 is to be cut under the alterations permit and
3 that and now Marnie has just confirmed is going
4 to be cut near the bridge has a cultural
5 modification on it that is three hundred
6 eighty-nine years old. So, that event, that bark
7 stripping would have taken place in the year
8 1609. A very ancient record of use of this land
9 by the ancestors of the Kitkatla people.

10 I think that it is unthinkable that you
11 would cut that tree down.

12 MR. HEDGES: That date is yet to be confirmed
13 through the dendrochronological analysis. That
14 is one of processes and requirements which is
15 part of the alterations permit. The date that
16 has been suggested is a best guess right now. It
17 could be older or it could be far younger,
18 depending on the characteristics particulars a
19 growth pattern in the area. That will be
20 certainly determined.

21 MR. WOODWARD: Well, the I.R. Wilson Report
22 suggests that it is approximately three hundred
23 and eighty-nine years old and you have some other
24 information?

25 MR. HEDGES: I am simply saying that you should
26 focus on the possibilities as opposed to the hard
27 date until we can undertake a more sophisticated
28 analysis.

29 MR. WOODWARD: So you disagree that it is very
30 old?

31 MR. HEDGES: I never suggested that for a minute.

32 MR. WOODWARD: Okay. It was a very old cultural
33 modification and I suggesting to you that it is
34 unthinkable that you would cut that tree down.
35 Why can't you make this plan to go around. -

36 MR. HEDGES: We have carefully reviewed a number
37 of options in the area and our assessment of the
38 professional opinion and the environmental risks,
39 the costs, potential damage to other values in
40 the area and the risks involved, led us to the
41 opinion that this was the best option and that
42 the removal of the tree was unavoidable and
43 provided that we established a permanent and
44 lasting record and analyzed the tree to determine
45 any unique characteristics and sent that down to
46 the professional archeologists to undertake the
47 analysis as well as a note on the permit to make

the tree available to the Kitkatla people.

I would endeavour to have the tree delivered to a location of your choosing. We could have it in the village site here if you so chose and as a further means of mitigating the impact on that one tree.

It should be emphasized that there are other trees in the area that we were successful in avoiding, this one is unavoidable.

MS. MCKITTRICK: I would like to interject here to say that we have another four weeks to make representations and I have indicated that we would like to stick to the date of December 18th of 2000 to get the written representations and that the decision has not been made at this point. The decision is for the District Manager, Gary Adolph. We would be interested in hearing any further material that you would like to submit on the question before that time.

MR. WOODWARD: Well thanks for that Wendy. What I would like in response to what Mr. Hedges just said was that it was indicated that there was a careful analysis done of whether or not the road could be put in a different place. I think we would certainly like all the records of that analysis.. We have would like to know everything else that you considered. We would like to know the economic considerations that went into it. We would like to know the whole history of your thinking about that.

You mentioned that there was an environmental considerations that involved the reason that you have to cut the tree down. We would like to know what those were. We would like to know how you came to that decision that this is unavoidable.

MS. MCKITTRICK: I think we can undertake to provide the ancillary information. Shawn, perhaps you would like to clarify that this is approved under the previous forest development plan.

MR. HEDGES: That is correct. We have undertaken an amendment to the 1998 to 2004 Forest Development Plan for this particular timber sale. It is approve to proceed with construction and road for harvest development. Again this is as you can see from the map here, this solid

1 line, if you look at the legend, the solid line
2 indicates approved status. In this case, this
3 has received full approval.

4 MR. WOODWARD: So, the timber has been sold. Who
5 was it sold to.

6 MR. HEDGES: The timber has not been sold, it
7 will not be sold until next year, 2001, and we
8 don't have the firm harvest date or sale date as
9 yet nor do we have a firm road construction
10 date. Road construction will likely commence...
11 next year.

12 MR. WOODWARD: I am sorry, the road construction,
13 road construction is going to begin in...

14 MR. HEDGES: ... We have it planned for
15 ... 2000.

16 MR. WOODWARD: Has anything, the preliminary road
17 construction happened yet or have you done
18 anything on the beach to get ready for that...
19

20 MR. HEDGES:

No.

21 MR. WOODWARD: Similarly, at the bridge, you don't
22 do anything ahead of time, there is nothing that
23 is going to happen before [2001], as far as you
24 know?

MR. HEDGES: It is all done concurrently....

27
28 MR. WOODWARD: Will the road contract be let to
29 somebody, will that be done by the Government or
30 would you let that out in contract?

31 MR. HEDGES: It will be done by myself and
32 Marnie, we have not finalized the details yet.
33 Marnie has indicated that there is a number of
34 ways we can construct roads. I am leaning today
35 towards tendering this as a separate stand-alone
36 road construction contract and I thought that we
37 may elected to have the road constructed as part
38 of the timber license.

39 MR. WOODWARD: So, this is Banks Island and this is
40 the first commercial logging that we know of to
41 take place on Banks Island, is that correct?

42 MR. HEDGES: There has been a long established
43 history of hand logging up and down the eastern
44 shore of Banks Island and Principe Channel no
45 there has been previous harvesting all along
46 Banks Island.

47 MR. WOODWARD: Hand logging?

1 MR. HEDGES: Hand logging. Fairly rudimentary
2 method of forest harvesting.

3 MR. WOODWARD: You have not issued a license to
4 hand logging on Banks Island for quite a while
5 have you?

6 MR. HEDGES: Not in my recent memory. This sale
7 should be noted as well that this particular sale
8 that we are discussing scheduled for disposal in
9 the spring of next year was previously sold and
0 has also been previously deferred a number of
1 times to the Kitkatla. But it certainly was sold
2 back in late 1988 and for a number of reasons was
3 returned back to the Crown, unharvested with no
4 development.

5 MR. WOODWARD: Can I ask you a question about the
6 bio-diversity map. You have it open there. Do
7 you see there is inside the proposed cut blocks
8 there is hatch marks in a grid that indicate
9 early zero to forty years of age. What does that
0 mean?

1 MR. HEDGES: That is an integral part of our
2 seral stage, the stand level bio-diversity
3 analysis and one of the integral parts of the
4 bio-diversity guide book and the planning
5 processes within it are to management for seral
6 stage. The seral stage is just the phase, a
7 growth phase or age of the forest. And in this
8 case we categorize seral stages into early,
9 intermediate, mature and to old.

0 For the sake of this analysis and this map,
1 what you are looking at is our guess with
2 reference to everything to the end of the plan or
3 year seven of the plan. So that these seral
4 stages would indicate what things would look like
5 in this area in the year seven of the plan all
6 right. Assuming that everything was harvested
7 and developed in accordance with this plan. It
8 never quite happens that way but that is the way
9 it is assumed.

0 MR. WOODWARD: As this stands right now this is all
1 old forest?

2 MS. CUTHILL: It is all mature and old and you
3 will find in the supporting text, there maybe a
4 little crib note here that indicates, I know it
5 is in the text that these seral stages are
6 forecast in seral stages towards forecasted to
7 year seven if you will.

1 All other information is correct outside of
2 that or not correct but accurate in terms of the
3 present day information.
4 MR. WOODWARD: Okay. Now, including the site index
5 there is the light green colour indicated in the
6 cut block just west of Donaldson Lake. Does that
7 do I read this correct that that is a poor and
8 low site for growing Hemlock and balsam?

9 MR. HEDGES: Yes.
10 MR. WOODWARD: What does that mean?
11 MR. HEDGES: That is correct. The site indices

12 are simply rough measurements of site
13 productivity. In this case, the vast majority of
14 district falls into this poor and medium site
15 productivity. Essentially what it means is that
16 stands in the area are not growing at the same
17 rate that they might be. Perhaps it is more
18 analogues to things of your vegetables patch and
19 if you have a nice fertile site you would have
20 been growing vegetables at a higher rate than you
21 would with somebody at a poor site and that is
22 the same principle here.
23 MS. MCKITTRICK: I believe that the site indices

24 are done by air photo interpretation and based on
25 age and height of the stands and I believe in the
26 future, they don't necessarily, they represent
27 what is growing on that site right now, they
28 don't represent the potential for growth, future
29 timber necessarily.
30 MR. HEDGES: That is an excellent point. Quite

31 often the Forest Management practices will
32 enhance improve a site productivity in the area.
33 MR. WOODWARD: Can we have two minutes privacy here
34 before we continue with the Banks Island
35 discussion? I'm sorry there is more of us. - Can
36 we ask you to just go outside it is a sunny
37 afternoon and I promise you this will just last a
38 couple of minutes.

39 (PROCEEDINGS ADJOURNED)
40 (PROCEEDINGS RESUMED)

41 MS. MCKITTRICK: We would like to try to wind up
42 our portion by three o'clock.
43 MR. WOODWARD: How long have you got out here.
44 MR. HEDGES: We have to be out of Kitkatla by
45 four o'clock.

MR. WOODWARD: I think there is probably, we are not going to get through all the areas today. We are at Banks Island and I think that before we go to the next area, some of the, some of the members of Council and Elders here have things to say about Banks Island.

CHIEF WILSON: I guess looking at the overall picture here, some major decisions have been made in a lot of areas and we are just getting into the consultation stage, trying to get as accurate as we can and understanding as we can on the whole thing here. And Kitkatla has title to a huge territory and a lot of members in the community are involved in different tribes and so we have chosen that we would like to walk cautiously, particularly, in Banks Island.

To say that at the moment were not looking at saying yes to any logging, we just can't see it. There is a lot of concerns that we would like to discuss with the public at large before our names are attached to any activities that are going to be taking place there. There is a lot of questions that we have and we want to ensure that and reassure the public that we are looking after their best interests so we want to be very cautious.

MR. PETERS: As an elder, we would support Mike. We do have a huge territory. We have a huge claim and we don't want Banks Island to be touched in anyway at all. That is what Mike was saying and that is what we discussed because how many different families own different parts of Banks Island and we have lines where they meet from one family to the other right clean around Banks Island. It never miss and we own every inch of it. Thank you.

MR. WHITE: I would like to voice concern about the west coast of Banks Island that is part of our livelihood when it comes to growing kelp. That is where we get the kelp from we have a bunch of logging there tearing up the kelp, that is one industry that is lost to the economy of the village in the future. When it comes to self Government so just like what the Chief said and the Elder, we have to take this one step at a time because the forestry is not the only economy in the Tsimshian Territory. There is lots of

1 gas, oil, fish hatchery all these resources have
2 to be dealt with before any trees can go just
3 falling any place on Tsimshian Nations
4 territory. Thank you.

5 MR. ROBINSON: Thank you, Mr. Chairman. I heard
6 from the lady a while ago saying that a fair
7 return to the Province. It is our land that you
8 are talking about, our trees. I think that we
9 are coming to the area where we are going to sit
10 down and talk about the percentage of the
11 stumpage. That is another way and another way is
12 a joint venture and, the third party is what
13 profit sharing.

14 When we permit logging in our territory, the
15 Tribal Chiefs got to approve of the logging in
16 that specific place first before it is going to
17 be logged. When the logging begins in our area,
18 our boys are going to get the first sled to work
19 in that industry fallers, the boom men, the
20 cooks, et cetera.

21 I would like to see some stages where the
22 Government will train our young people in the
23 logging aspects. I think it is fair to say that
24 this is our land regardless of the trees being
25 very old or very young, it is still belongs to
26 Kitkatla. The numbers don't matter, it is that
27 it belongs to Kitkatla. Right from ten thousand
28 years ago, it is still ours. Percentage, we have
29 got to sit down to share the wealth. In the
30 first place, it all belongs to Kitkatla anyway.
31 Thank you.

32 CHIEF WILSON:

33 Harry.

34 MR. STONE:

35 Thank you Mike. That area there,
36 along that area just below that, there is a hill
37 around that area there. My dad used to tell me
38 about that area where people used to go to that
39 hill there to, we call it Tatam (phonetic) in our
40 language, that is crayons in the Tsimshian.

41 Anyway they call that place Tatam and I
42 asked them why they call it that. He said they
43 go up there and they get colours like black and
44 red colours. There is clay on the mountain there
45 and that is around that area there.

46 Patsy Cove.

47 MR. ROBINSON:

MR. HEDGES:

MR. STONE:

South of Patsy Cove.

That is the big story there, nobody
knows it was too or his dad. That is where they

Discussion

1 go to get the colours for the paint,
2 traditionally used it in painting their face and
3 painting the totem poles and bent boxes and all
4 that--and this place it is -- they have no
5 business about that territory there, that belongs
6 to the other tribe. But we are speaking for our
7 people here, coming to protect the territory.

8 There was logging taking place on the west
9 coast of Banks, I cannot speak about that. I can
10 speak for the old people not just because we
11 owned the territory. We are trying to speak for
12 the old people all in Union Pass, it is all
13 Kitkatla. The lower inlet, that is all
14 Kitkatla. The Kumealon, that is all Kitkatla.

15 Just because we have tribal land, it does
16 not mean we own it, shared that is why I brought
17 that up that Banks Island, that is, I wanted to
18 see that protected too so that is all.

19 MR. WOODWARD: Thank you. Those are the comments
20 from the Elders and Councillors. . . .

Re: Banks Island Field Trip August 11, 2000

On August 11, 2000, Mark Clark, Glenn Piggot, and Marnie Cuthill from the Ministry of Forests and Chez an engineer from Coast Forest Management scheduled a boat trip to Banks Island to look at the engineered road design in relation to the recently reported culturally modified trees (CMT) found within the mainline road right-of-way.

Background:

An archaeological impact assessment was completed for Banks Island in July 2000 by IR Wilson Consultants Ltd. Three CMT's were noted along the mainline access into the block. Tree number 3 at site FiTM2 was modified 67 years ago, based on increment bore sampling, and is therefore not protected by the Heritage Conservation Act. Tree number 5 is within the barge ramp access and tree number 4 (site FiTM1) is adjacent to a proposed bridge crossing. The field trip was scheduled to review the options for re-locating the right of way, barge ramp and bridge crossing to avoid impacting the CMT's.

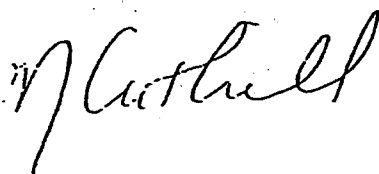
August 11, 2000

After reviewing the barge ramp site, Chez determined that it was feasible to relocate the barge ramp to a different approach in order to avoid CMT # 5. The centreline and right of way ribbons were relocated and the new location traversed for re-mapping. The location CMT #3 was reviewed and it was determined that changing the road alignment would make the approved log dump and sort area inaccessible (location previously approved by DFO) and would require an excessive amount of rock blasting and removal due to a cliff adjacent to the current right of way. A site alteration permit is not required for CMT #3 because of its young age it is not covered by the Heritage Conservation Act.

Several hours were spent re-reviewing the chosen bridge location in relation to CMT #4. From an engineering perspective, Chez had already spent several days looking for a crossing with the shortest bridge span, best alignment and the least amount of environmental impact potential on the stream that drained into Patsey Cove. Marnie Cuthill and Chez re-did this work in an effort to avoid the CMT. Due to the meandering nature of the creek and the frequent dispersal of channels, a suitable crossing that would provide sufficient access to the correct elevation in the block, could not be found. Upstream, the creek was divided into a minimum of 3 channels and an adequate crossing was not available. Downstream, the creek meandered in several oxbows and did not leave enough width to align and install a bridge. The creek is in a depression and the current road alignment provided the best access to cross and access the Timber Sale Licence. Alternative road alignments were reviewed but did not make sense due to our inability to find another suitable bridge location.

Conclusion

Coast Forest Management will re-map the barge ramp location change and submit them to us in the near future. Marnie Cuthill will apply for a site alteration permit for CMT #5 from Archaeology Branch.



Permit File: 21100-20/2000-333

FAX: 250-624-7479

November 9, 2000

Gary Adolph
Ministry of Forests
North Coast Forest District
125 Market Place
Prince Rupert, BC V8J 1B9

Dear Gary Adolph:

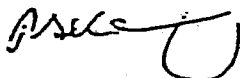
Application for Permit: Cutting, felling, yarding, moving, milling and other alterations of site FITm.1, located along the Salty Bear Mainline, on Banks Island near Donaldson Lake, Principe Channel, North Coast Forest District.

Further to your September 24, 2000, Application for Permit under the *Heritage Conservation Act*, I am pleased to enclose Permit 1998-333.

The results of your alteration are to be presented in the permit report due by October 2, 2001.

Please contact Bob Powell, Project Officer, telephone 250-356-1039, to answer any questions you may have with respect to this permit.

Sincerely,



Ray A. Kenny
Manager
Planning and Assessment
Archaeology Branch

RAK/ar
Encl.

pc via fax: Kitkatla Band (250) 848-2238



HERITAGE CONSERVATION ACT

ALTERATION PERMIT

THIS IS TO CERTIFY that Gary Adolph of North Coast Forest District, 125 Market Place, Prince Rupert, BC, V8J 1B9 is hereby authorized to alter archaeological sites as described below, subject to the terms and conditions on the back hereof.

Type of alteration, archaeological site number(s) and location(s):

Cutting, felling, yarding, moving, milling and other alterations of site FITm 1, located along the Salty Bear Mainline, on Banks Island near Donaldson Lake, Principe Channel, North Coast Forest District.

All work is to conform with the "Application for Permit" dated September 24, 2000 attached hereto.

Disposition of materials collected: Analysed dendrochronological samples to be photocopied for archival purposes and offered to the Kitkatla Indian Band, then may be discarded after one year from expiry of this permit.

Issued November 09, 2000

Expires October 2, 2001

Minister of Small Business, Tourism and Culture

Per *[Signature]*
(See back for Conditions)

A NOTE ABOUT INJUNCTIONS

DOCUMENT 9

An injunction is an extraordinary legal remedy that can be granted by a superior court at the suit of a party in a legal action. It is a court order that requires a person to refrain from doing something that that person is either already doing or is about to do. In the latter case, when it operates to enjoin someone from doing something he or she was about to embark upon, it operates to maintain the status quo. (It is also possible to get an injunction to require a person to do a particular thing.)

An injunction can be sought as a "permanent" remedy. For example, an injunction may be granted in a nuisance action to require a person to refrain from creating or continuing a particular kind of nuisance. However, injunctions are more commonly used as temporary measures to preserve the status quo until the rights of parties to litigation can be finally heard and determined at trial. In this case, the injunction is referred to as "interlocutory". It is granted "in the course of" the litigation and is considered "provisional" or "temporary".

Obviously, the granting of an interlocutory injunction can seriously interfere with the rights of the person who is enjoined and thus the remedy is not granted lightly. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334 the Supreme Court of Canada set out the following three-pronged approach in relation to the court's power to grant an interlocutory injunction.

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits

1. Is There a "Serious Question to be Tried"?

Courts generally apply a low threshold at the first stage of this inquiry, requiring a plaintiff simply to establish that the claim is not frivolous or vexatious. That is, there must be a serious question to be tried.

2. Will the Applicant Suffer "Irreparable Harm" if the Injunction is Refused?

The concept of "irreparable harm" refers to the nature of the harm to be sustained rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured. Thus, if money damages awarded at trial would be an adequate remedy, the injunction should not be granted. The extraordinary remedy of an interlocutory injunction should be reserved for those cases where it is necessary to preserve the applicant's rights pending trial. The test is whether a refusal to grant relief could so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application. (*RJR-MacDonald*, at 349.)

3. Balance and Inconvenience and Public Interest Considerations

Where irreparable harm to the applicant is established, the court then must determine which one of the two parties would suffer the greater harm from either the granting or the refusal of the interlocutory injunction, pending a decision on the merits.

Many cases turn on this stage of the analysis. On this point, the Supreme Court of Canada in *RJR-MacDonald* stated, (at 342):

The factors which must be considered in assessing the 'balance of inconvenience' are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at page 408 that

[i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relevant weight to be attached to them. These will vary from case to case.

The court at this stage may consider the strengths or weakness of the applicant's claim. Sharpe, in *Injunctions and Specific Performance* (2nd Ed.) at paragraph 2.230 states:

The likelihood of the plaintiff's success or failure relates both to the extent of the risk that there will be any legal harm which calls for a remedy in favour of the plaintiff, and to the extent of the risk that an injunction may prevent the defendant from pursuing a rightful course of conduct. If relevant, the strength of a case should be considered, unless there is some compelling reason to disregard it.

Public interest considerations may also be relevant at this stage, as either the applicant or the respondent "may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. "Public interest" includes both the concerns of society generally and the particular interests of identifiable groups." (*RJR-MacDonald* at 344)

Phases of Negotiation



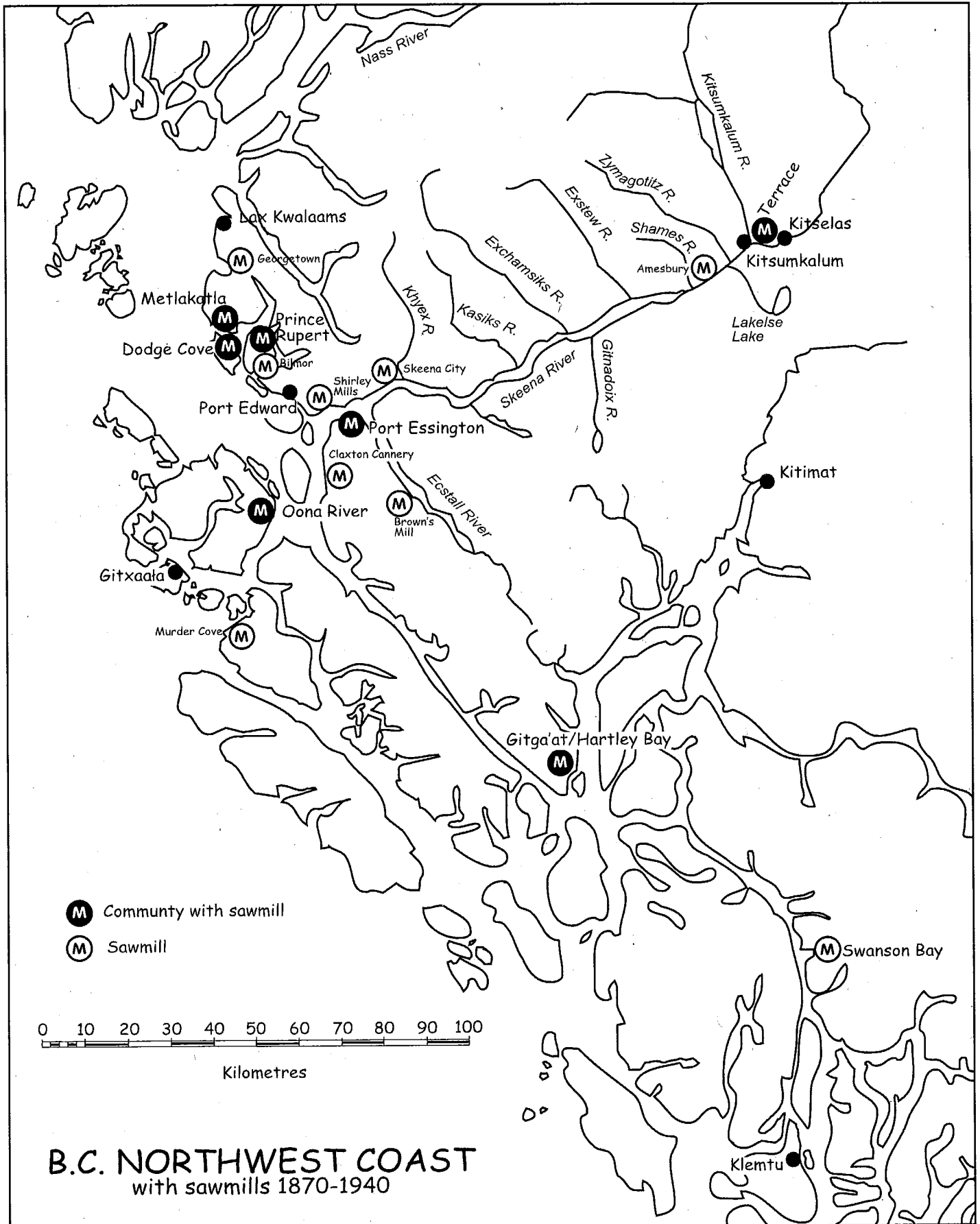
Forests for the Future

Unit 4

Tsimshian Involvement in the Forest Sector

by Paul Orlowski





The Tsimshian in the Forest Industry

The Tsimshian are one of the First Nations whose traditional lands occupy the coastal territories of British Columbia. These Tsimshian lands are located in the northwestern region of British Columbia and include the Tsimshian communities of Lax Kw'alaams, Metlakatla, Kitkatla, Kitasoo (Klemtu), Kitselas, Hartley Bay and Kitsumkalum as well as the towns of Prince Rupert, Port Edward and Terrace. (Please refer to the map.) Today the members of the Tsimshian Nation number around 10 000 and are the direct descendants of people who have lived and worked in this area for at least 13 000 years! When the Europeans first came to the Tsimshian lands in the eighteenth century, they encountered a culture whose basic form had been more or less developed for at least the past 2500 years.

It is obvious that the Tsimshian, as well as all the First Nations who live in what is now called British Columbia, used trees for functional and aesthetic purposes long before the arrival of Europeans. For instance, you may be aware of the longhouses that the First Nations people of the west coast used to house themselves. An example of a wooden object that was both aesthetic and functional is the totem pole, which served to express the stories and carving abilities of certain clans within each nation.

Tsimshian Society and the Shift to Wage Labour in Forestry

The most significant change that took place in forestry after contact with the Europeans was the shift to wage labour that began in 1834 shortly after the Hudson's Bay Company agreed to build a post at Fort Simpson (about 20 kilometers north of present-day Prince Rupert). It was the Tsimshian themselves who logged the trees that were used in the construction of the fort.

Shortly thereafter, members of the Tsimshian communities living near present-day Metlakatla shifted their yearly activities by establishing a year-round community, Lax Kw'alaams, near the fort. This is the first of many instances in which the European idea of wage labour worked to disrupt the way the Tsimshian had lived by for thousands of years. (You will read more about this later.)

In 1857, the Anglican Church Missionary Society sent William Duncan to Fort Simpson to convert the Tsimshian to Christianity. With Duncan's arrival, the seeds were sown for the second shift the Tsimshian were required to do in order to culturally adapt and survive, namely, to procure a job in one of the small-scale sawmills that appeared in the late 1800s. Before the sawmills came, however, working with the trees had much to do with Duncan's plans to convert the Tsimshian to Christianity. He even persuaded many to chop down their totem poles because he saw them as an impediment to conversion.

Another missionary, Thomas Crosby, especially disapproved of the traditional Tsimshian longhouse, large buildings that housed several families living communally. He and most other missionaries did not approve of this traditional housing arrangement of the Tsimshian because it was seen as antithetical to the Christian lifestyle. They wanted the Tsimshian to move out of these larger structures and move into single-family wooden frame houses. But first, they had to be built. The missionaries ordered that this be done, however, with the condition that to get one of these jobs a Tsimshian had to be newly converted. Consequently, the Aboriginal employees at the new sawmills soon found themselves producing the lumber requirements not only for the growing fishing industry but for western-style single-family homes.

The sawmills were also seen by Duncan, Crosby, and other Europeans as an opportunity to transform the lives of the Tsimshian, both economically and socially. This is an example of how European influence resulted in some Tsimshian families benefiting more than others.

Handlogging and Tsimshian Society

As well as running their own logging operations, the local saw mills purchased logs from independent handloggers. This created another opportunity for the Tsimshian families and they responded by registering logging tracts on their traditional territories usually near their traplines, as well as working claims owned by the mills. Handlogging involved traveling along the river and falling trees by hand (i.e., axe and/or saw), dragging them down to the shore and towing them by boat to the mill. This was a common activity for both First Nations people and white loggers beginning in the nineteenth century up until the 1950s.

Handlogging brought in a little extra income for these Tsimshian families who still lived on the land. They integrated handlogging with their traditional subsistence activities. It was usually done in the spring between the beaver-trapping and fishing seasons or in the fall before trapping mink and marten in November. It was also an excellent opportunity for younger members of the family to spend time working with the older men, often learning about Tsimshian values while they spent time in the bush. Many of the older Tsimshian members alive today who used to handlog with their families before its demise spoke of discussing Aboriginal conservation practices and the sustainability of traditional logging practices. This relationship to the land was in clear conflict with the worldview that most capitalists held, namely, that the trees were to be seen as a resource to be exploited for money - when the trees disappeared, the companies would soon follow.

Nevertheless, the Tsimshian benefited from handlogging. They used the extra income to pur-

chase fishing supplies or provisions to get through the winter with increased comfort. The process of applying to the government for handlogging licenses, however, ended with the allocation of huge tracts of land to the corporations in the 1950s.

The Tsimshian and Industrial Logging

A few decades before the demise of handlogging, however, the emergence of the third phase of Tsimshian involvement with forestry appeared. Beginning in the 1920s, the small-scale, locally-owned sawmills were replaced by the industrial practices of monopolistic transnational firms. Some Tsimshian men were hired to log on reserve land before they began careers as loggers up and down the north coast. Employment opportunities away from the reserve affected the traditional social relations of the Tsimshian. Many families became separated from the men who were engaged in logging for these large companies away from home for long periods of time.

Logging for the large corporations was a lot different than simple handlogging. For one thing, it was very difficult to combine logging with fishing because the seasons often overlapped—if a Tsimshian logger was out fishing when the logging companies called for names to log, he was simply out of luck. During this phase, most Tsimshian men became either loggers or fishers but rarely both. To work for the large companies also differed from previous work because each worker now had a boss who was not Tsimshian. Family needs might have to compete with company needs for many of the Tsimshian men who logged for the transnationals.

Eventually, the forestry companies began logging on the Tsimshian reserves and hired Tsimshian men to do so. This was beneficial for Tsimshian families in that the men were working nearby and because of the tax-exemption under the Indian Act, they did not have to pay taxes. The logging companies, however, used the tax-

exemption to justify paying the Aboriginal loggers much less than their non-Aboriginal counterparts, thereby gaining significant profits. The hierarchy on the pay-scale based on race was not the only disadvantage for the Tsimshian - they had very little say in regulating the logging practices of these large corporations.

The wages of loggers were not based on one's race when everyone was unionized. And by the 1950s, the International Woodworkers of America (IWA) was one of the largest unions in BC, counting many Tsimshian loggers as members. If any non-unionized Tsimshian loggers complained about the unequal pay rates for logging on reserves, they were often confronted with the prospect of being fired.

The Tsimshian were able to make an adaptation that helped them survive economically during this era of industrial logging. Beach-combing became a common activity for many families, especially after the Second World War. This entails using a boat, often a fishing boat, to tow logs that have broken loose from booms in the river and along the coast. The logs would be sold to the nearest sawmill, much like during the handlogging years. Beachcombing proved to be economically viable for Tsimshian families until the large corporations limited access by purchasing riverside claims. Today beachcombing is only done casually by fishers who live in Lax Kw'alaams, supplementing their usual income from fishing, cannery work and on-reserve logging. There are some Tsimshian, however, who see beachcombing growing in importance, particularly as fishing becomes less profitable because of over-fishing (which is a global phenomenon).

Summary

It is clear that the Tsimshian have had long involvement in working with trees for both aesthetic and functional purposes. The forest has always provided much of the essentials for the Tsimshian people. It has been vital for their cultural survival.

A big change occurred, however, with the arrival of Europeans and the construction of a Hudson's Bay Company fort at Port Simpson in 1834. For the first time, some of the Tsimshian found themselves working with wood for a wage. This monetary relationship with lumber continued several decades later with missionary attempts to convert the Tsimshian, offering employment to those who became Christian. Throughout this period, the Tsimshian adapted in ways that ensured their survival. Some converted, of course, and in the process became waged labourers as loggers or sawmill employees. Others became independent handloggers, selling their logs at local sawmills.

With the emergence of industrial logging, the Tsimshian were forced to adapt yet again to the changing conditions. Logging on the reserves meant that the men were still close to their families but other problems arose: Tsimshian loggers were paid less than their white peers and there was little local control over their lands. Experience with on-reserve logging, however, often led to employment up and down the north coast for many Tsimshian men. The pay was good, particularly if they belonged to a union, yet Tsimshian families had to contend with the male head of the family being away from home for long periods of time.

Beginning in the 1980s, resource-based industries have been declining in many parts of British Columbia. The Tsimshian have once again adapted to these changing conditions by contributing to family incomes through either beachcombing or through involvement in silviculture projects or both. As well, recent Supreme Court decisions have added legal clout to the Aboriginal Rights movement in BC and throughout Canada. The Tsimshian people will undoubtedly respond to these changes by adapting in ways that best strengthen their socioeconomic position and ensure their cultural survival, much in the same way that they have been doing ever since the Europeans first came to live on their lands, almost two centuries ago.

Tsimshian Women and Forestry

As you learned in the previous lesson, the Europeans first came to Tsimshian lands in the eighteenth century. Upon their arrival, they encountered a matrilineal culture whose basic form had been more or less developed for at least the past 2500 years. A matrilineal culture is one in which a person claims kinship to people who share a common female ancestor, always through the mother's side of the family.

Tsimshian women have perhaps been less obvious participants in the forest industry than their husbands, fathers and brothers. They have nonetheless been involved in forestry in various ways since contact with the Europeans. The nature and degree of their involvement have changed throughout the last 150 years, however, and it is these changes that are important to understanding the significance of colonialism in transforming the status of Tsimshian women and their relationships with other Tsimshian members.

When the Hudson's Bay Company set up Fort Simpson on Tsimshian territory in 1834, the white residents were fearful of the Aboriginal community camped outside the fort walls. The HBC hired Aboriginal men to cut wood for them but would only allow the Tsimshian women to bring the wood inside. As well, the women were hired to cut firewood when the fishing season caused a shortage of male labour at the fort.

The proliferation of local saw mills during the late 19th century did not result in any direct employment opportunities for Tsimshian women. The saw mills caused an increase in handlogging, however, and this resulted in some work for women in the kin-based production of

logs. While the men did the actual falling, the women were involved in the process of handlogging: trimming the logs, making the boom, driving the boat, gathering and preparing food for the loggers.

The money brought in through handlogging helped with Tsimshian subsistence activities such as buying gas and supplies for fishing. This continued until the 1950s when the large logging companies began to monopolize timber claims in the region. The Tsimshian soon found that this shift to industrial logging impacted their ability to gather other resources. In other words, large tracts of clearcut land meant fewer animals to hunt, fewer fish, smaller amounts of forest foodstuffs. For Tsimshian women, the end of the handlogging era also meant the end of any significant involvement in the forestry industry for several decades. Women were not hired by logging companies, nor were they able to find employment in the local sawmills. (There was one brief exception to this exclusion, however, when women were hired to replace Japanese male labourers who were forced to go to internment camps during World War II.)

The recent shift in control of logging operations on reserve lands back to the First Nations may result in increased employment opportunities for Aboriginal women. Administrative positions may appear for women in joint-venture logging projects, although jobs in the actual logging process may not materialize for them. One thing is certain - this most recent shift in forestry in the traditional Tsimshian territories cannot provide fewer employment opportunities for Tsimshian women than were provided when

logging was controlled by the large transnational companies up until the 1980s.

TSIMSHIAN WOMEN, WAGE LABOUR & PATRIARCHY

It may not be surprising that Tsimshian women experienced a steady decline of involvement in forestry as the industry became more industrialized. What complicates this picture is that Tsimshian women found steady employment in wage labour positions in another sector of the resource economy. From the 1880s until the 1950s, Aboriginal women provided the majority of workers for the salmon canneries on the north coast of BC. The reasons are very complex as to why Tsimshian women were integrated into the wage labour of fishing and not forestry. This would require an analysis of the ideology driving the European colonialists that is beyond the scope of this paper.

The massive growth of capitalism that occurred in the 19th and 20th centuries could not have occurred to the extent it did without the colonizing of indigenous peoples throughout the world. This process required that lands and resources be wrested from Aboriginal control, that independent Aboriginal workers be transformed into wage labourers, and that Aboriginal people be assimilated into a European set of values and economic structures. Furthermore, the Tsimshian practice of matrilineal descent, where people become part of the mother's group at birth and remain so for their entire lives, did not fit in with the European patriarchal model in which positions of authority and power were always male. Therefore, this practice had to be altered through their colonizing efforts. These goals were achieved largely through the efforts of the Christian missionaries and capitalists: the social and economic benefits of the potlatch were lost with the federal ban of 1881, male-

headed single family households were established, male and female labour was completely segregated, and subsistence activities on their lands such as hunting and fishing became more difficult to do. All of these policies were part of the colonial system that the Europeans forced Aboriginal people to live under. Colonialism is a system in which there is an unequal power relationship between two groups of people in which the group with the power gets to force their ideas of how the relationship should work onto the other group. Obviously, it was the First Nations who had to contend with white people who considered themselves superior.

The assimilationist policies of the federal government and the missionaries, most effectively delivered through residential schooling, eventually led to the Tsimshian and other First Nations to shift their own ideology regarding gender relations. Despite the fact that the Tsimshian had traditionally valued both male and female labour as crucial to the well-being of the family and the community, during the 20th century they internalized the European notion of the "male breadwinner." For some Tsimshian families, this idea extended into adopting the notion that married women should not have to work outside of the home. This exclusion from wage labour positions did nothing to enhance the power wielded by Tsimshian women. After a century of colonialization, the Tsimshian had adopted the patriarchal nuclear family structure that dominated 1950s North American culture.

CONCLUSIONS

The history of the Tsimshian, who have been living in what is now the northwestern coast of BC for 13 000 years, was profoundly affected by the arrival of European people and especially by their policies of colonization and assimilation. Despite the commonly held

assumption that it was only through the hard work and perseverance of white males in adverse conditions that Canada's west coast was developed, it is clear that the First Nations people themselves have been instrumental in this evolution. When the Europeans first came to the Tsimshian lands in the late 1700s, they encountered a highly developed, matrilineal culture whose basic form had been in place for at least 2500 years.

The Tsimshian have been using trees for functional and aesthetic purposes throughout their history. A major shift occurred in their relationship to working with wood, however, when wage labour began with the construction of Fort Simpson in 1834. Although men were required to cut the trees, only Tsimshian women were allowed to carry the wood into the fort. When sawmills began to appear in the Tsimshian territories in the late 1800s, Tsimshian men found more waged employment. Women also became involved with part of the handlogging production, an opportunity that arose during this same period because the sawmills bought from independent loggers. It was in these capacities that Tsimshian women were an integral part of their people's way of adapting to the changing conditions caused by the colonizing efforts of the Europeans. It was also their way of contributing to the family income and helped with several subsistence activities, including hunting and fishing. The women were also able to procure wage labour positions in the canning industry, positions that were lower in status than those in forestry.

When the handlogging option disappeared in the 1950s, so did the involvement of

Tsimshian women in forestry. The large transnational companies did not hire the women in any capacity and were a major influence in the deterioration of animal and fish habitats on Tsimshian lands. Moreover, the assimilationist policies of the colonizers resulted in the Tsimshian adopting the European patriarchal model of the male-led nuclear family household. Tsimshian women lost social power both in the community and in the family with these new conditions.

With the recent decline in resource-based industries in BC, however, the monopolistic policies of the large logging companies have given way to a variety of options for the Tsimshian people. Logging still holds the major potential for income, of course, and now that the Tsimshian are regaining control of the resources on their lands, this will undoubtedly be a large source of employment. Tsimshian women may find it more likely to be employed in spin-off forestry alternatives, such as in silviculture and possibly beachcombing.

Whatever the future holds for the Tsimshian, it is obvious that they have been key players in the evolution of forestry in northwestern BC. Despite the obstacles facing them, Tsimshian women have contributed significantly in a variety of ways to the family income through forestry. Recent changes in political and environmental conditions may provide an increase in employment opportunities for Tsimshian women, suggesting that brighter days may be on the horizon.

Forests in the Future: Background Information

As we enter the twenty-first century, the forest economy - both in Canada and, more specifically, the province of British Columbia - would be best described as in a state of transition. The industrial model of logging, whereby large transnational companies control huge tracts of crown land, has been in a state of decline since the 1980s, resulting in calls for a restructuring of the industry. A widely supported environmental movement has gained strength in the province, forcing forestry companies to pay a lot more attention to how and where logging is done.

At the same time, the Aboriginal rights movement has come of age - Supreme Court of Canada decisions such as *Calder* (1973), *Delgamu'ukw* (1997), and *Marshall* (1998) have resulted in at least a legal understanding for non-Natives when it comes to settling Aboriginal treaties and recognizing Aboriginal title. The Nisga'a Treaty, which was finalized in 1998, became the first modern-day treaty in B.C. (It is significant that this province entered confederation in 1871 declaring that it did not have to negotiate treaties nor would it recognize Aboriginal title. The Nisga'a Lands border the Tsimshian Lands to the north. (Please refer to the map.)

The signing of the Nisga'a Treaty gave the Nisga'a increased control of harvestable timber on their land. The period leading up to the signing of the treaty saw a massive increase in logging on the land that was returned to the Nisga'a as forest companies acted to maximize profits before they lost timber rights. This situation will undoubtedly be the case for the Tsimshian, as well. (In early 2001, the Tsimshian are at Stage 4 of the 6-stage Treaty Process.)

As with the Nisga'a Treaty, the Tsimshian will also be affected by the global commodity price of pulp, paper and lumber. Depending on

the response of the Tsimshian, this could be result in either short-term gain or long-term security. For instance, if the world prices for pulp, paper and lumber remains at levels similar to 2000 (or even drop further), in order to create significant income for the communities logging will have to be done with industrial methods (i.e., clear-cut) rather than with sustainable methods (i.e., selective). Lumber exports from the North Coast area are primarily exported into two separate markets: the American housing market and the Asia Pacific.

Another response the Tsimshian might take is to wait until the world prices rise so that logging practices that fit in with sustainable development models will be profitable and long-lasting. A third option is for the Tsimshian to consider utilizing the forest in other ways in order to bring in income or leave it as a source of food-stuffs for Tsimshian families. This would be more in keeping with traditional notions of subsistence activities, as well as fit in with a "stewardship" approach to managing the forests.

Another complicating factor has to do with the huge amounts of financing initially required to make the logging economically viable. This is a result of the industrial logging model that began in the 1920s and reached its peak in the 1970s. Consequently, arrangements with non-Aboriginal firms, usually logging companies, have become necessary in order for the First Nations communities to gain access to capital and critical knowledge for local economic development. The Nisga'a have engaged in these partnerships, called joint ventures, since their treaty was completed and the Tsimshian will have to at least consider this option. A significant problem with the joint venture model is that employment opportunities for First Nations people are often restricted to non-management positions.

HARVESTERS of NON-TIMBER ITEMS

Now that the Tsimshian have had their lands returned to them, your position is that they should go back to the way that their ancestors used the forest. (After all, you are a Tsimshian, too.) In other words, the Tsimshian should not look at the forest as a way to make money but see it as a source of things they need to live. They can treat the forest with respect and not worry about global prices and investment money and things that destroy the spirit. Even recently some Tsimshian people have been going into the forest to get the things they need in the same way that their ancestors did a long time ago. Only the Tsimshian have noticed the changes that have occurred because of all the logging that has taken place in the forests ever since the white people came here.

Point out that if the Tsimshian allow the forests to be clear-cut, what has been learned from the lessons of the past 70 years? The animals will leave, the fish habitats will be ruined, and your people will also lose all of the other things in the forest that can be used or sold to others to use.

The history the Tsimshian have lived with since non-Aboriginal people have wanted the trees on their lands has made many of them blind to other things the forest offers, things that will also bring in significant amounts of money. You currently pick three types of mushrooms for money: pine mushrooms, chanterelles, and morels. European countries such as Germany, France and Italy like to import chanterelles and morels. The Japanese have been paying very good prices for your pine mushrooms, which they call matsutake. In Japan, matsutake is considered a delicacy and many people believe that eating it increases a person's energy and will help them live longer. Because the areas where pine mushrooms grow are very fragile, logging always results in the end of pine mushrooms growing there.

Also, mushroom picking is an occupation that people of all ages can do and therefore it is an

industry that can help develop community spirit. The influx of tourists to your lands is also causing a detrimental effect on the areas in which mushrooms, especially matsutake, are able to produce.

Besides mushrooms, there are 29 plants growing in B.C. that are used for medicinal and pharmaceutical purposes. Two of them, western yew bark and cascara, are actually sold to make money. Western yew bark is in your forests. If the loggers have their way, the Tsimshian will lose the chance to develop these opportunities to bring income to our communities by selling these items for people's health. The number of health-food stores and distributors in Vancouver alone strongly suggest that there is a market for these things just waiting to be tapped into.

Furthermore, there are 34 indigenous species of fruits and berries harvested in B.C., 7 of which are sold commercially. These are saskatoon berries, black currants, blackberries, Canada blueberries, oval-leafed blueberries, red huckleberries, and high-bush cranberries. Several of these berries actually grow naturally in the forests of our lands. Point out that the market for these berries will only grow, both in Canada and the U.S., especially as people come to request more environmentally-friendly products.

There is also an increasing demand for craft products, such as baskets and other woven products, made from native plant species. Some of the other plants that grow in your forests are also desirable for landscaping, especially in the Lower Mainland. Therefore, the logging should end, especially with the low world prices for pulp, paper and lumber. You want to develop jobs and markets for all of these other products.

You have your land back. You should untie ourselves from the money system that has been imposed on you from other people, people who don't care about your land. The Tsimshian are the only ones who can take care of their lands now. And this is the way it should be.

You urge the Council to

At the root of so much of our country's relationship with Indigenous Peoples was and is an attitude of cultural superiority.

It started with the Doctrine of Discovery and Doctrine of Terra Nullius, was strengthened by the bad faith and violation of the Peace and Friendship treaties, was legalized by the creation of the Indian Act and the birth of the Indian Residential Schools Era, and persists in the modern Indigenous rights and title disputes, resource extraction projects, and the socio-economic discrimination in health, education and social services.

The institutional racism is pervasive. The social inequality and racism is pervasive. The ignorance and indifference is pervasive.

Relationship Road Map

① First Contact between Europeans and First Nations

Two Row Wampum between Haudenosaunee and the Dutch (and later the British) which evolved into the covenant chain relationship

↳ 2 canoes travelling parallel and equal paths respecting each other's direction and not interfering ⁱⁿ each other's way of life

↳ 3 rows of beads between the canoes are rich in symbolism, each representing peace, power and righteousness - the values needed to sustain the NATION to NATION relationship

② The Peace and Friendship Treaties (Atlantic Canada, Québec, and Ontario)

↳ essentially military alliance agreements

↳ 1763 Royal Proclamation - recognized pre-existing rights to land as inherent
- territory ceded only with consent and only to the Crown

↳ 1764 Treaty of Niagara - confirmed the principles embodied in the Royal Proclamation

- solidified the alliance between the Haudenosaunee, Anishinaabe, and the British (Ontario)

③ Numbered Treaties 1 to 11 (Praries)

↳ Treaty 3 Case Study - "we have one mind and one mouth. It is the decision of all of us."

Chief Saagachiwe

- "give us one of your sons and your daughters, we will give you one of our sons and daughters."

↳ documented that the British spent 2 years negotiating and before signing they brought a copy of Treaty 2 to sign which was more to the liking and advantage of the British

↳ the Paypom Document is an original set of notes made for Chief Powasson that details the original, comprehensive, and fair agreement between nations

④ No Treaties Signed in British Columbia

↳ no longer necessary for First Nations to be military allies as threat from the United States disappeared so European settlement proceeded without treaty-making and relied on the Doctrine of Discovery, Conquest, and Settlement

⑤ The British North American Act (BNA Act) and section 91(24)

↳ the federal government has jurisdiction over "Indians and lands reserved for the Indians."

⑥ The Indian Act and the Indian Residential Schools Era

↳ a clear and ongoing violation of the Crown promise/duty honour the treaties

↳ a clear and ongoing, violent tool of colonization

↳ removed economic opportunity — removed freedom of movement/mobility to leave the reserve
— removed access to markets and government permission

↳ paternalistic in nature — regulated and controlled First Nations' lives in every detail

↳ empowered the residential school era — the framework only repealed in late 2014

— documented physical, emotional, spiritual and cultural harm
— documented as a cultural genocide

— 2013 Article by Ian Mosby documenting nutritional experiments conducted by federal government scientists on under-nourished Indigenous children

⑦ Flashpoints — Standoffs, Blockades and Crises

↳ a toxic relationship that divides First Nations and Non-First Nations, communities and a country

⑧ The Report of the Royal Commission on Aboriginal Peoples (1999-2000)

61

↳ the commission's recommendations form the basis of any start to meaningful reconciliation between Canada and its First Peoples

↳ a vision of a new relationship founded on the recognition of First Peoples as self-governing nations with a unique place in Canada

- a new Royal Proclamation
- recognition of an Aboriginal order of government
- replacement of the Indian Act & the federal department of Indian Affairs
- creation of an Aboriginal parliament
- expansion of the Aboriginal land and resource base
- recognition of Métis self-government, land, and rights
- initiatives to address social, education, health and housing needs, including authority over child welfare

⑨ Aboriginal Rights and Title Claims and the Canadian Courts (1970s to Modern Claims)

⑩ Canadian Prime Minister Apologises on Behalf of the Government of Canada for the Indian Residential Schools Era (2008)

⑪ UN Declaration of the Rights of Indigenous Peoples (2008, endorsed by Canada in 2010)

⑫ Idle No More and the Common Call for Escalating Action around the big 6

↳ ① Repeal Bill C-45 which infringes environmental protections and Aboriginal treaty rights

↳ ② proportional representation and consultation on Indigenous collective rights issues like resource extraction / environmental protection

↳ ③ respect the UN Declaration recognition of the principle of free, prior, and informed consent and respect for Indigenous Peoples right to say no to economic development on their territory

↳ ④ stop the policy of extinguishment of Aboriginal title to land as set out in s.35 of the Canadian Constitution Act and recommended by the Royal Commission on Aboriginal Peoples

↳ ⑤ honour the spirit and intent of the historic treaties and officially repudiate the Doctrine of Discovery and the Doctrine of Terra Nullius as the justification of the seizure of Indigenous lands and wealth

↳ ⑥ actively resist violence against women and hold a national inquiry into missing and murdered Indigenous women and girls

(13) The Truth and Reconciliation Commission of Canada Final Report (15 December 2015)

↳ 94 recommendations have been handed down to begin our journey on the path to reconciliation in Canada