

**Comox First Nation
Forest Agreement
(the "Agreement")**

**Between:
Comox First Nation**

As represented by Chief Ernest Hardy and Council
(the "Comox First Nation")

And

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

(collectively the "Parties")

Whereas:

- Comox has Aboriginal Interests throughout the Comox Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development activities and related economic benefits arising from this development on Provincial Crown Lands within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the Comox on forest resource development activities proposed on Provincial Crown Lands within the Traditional Territory that may lead to the infringement of the Comox First Nation's Aboriginal Interests.
- Comox First Nation has a responsibility to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest resource development activities proposed on Provincial Crown Lands within the Traditional Territory, that may lead to an infringement of Comox First Nation's Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of Comox First Nation's Aboriginal Interests where forest resource development activities are proposed on Provincial Crown Lands within the

Traditional Territory that may lead to the infringement of Comox's Aboriginal Interests.

- The Government of British Columbia and the Comox First Nation wish to resolve issues relating to Provincial Crown Land forest resource development activities where possible through negotiation as opposed to litigation.

Therefore the Parties agree as follows:

1.0 Definitions

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

- 1.1 "Aboriginal Interests" means asserted and/or proven aboriginal rights and/or aboriginal title.
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:
 - 1.2.1 the decision setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
 - 1.2.2 the issuance, consolidation, subdivision or amendment of a Forest Tenure ;
 - 1.2.3 the replacement or extension of a Forest Tenure ;
 - 1.2.4 the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
 - 1.2.5 the conversion of a timber sale licence to another form of Forest Tenure;
 - 1.2.6 the issuance of a special use permit; and,
 - 1.2.7 the establishment of a interpretative forest site, recreation site and/or recreation trail.
 - 1.2.8 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.
 - 1.2.9 the decisions regarding tree farm licence management plan, community forest management plan and/or woodlot licence management plan;

- 1.2.10 the deletion of land from provincial forest; and,
- 1.2.11 the transfer of cuts between timber supply areas.
- 1.3 “Economic Component of Aboriginal Interests” means the financial or commercial aspects of Aboriginal Interests.
- 1.4 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.5 “Licensee” means a holder of a Forest Tenure.
- 1.6 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has an effect in the Traditional Territory.
- 1.7 “Operational Plan” means a forest development plan, forest stewardship plan, a woodlot licence plan, that has an effect in the Traditional Territory.
- 1.8 “Response Period” means a period of up to 60 days from initiation of the processes set out in Sections 4 and 5 of this Agreement, where the initiation date is the date on which Comox is notified of an Administrative Decision or timber supply review process, or in the case of Operation Plan reviews, the date on which Comox receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.
- 1.9 “Traditional Territory” means the Comox asserted traditional territory as shown on bold black on the map attached in Appendix A.

2.0 Purpose

The purposes of this Agreement are to:

- 2.1 Increase the Comox First Nation's opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Comox First Nation through a forest tenure opportunity and/or the sharing of revenues received by the Government of British Columbia from forest resource development activities.

- 2.3 Address the consultation process and to provide an interim workable accommodation as set out in this Agreement, with regard to any infringements of the Comox First Nation's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development activities on Provincial Crown Lands within the Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest resource development activities on Provincial Crown lands within the Comox First Nation's Traditional Territory during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.

3.0 Economic Benefits to Comox

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Sections 4.0 and 5.0 of this Agreement and will provide one or more of the following economic benefits to the Comox First Nation to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any infringements of the Comox First Nation's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development activities on Provincial Crown Lands within the Traditional Territory.

3.1 Forest Tenure

- 3.1.1 After the execution of this Agreement by the Parties, and as soon as sufficient volume of timber is available for disposition to the Comox First Nation as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite the Comox First Nation to apply, under section 47.3 of the *Forest Act*, for a woodlot licence known as the Union Bay woodlot that will have a minimum size of 500 hectares and the maximum size of 644 hectares as shown in Appendix B. The AAC for this woodlot will be determined based on an agreed to AAC analysis once the final area is determined.
- 3.1.2 If during the term of this Agreement a regulation is passed enacting changes to section 44 of the *Forest Act*, which would permit the Comox First Nation to hold two woodlot licences, and as soon as sufficient volume of timber is available for disposition to the Comox First Nation as a result of the implementation of the *Forestry Revitalization*

Act, the Minister may invite the Comox First Nation to apply, under section 47.3 of the *Forest Act*, for a second woodlot licence of up to 537 hectares in size as outlined in bold black on the maps in Appendix C known as the Salmon River woodlot. For the purposes of the agreement, volume calculations will be based on an initial mean annual increment of 4.64 m³/ha/yr for the two blocks comprising the Salmon River woodlot.

- 3.1.3 The Government of British Columbia and Comox First Nation agree that the number of hectares included for the proposed woodlot in 3.1.1 will be targeted for the maximum available once the adjacent MTSL A20486 conversion is determined and that the size of the woodlot offered in 3.1.2 will be adjusted to target an initial estimated allowable annual cut that will not exceed 8,210 m³ per year for the combined woodlots in clause 3.1.1 and 3.1.2.
- 3.1.4 If during the term of this Agreement a regulation is not passed enacting changes to section 44 of the *Forest Act*, which would permit the Comox First Nation to hold two woodlot licences in accordance with Section 3.1.2, then as soon as sufficient volume becomes available for disposition to the Comox First Nation as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite the Comox First Nation to apply, under section 47.3 of the *Forest Act*, for a non-replaceable licence to annually harvest a volume equivalent to the estimated Allowable Annual Cut of the woodlot proposed in 3.1.2 in the Strathcona Timber Supply Area and Tree Farm Licence 39. The maximum volume available from Tree Farm Licence 39 is 1,478 m³/yr or 7,390 over 5 years.
- 3.1.5 For greater certainty, the maximum volume that may be available for the licence referred to in 3.1.4 will be 41,050 cubic metres over 5 years minus five times the initial allowable annual cut of the Union Bay Woodlot proposed in 3.1.1.
- 3.1.6 A woodlot licence entered into as a result of an invitation to apply under Section 3.1.1 or 3.1.2 of this Agreement:
- 3.1.6.1 will be for a term of no longer than 20 years, as determined by the Minister;

- 3.1.6.2 will contain a term that the woodlot will not expire or terminate solely because this Agreement terminates pursuant to Section 8.2.1;
 - 3.1.6.3 will not be transferable or divisible except as provided for in the *Forest Act* and then only to a legal entity in which the Comox First Nation has controlling interest;
 - 3.1.6.4 will contain other terms and conditions required by law, including the condition that Comox First Nation must comply with this Agreement; and,
 - 3.1.6.5 will include other terms and conditions as may be required by the regional manager or district manager.
- 3.1.7 If the term of the licenses entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then that licence will be referenced in and considered to be an economic benefit that addresses consultation and provides an interim workable accommodation in respect of any infringements of the Comox First Nation's Aboriginal Interests in any renewed or subsequent agreement pursuant to Section 10.0 or any other forestry interim measures agreement as referenced in Section 3.1.9.1.
- 3.1.8 If no further agreement is entered into between the Comox First Nation and the Government of British Columbia, the Government of British Columbia will consider the woodlot licence(s) to be an on-going economic benefit that will be taken into consideration during any consultation and accommodation in respect of any future infringement of Comox First Nation's Aboriginal Interests.
- 3.1.9 Nothing in this Agreement excludes Comox First Nation from accessing other forestry economic opportunities or benefits, which may be available to them from time to time.
- 3.1.10 The Minister may invite Comox First Nation to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement and subject to:

3.1.10.1 The Government of British Columbia and Comox First Nation entering into another interim measures agreement providing for an invitation to apply for a licence, and

3.1.10.2 The Minister determining that there is sufficient volume of timber available for disposition to the Comox First Nation.

3.2 Revenue Sharing

3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Comox First Nation approximately \$136,837.00 annually for purposes described in Section 3.0.

3.2.2 The funding commitment set out in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.

3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e. $\frac{1}{4}$) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.

3.2.4 Upon signing of this Agreement, the Comox First Nation will be paid the full revenues for the quarter in which the Agreement is signed with subsequent payments being made at the end of each quarter.

3.2.5 Comox will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.

3.2.6 Upon request, Comox will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

4.0 Consultation and Accommodation Regarding Operational Plans

4.1 The Government of British Columbia agrees to consult with the Comox First Nation on Operational Plans that may potentially infringe Comox's Aboriginal Interests within the Traditional Territory, except for any economic component of those interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.

- 4.2 During the term of this Agreement, the Comox First Nation agrees that the Government of British Columbia has fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of the Comox First Nation's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices that may be carried out under an Operational Plan in the Traditional Territory.
- 4.3 The Comox First Nation agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest resource development activities on Provincial Crown Lands within the Comox First Nation Asserted Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, the Comox First Nation will, within the Response Period, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Traditional Territory, other than the economic component of those Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.5 Upon receiving the response from Comox as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Comox any site specific operational impacts on Comox's Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Traditional Territory, other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.6 If no response is received from Comox or from the Hamatla Treaty Society acting on behalf of the Comox First Nation within the Response Period, then the Government of British Columbia may conclude that the Comox First Nation does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Comox First Nation, whether received directly or through a Licensee, and will consider whether concerns identified by Comox first nation have been addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to the Comox First Nation, on an annual basis, a list of all proposed Administrative Decisions anticipated within the year that will have an effect on Provincial Crown Lands within the Comox First Nation Traditional Territory, and either upon the request of the Comox First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to the Comox First Nation, an updated list.
- 5.2 The Government of British Columbia will meet with the Comox First Nation at mutually agreed times throughout the year to provide an opportunity for the Comox First Nation to make known to representatives of the Government of British Columbia Comox First Nation concerns and comments relative to the effect of the Administrative Decision(s) on Comox First Nation Aboriginal Interests within the Traditional Territory.
- 5.3 The Government of British Columbia will include the Comox First Nation in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Strathcona Timber Supply Area, Arrowsmith Timber Supply Area and Tree Farm Licences 39, 45 and 47.
- 5.4 The Comox First Nation agrees to fully participate, within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Comox First Nation Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 5.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 5.6 If after considering the concerns and comments of the Comox First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of the Comox First Nation's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.

- 5.7 The Government of British Columbia will provide a response to the Comox First Nation as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 The Comox First Nation agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of the Comox First Nation's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.
- 5.9 The Comox First Nation further agrees that, in consideration of Sections 5.1 to 5.7 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of Comox First Nation's Aboriginal Interests.

6.0 Stability for Land and Resource Use

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

7.0 Dispute Resolution

- 7.1 Prior to taking any dispute resolution action the Comox First Nation will provide notice to the Government of British Columbia of any alleged contravention's of this Agreement.
- 7.2 If a dispute arises between the Government of British Columbia and the Comox First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.

- 7.3 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and the Comox First Nation.
- 7.4 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

8.0 Term

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or,
 - 8.2.2 the coming into effect of a treaty between the Parties;
or,
 - 8.2.3 the mutual agreement of the Parties; or,
 - 8.2.4 the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 9.0; or,
 - 8.2.5 upon written notice of withdrawal from this Agreement by either Party, which will take effect 90 days following receipt of the notice by the other Party.
- 8.3 If this Agreement is terminated in accordance with Section 8.2, then the Minister may terminate the economic benefits under this Agreement.

9.0 Suspension or Cancellation of Economic Benefits by the Minister

- 9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that the Comox First Nation is not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to Comox First Nation of any alleged contravention of this Agreement that may lead Comox First Nation being determined to not be in compliance with this Agreement.

9.3 If, during the term of this Agreement, the Comox First Nation challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:

9.3.1 provide adequate consultation, to substantially address the Comox First Nation's concerns and to provide an interim workable accommodation in respect of any potential infringements of Comox First Nation's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development activities within the Traditional Territory, or

9.3.2 substantially address the economic component of the Comox First Nations's Aboriginal Interests with regard to Operational Decisions relating to forest resource development activities within Comox First Nation's Asserted Traditional Territory,

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

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

10.0 Renewal of the Agreement

10.1 Prior to this Agreement terminating in accordance with Section 8.2, and subject to Section 10.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and the Comox First Nation will seek the necessary authorities and approvals to renew this Agreement.

10.2 Any subsequent forestry agreement between the Government of British Columbia and the Comox First Nation may provide for an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to

available appropriations, as an interim measure and the Comox First Nation has agreed to accept as an interim measure for the term of this Agreement.

11.0 Amendment of Agreement

- 11.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

12.0 Entire Agreement

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

13.0 Notice

- 13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 13.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 13.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia

Deputy Minister
Ministry of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-3656
Facsimile (250) 953-3687

Comox First Nation

Chief Ernest Hardy and Council
Comox Indian Band
3320 Comox Road,
Courtenay, B.C.
V9N 3P8

Telephone: (250) 339-4545
Facsimile: (250) 339-7053

14.0 Miscellaneous


- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.

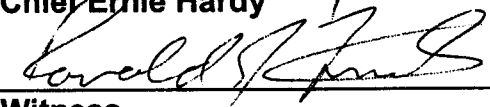
- 14.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.
- 14.3 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.4 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 14.5 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 14.6 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.7 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 14.8 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of:

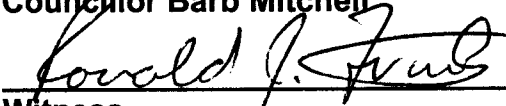
Comox First Nation

Date: June 30th/2005

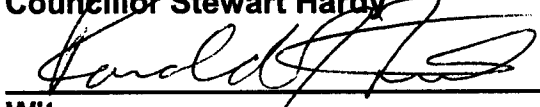

Chief Ernie Hardy


Witness


Councillor Barb Mitchell


Witness



Councillor Stewart Hardy


Witness

Signed on behalf of:

Government of British Columbia

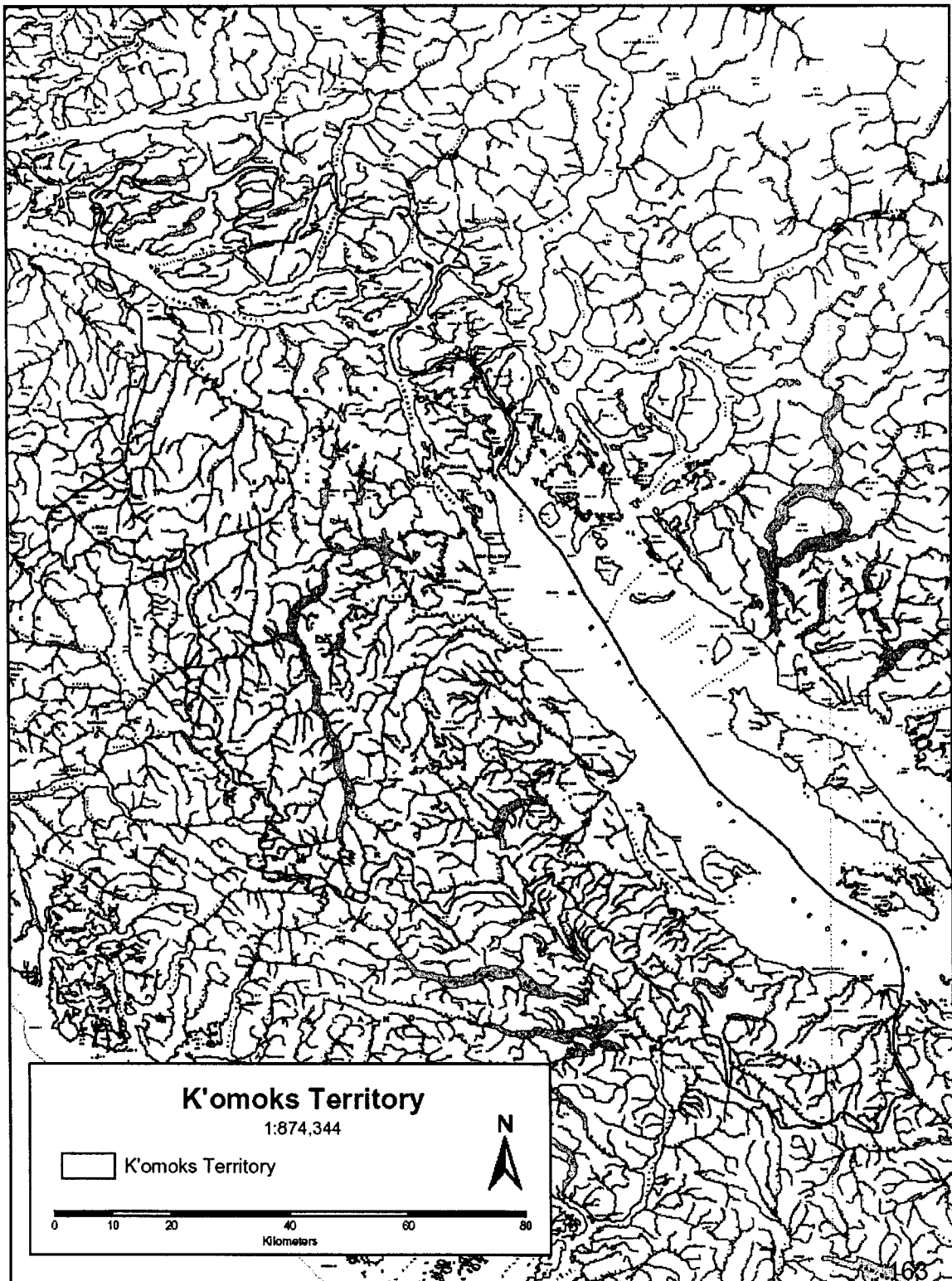
Date: Aug. 13/05



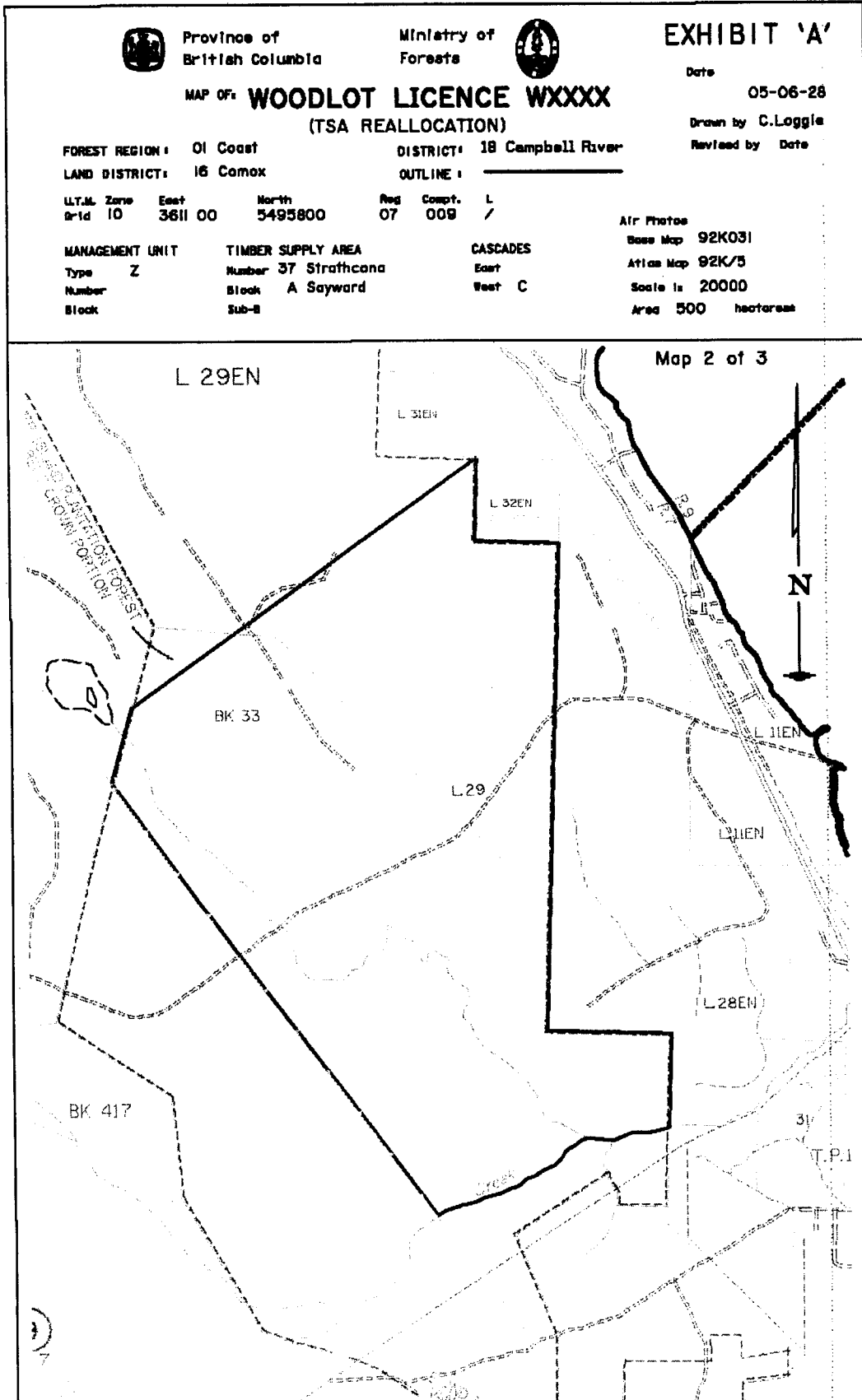
R.T. (Rich) Coleman
Minister of Forests and Range and Minister Responsible for Housing


Witness

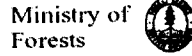
**APPENDIX A
COMOX FIRST NATION TRADITIONAL TERRITORY**



APPENDIX B UNION BAY WOODLOT (not to scale)



APPENDIX C SAYWARD AREA WOODLOT (not to scale)



Map of: **WOODLOT LICENCE WXXX
TSA REALLOCATION**

FOREST REGION: RCO DISTRICT: Campbell River
LAND DISTRICT: Sayward OUTLINE:
UTM ZONE East North Region: Comp: L:

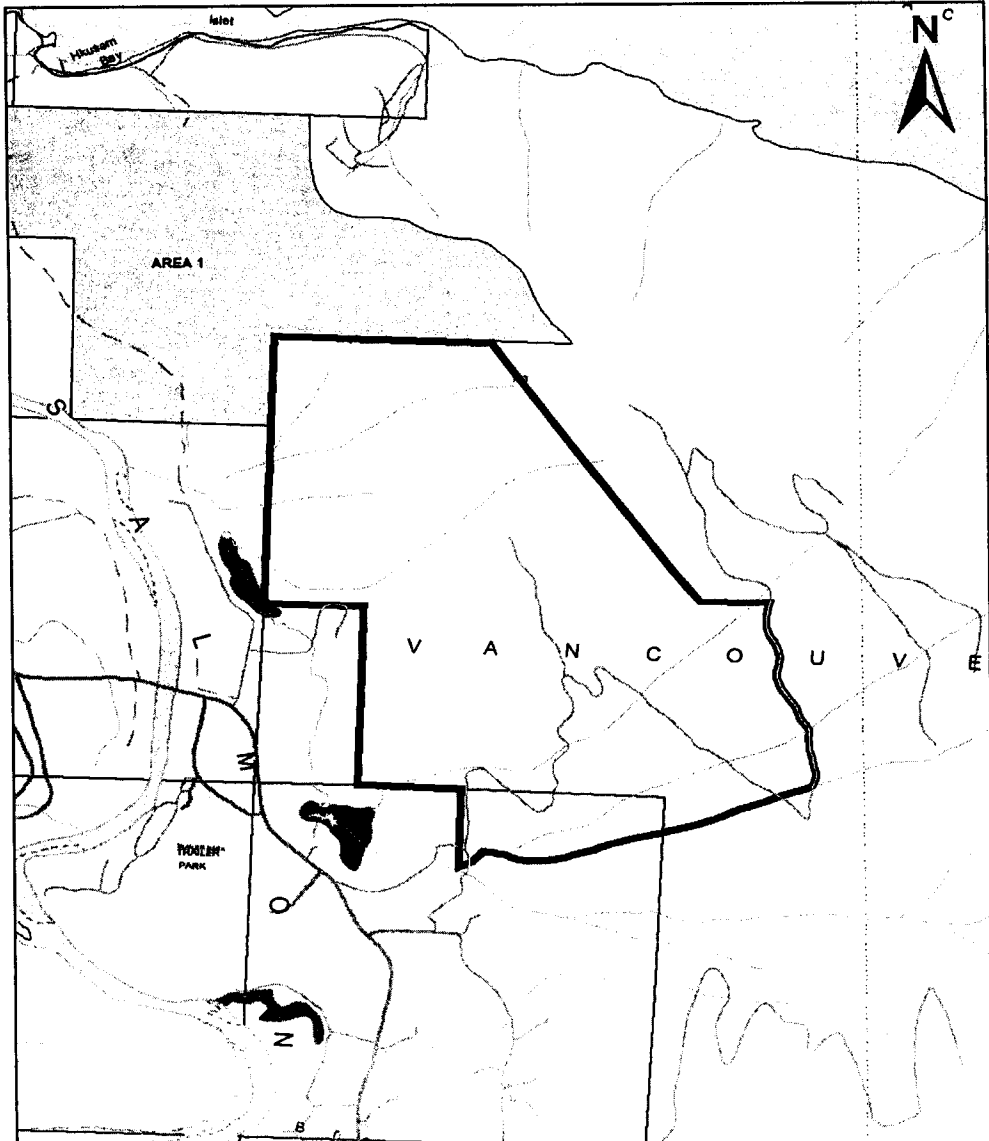
EXHIBIT 'A'

DATE: 05-06-28
Drawn By: C.Loggie
Revision Date:

MANAGEMENT UNIT TIMBER SUPPLY AREA CASCADES
Type: Z 37A Strathcona East:
Number: West: C
Block:

Scale 1: 20,000
Area: 320 ha

Map 3 of 3



APPENDIX C - Continued SAYWARD AREA WOODLOT (not to scale)

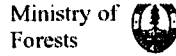


EXHIBIT 'A'

Map of: **WOODLOT LICENCE WXXXX
TSA REALLOCATION**

DATE: 05-06-28

Drawn By: C.Loggie

Revision Date:

FOREST REGION: RCO DISTRICT: Campbell River
LAND DISTRICT: Sayward OUTLINE:
UTM ZONE East North Region: Comp: L:

MANAGEMENT UNIT TIMBER SUPPLY AREA CASCADES
Type: Z 37A Strathcona East:
Number: West: C
Block:

Scale 1: 20,000
Area: 217 ha
Map 1 of 3

