

**Leq'á:mel First Nation
Forest Agreement
(the "Agreement")**

Between:

Leq'á:mel First Nation
As represented by Chief Susan McKamey and Council
(the "Leq'á:mel")

And

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

(collectively, the "Parties")

Whereas:

- The Leq'á:mel has Aboriginal Interests within its Traditional Territory.
- Leq'á:mel has developed a business vision and strategy to establish a sustainable, vibrant and integrated forest business and operations in and around Traditional Territory.
- The Government of British Columbia recognizes that the Leq'á:mel is pursuing its forestry vision.
- The Leq'á:mel wishes to participate in any consultation initiated by the Government of British Columbia in relation to forest resource development activities proposed within the Leq'á:mel Traditional Territory that may lead to an infringement of Aboriginal Interests.
- The Parties have a mutual interest in seeking workable interim accommodation of the Leq'á:mel Aboriginal Interests where proposed forest development activities within the Traditional Territory may lead to the infringement of Aboriginal Interests.
- The Parties wish to resolve issues relating to forest resource development where possible through negotiation.

Therefore the Parties wish to enter into this interim measures agreement in relation to forest resource development and related economic benefits arising from this development within the Traditional Territory and agree as follows:

1.0 Definitions

For the purpose of this agreement, the following definitions apply:

- 1.1 “Aboriginal Interests” means asserted aboriginal rights and/or aboriginal title.
- 1.2 “Allowable Annual Cut” (AAC) means the allowable rate of timber harvest in a specified area of land.
- 1.3 “Administrative Decision” means one or more of the following decisions made by a person under forestry legislation:
 - the decision setting or varying the allowable annual cut (AAC) for a timber supply area or a Forest Tenure;
 - the issuance, consolidation, subdivision, amendment, or boundary adjustment of a Forest Tenure where these events may have an impact on Aboriginal Interests;
 - the replacement or extension adjustment of a Forest Tenure;
 - the disposition of volumes of timber arising from undercut decisions on a Forest Tenure
 - the issuance of a special use permit;
 - the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
 - the decision regarding a tree farm licence management plan, community forest management plan and/or woodlot licence management plan;
 - the deletion of land from provincial forest; and
 - the transfer of AAC between TSAs.
- 1.4 “Consult” means the processes as set out in Sections 4 and 5 of this Agreement.
- 1.5 “Forest Tenure” means an agreement granting rights to harvest crown timber under the *Forest Act*.
- 1.6 “Licensee” means a holder of a Forest Tenure.
- 1.7 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan.
- 1.8 “Operational Plan” means a forest development plan, a forest stewardship plan or a woodlot licence plan, which has an effect within the Traditional Territory.

- 1.9 “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 Nation is notified of an Administrative Decision or timber supply review process, or in the case of Operational Plan reviews, the date on which Leq’á: mel First Nation 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.
- 1.10 “Traditional Territory” means the Leq’á: mel First Nation 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 opportunity to participate in the forest sector and thus to facilitate the business vision and strategy of establishing a forestry business and operations in and around Leq’á:mel Traditional Territory.
- 2.2 Provide economic benefits to the Leq’á:mel through Forest Tenure opportunities and the sharing of revenues received by the Government of British Columbia from forest resource development.
- 2.3 Provide an adequate consultation process and interim workable accommodation(s) during the term of this Agreement, with regard to any potential infringements of the Leq’á:mel’s Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory.
- 2.4 Provide a period of stability to forest resource development on Crown lands within the Leq’á:mel Traditional Territory, during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.

3.0 Economic Benefits to the Leq’á:mel First Nation .

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in sections 4 and 5 of this Agreement and will provide the following economic benefits to the Leq’á:mel.

3.1 **Non-replaceable Licence**

After the execution of this Agreement by the Parties and after the Minister has determined that sufficient volume of timber is available for disposition to the Leq'á:mel as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite the Leq'á:mel to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "licence") for approximately 9,112 cubic meters annually in the Fraser Timber Supply Area. For greater certainty, the maximum volume that may be available under the licence will be up to 45,560 cubic meters over 5 years.

3.2 **Invitation for a Licence**

3.2.1 An invitation to apply for a licence (individually, an "Invitation") and any licence entered into as a result of an Invitation will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.

3.2.2 An Invitation for a licence:

3.2.2.1 will be subject to a condition that prior to the Leq'á:mel making an application for the licence, the Leq'á:mel must contact and work together with Ministry of Forests and Range personnel to assist in identifying the location of an operating area for the licence, which to the extent that it is operationally feasible will be within the Traditional Territory and, for greater certainty, it is understood that the Parties will agree to the operating area prior to the Leq'á:mel making application for the licence; and

3.2.2.2 will contain terms and conditions required by the Minister in accordance with applicable legislation.

3.2.3 A licence entered into as a result of an Invitation will:

3.2.3.1 be for a term of no longer than 5 years, as determined by the Minister;

3.2.3.2 be issued to the Leq'á:mel;

3.2.3.3 contain a term that the Leq'á:mel may not dispose of the licence except in accordance with Section 54(4) of the *Forest Act*;

3.2.3.4 not be replaceable as defined in the *Forest Act*;

- 3.2.3.5 contain other terms and conditions required by law, including the condition that the Leq'á:mel must comply with this Agreement;
- 3.2.3.6 contain a term that the licence will not expire or terminate solely because this Agreement expires or terminates; and
- 3.2.3.7 include other terms and conditions as may be required by the regional manager or the district manager, as the case may be.

the Minister may invite the Leq'á:mel to apply for a subsequent forest licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.3 **Revenue Sharing**

- 3.3.1 During the term of this Agreement, the Government of British Columbia will pay to the Leq'á:mel the amount of **\$151,874** annually.
- 3.3.2 The funding commitment set out in section 3.3.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.3.3 For the purposes of determining amounts for partial years, one-fourth (i.e. ¼) of the annual amount will be used for each British Columbia government fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.3.4 Upon signing of this Agreement, the Leq'á:mel 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.
- 3.3.5 The Leq'á:mel will maintain financial records and prepare financial statements in accordance with Canadian generally accepted accounting principles for each year of this Agreement.
- 3.3.6 Upon request, the Leq'á:mel will provide a copy of an audit extract to the Government of British Columbia which will verify and properly account for the receipt and expenditure of the revenue sharing funds provided under section 3.3.1 of this Agreement.

4.0 Consultation and Accommodation Regarding Operational Plans

- 4.1 The Government of British Columbia agrees to consult in a timely manner with the Leq'á:mel, as set out in this section 4, on Operational Plans that may potentially infringe Leq'a:mel's Aboriginal Interests within the Traditional Territory.
- 4.2 The Leq'á:mel, agrees to fully participate in a timely manner, as set out in this section 4, in the review of all Operational Plans dealing with forest development within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.3 The purpose of the consultation under this section 4 is for the Government of British Columbia to consult and to seek interim workable accommodations with the Leq'á:mel regarding Operational Decisions that may potentially infringe their Aboriginal Interests, other than the economic component of such Aboriginal Interests.
- 4.4 During the term of this Agreement, and subject to its terms of section 3 being met and adherence by the Government of British Columbia to the consultation process in this section 4, the Leq'á:mel First Nation agree that the Government of British Columbia will have fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of the Leq'á:mel's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices development activities that may be carried out under an Operational Plan in the Leq'á:mel's Traditional Territory.
- 4.5 In reviewing and responding to an Operational Plan submitted to them, the Leq'á:mel will, within the Response Period, or such longer period as the Parties may agree, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential non-economic impacts to the Leq'á:mel's Aboriginal Interests that may result from the forest development activities within the Traditional Territory.
- 4.6 Upon receiving the response from the Leq'á:mel as specified in section 4.5 above, the Government of British Columbia will discuss and attempt to resolve with the Leq'á:mel any non-economic impacts on the Leq'á:mel's Aboriginal Interests that may occur as a result of proposed forest development activities within the Traditional Territory.

- 4.7 If no response is received from Leq'á:mel within the Response Period, or such longer period that the Parties may have agreed to, then the Government of British Columbia may assume that the Leq'á:mel 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.
- 4.8 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Leq'á:mel, and will consider whether concerns identified by the Leq'á:mel have been addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to the Leq'á:mel on an annual basis a list of all proposed Administrative Decisions anticipated within the upcoming calendar year that will have an effect in the Traditional Territory, and either upon the request of the Leq'á:mel or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Leq'á:mel, an updated list.
- 5.2 The Government of British Columbia will meet with the Leq'á:mel at mutually agreed times throughout the year to provide an opportunity for the Leq'á:mel to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.
- 5.3 The Government of British Columbia will include the Leq'á:mel in the public Timber Supply Review processes that will lead to AAC determinations made pursuant to section 8 of the *Forest Act* for the Fraser Timber Supply Area.
- 5.4 The Leq'á:mel agrees to participate, within the Response Period, or such longer period as the Parties may agree, in the public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Traditional Territory potentially affected by AAC determinations to be made pursuant to section 8 of the *Forest Act*.
- 5.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.

- 5.6 If after considering the concerns and comments of the Leq'á:mel, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of the Leq'á:mel'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 accommodate the concerns and comments in the Administrative Decision or, alternatively, in relevant Operational Plans or Operational Decisions in accordance with the consultation process outlined in section 4.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a written response to the Leq'á:mel as to how the concerns of the Leq'á:mel raised in section 5.2 have been addressed.
- 5.8 During the term of this Agreement, and subject to its terms being met and adherence by the Government of British Columbia to the consultation processes in sections 4 and 5 of this Agreement, Leq'á:mel agree that the Government of British Columbia will have fulfilled its duties to consult and to seek interim workable accommodation with respect to any potential infringements of the Leq'á:mel's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.

6.0 Stability for Land and Resource Use

- 6.1 The Leq'á:mel will respond quickly 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 any Leq'á:mel First Nation members with provincially authorized activities related to forestry resource development, including timber harvesting or other forestry economic activities, occur within the Traditional Territory.

7.0 Dispute Resolution

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

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 effective date of this Agreement;
 - 8.2.2 the coming into effect of a treaty that includes the Parties;
 - 8.2.3 the mutual agreement of the Parties;
 - 8.2.4 written notice of withdrawal to the Agreement by either Party which will take effect 90 days following receipt of the notice by the other Party; or
 - 8.2.5 the date on which economic benefits cancelled under section 9 below.
- 8.3 If this Agreement is terminated in accordance with section 8.2.2, section 8.2.3 or section 8.2.4, the Minister may terminate the economic benefits under this Agreement.

9.0 Suspension or Cancellation of Economic Benefits by the Minister

- 9.1 In accordance with this section 9, the Minister or a person authorized by the Minister may suspend, adjust or cancel revenue sharing payments and may suspend or cancel the licence(s) entered into as a result of an Invitation under this Agreement, if the Minister or a person authorized by the Minister determines that the Leq'á:mel is not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in section 9.1, the Minister or his delegate will provide written notice to the Leq'á:mel of any alleged contravention of this Agreement by the Leq'á:mel.
- 9.3 If, during the term of this Agreement, the Leq'á:mel 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 benefit's 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 substantially address the economic component of the Leq'á:mel's Aboriginal Interests with regard to Operational Decisions relating to forest resource development within the Traditional Territory, or
- 9.3.2 substantially address the Leq'á:mel's concerns and to provide an interim workable accommodation in respect of any potential infringements of the Leq'á:mel's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory,

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend, adjust 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 will be terminated.
- 9.5 For greater certainty, if either Party terminates this Agreement, then any money paid to the Leq'á:mel prior to the date of such termination is not repayable by Leq'á:mel to the Government of British Columbia.

10.0 Renewal of the Agreement

- 10.1 Prior to this Agreement terminating in accordance with section 8.2, if the terms and conditions of this Agreement are being met, the Government of British Columbia and the Leq'á:mel 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 Leq'á:mel 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, subject to the availability of appropriations by the Government of British Columbia and/or the availability of sufficient volume of timber.

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

12.0 Entire Agreement

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

13.0 Notice

13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.

13.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.

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

British Columbia

Deputy Minister
Minister of Forest and Range
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-4809
Facsimile (250) 387-7065

Leq'á:mel First Nation

Chief Susan McKamey and Council
43101 Leq'á:mel Way
Deroche, British Columbia V0M 1G0
Telephone: (604) 826-7976
Facsimile: (604) 826-0362

14.0 Miscellaneous

- 14.1 The parties agree that this Agreement is an agreement respecting interim measures or economic measures for purposes of section 47.3 of the *Forest Act*.
- 14.2 Nothing in this Agreement will 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.
- 14.3 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.
- 14.4 Subject to section 9.3, this Agreement will not limit the positions that a Party may take in other negotiations or court actions.
- 14.5 This Agreement will 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 will be interpreted to authorize any infringement that may have occurred prior to this Agreement or that may occur following the termination of this Agreement
- 14.6 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.
- 14.7 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.8 The applicable laws of British Columbia and Canada will govern this Agreement.
- 14.9 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.

14.10 The Government of British Columbia will meet with Leq'á:mel from time to time to explore viable forestry business opportunities that may be available to the Leq'á:mel. The Parties also acknowledge and agree that this Agreement does not exclude the Leq'á:mel from accessing other forestry economic opportunities or benefits which may be available from time to time.

Signed on behalf of:

The Leq'á:mel First Nation:




Chief Susan McKamey




Witness

Date: October 6, 2005 .

The Government of British Columbia:



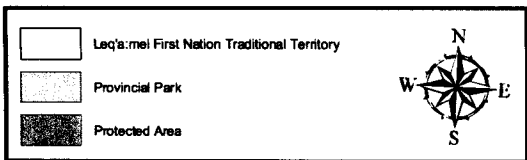
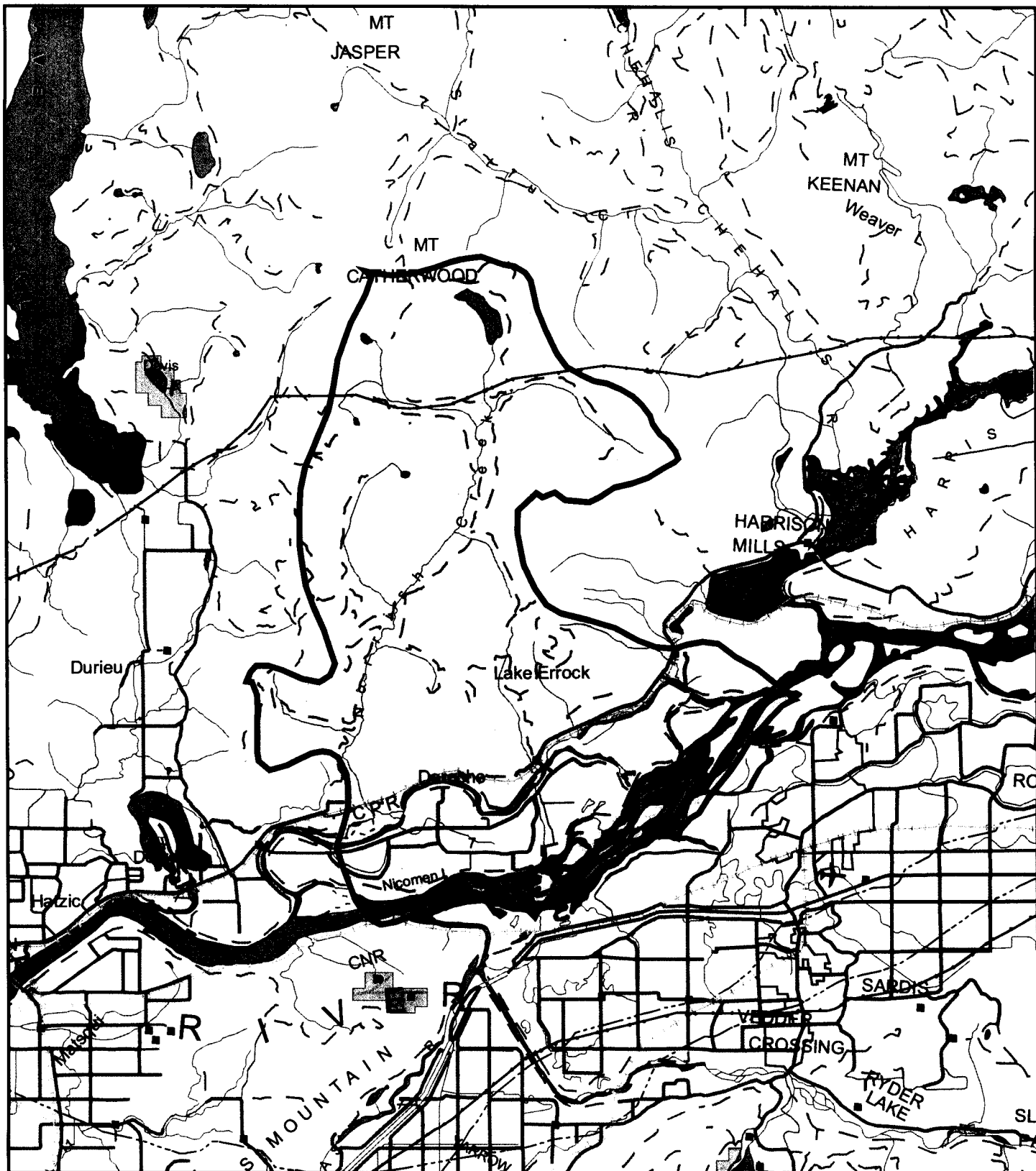
Rich Coleman
Minister of Forest and Range
(and Minister Responsible for Housing)



Witness

Date: Nov 3/05

Leq'a:mel First Nation Traditional Territory - Appendix A



Produced By: Chilliwack Forest District
 Date: September 29, 2005
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