

Penelakut First Nation Forest Agreement
(the "Agreement")

Between:

Penelakut First Nation
As represented by the Chief Councillor Earl Jack
(the "Penelakut First Nation")

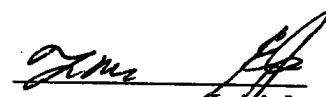
And

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

(collectively the "Parties")

Whereas:

- Penelakut First Nation has Aboriginal Interests within their Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development and related economic benefits arising from this development within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and/or seek interim workable accommodation with Penelakut First Nation on forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of Penelakut First Nation's Aboriginal Interests.
- Penelakut First Nation agree to participate in consultation initiated by the Government of British Columbia or the holder of a Forest Tenure in relation to forest resource development activities proposed within the Traditional


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Territory, that may lead to the potential infringement of Penelakut First Nation's Aboriginal Interests.

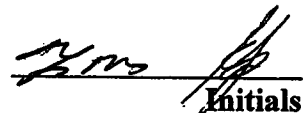

- The Parties have an interest in seeking interim workable accommodation of Penelakut First Nation's Aboriginal Interests where forest development activities are proposed with the Traditional Territory that may lead to the potential infringement of Penelakut First Nation's Aboriginal Interests.
- The Parties wish to resolve issues related to 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 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 decisions setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
 - 1.2.2 the replacement or extension of a Forest Tenure;
 - 1.2.3 the disposition of volumes arising from undercut decisions on a Forest Tenure;
 - 1.2.4 the issuance, consolidation, subdivision, amendment or adjustment of boundary change of a Forest Tenure as defined as a major licence under the *Forest Act* and including woodlot licence, and community forest agreement and range tenure where such changes may have an impact on Aboriginal Interests;
 - 1.2.5 the conversion of a timber sale licence to another form of Forest Tenure;



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- 1.2.6 the issuance of a special use permit;
- 1.2.7 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
- 1.2.8 decisions regarding a tree farm licence management plan, community forest management plan and/or woodlot licence management plan;
- 1.2.9 deletion of land from provincial forest; and,
- 1.2.10 transfer of cuts between timber supply areas.
- 1.3 "Forest Tenure" means an agreement granting rights to harvest crown timber as defined in the *Forest Act*.
- 1.4 "Response Period" means a period of 60 days from initiation of the processes set out in Sections 4.0 and 5.0 of this Agreement, where the initiation date is the date on which Penelakut First Nation is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which Penelakut 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.
- 1.5 "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 a forest development plan, a forest stewardship plan, or a woodlot licence plan that has an effect in the Traditional Territory.
- 1.7 "Operational Plan" means a forest development plan, a forest stewardship plan, or a woodlot licence plan that has an effect in the Traditional Territory.
- 1.8 "Traditional Territory" means Penelakut First Nation's asserted traditional territory as shown on bold black on the map attached in Appendix A.



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2.0 Purpose:

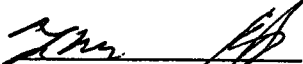
- 2.1 The purposes of this Agreement are to:
- 2.1.1 increase Penelakut First Nation's participation in the forest sector;
 - 2.1.2 provide economic benefits to Penelakut First Nation by directly inviting Penelakut First Nation to apply for a Forest Tenure and by sharing of revenues received by the Government of British Columbia from forest resource development;
 - 2.1.3 address consultation requirements and provide a interim workable accommodation in respect of the economic component of Penelakut First Nation's Aboriginal Interests with regard to any infringements of those Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory during the term of this Agreement; and,
 - 2.1.4 provide a period of stability to forest resource development on Crown lands within the Traditional Territory during the term of this Agreement, while longer-term interests are addressed through other processes.

3.0 Economic Benefits to Penelakut First Nation

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 the following economic benefits to Penelakut First Nation to address consultation and to provide an interim workable accommodation, as set out in the Agreement in respect of any infringements of Penelakut First Nation's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory.

3.1 Forest Tenure

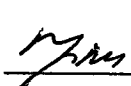
- 3.1.1 After the execution of this Agreement by the Parties, and after the Minister has determined that sufficient volume of timber is available for disposition to Penelakut First Nation



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as a result of the implementation of *the Forestry Revitalization Act*, the Minister will invite the Penelakut First Nation to apply under section 47.3 of the *Forest Act* for a Woodlot Licence of up to approximately 800 hectares in size as proposed and outlined in black bold on the map attached as Appendix B.

- 3.1.2 A Woodlot Licence entered into as a result of an invitation to apply under Section 3.1.1 of this Agreement:
- 3.1.2.1 Will be for a term of no longer than 20 years, as determined by the Minister;
 - 3.1.2.2 Will contain a term that the Woodlot Licence will not expire or terminate solely because this Agreement terminates pursuant to Section 8.2.1;
 - 3.1.2.3 Will include a term that Penelakut First Nation may not dispose of the Woodlot Licence except in accordance with the *Forest Act*;
 - 3.1.2.4 Will contain other terms and conditions required by law, including the condition that Penelakut First Nation must comply with this Agreement; and,
 - 3.1.2.5 Will include other terms and conditions as may be required by the regional or district manager.
- 3.1.3 If the term of the licence 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 and considered to be an economic benefit in any renewed or subsequent agreement.
- 3.1.4 If no further agreement is entered into between Penelakut First Nation and the Government of British Columbia, the Government of British Columbia will consider the woodlot licence 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 Penelakut First Nation's Aboriginal Interests.
- 3.1.5 If the intended holder of the licence is a legal entity other than Penelakut First Nation, the Penelakut First Nation must supply the Government of British Columbia with the supporting documentation stating that the intended holder has been validly appointed by the Penelakut First Nation as



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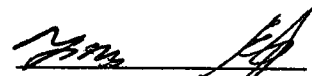
its representative and that the Penelakut First Nation holds the controlling interest in that legal entity.

3.2 Revenue Sharing

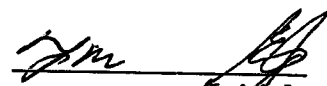
- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Penelakut First Nation approximately \$384,947 annually for purposes described in Section 3.0.
- 3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount set out in Section 3.2.1 will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.3 The funding commitment in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.4 Upon signing of this Agreement, Penelakut 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 Penelakut First Nation 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, Penelakut First Nation will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

4.0 Consultation and Accommodation Respecting Operational Plans

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


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- 4.2 During the term of this Agreement, Penelakut First Nation agree that the Government of British Columbia has fulfilled its duties to consult and seek interim workable accommodation with respect to the economic component of potential infringements of Penelakut 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 the Operational Plan in the Traditional Territory.
- 4.3 Penelakut First Nation agrees to fully participate, as set out in this section, in the review of all Operational Plans within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, Penelakut 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 result from forestry development activities within the Traditional Territory, other than the economic component of those Interests addressed under Section 3.0.
- 4.5 Upon receiving the response from Penelakut First Nation as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Penelakut First Nation any site specific operational impacts on Penelakut First Nation's Aboriginal Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for in Section 3.0.
- 4.6 If no response is received from Penelakut First Nation within the Response Period, then the Government of British Columbia may conclude that Penelakut 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 Penelakut First Nation, whether received directly or through a Licensee, and will consider whether concerns identified by Penelakut First Nation have been addressed.


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5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to Penelakut First Nation on an annual basis a list of all proposed Administrative Decisions anticipated within the year, and either upon the request of Penelakut First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Penelakut First Nation an updated list.
- 5.2 The Government of British Columbia will meet with Penelakut First Nation at mutually agreed times throughout the year to provide an opportunity for Penelakut First Nation 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 Penelakut 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 Arrowsmith Timber Supply Area.
- 5.4 Penelakut 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 or proven aboriginal rights 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 Penelakut First Nation, the statutory decision-maker is of the opinion that an Administrative Decision creates a potential infringement of Penelakut 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 either address the comments and concerns 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 Penelakut First Nation as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 Penelakut First Nation agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to seek interim workable accommodation with respect to the economic component of potential infringements of Penelakut 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 Penelakut 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 Penelakut First Nation's Aboriginal Interests.

6.0 Stability within Penelakut First Nation's Traditional Territory

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

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and Penelakut First Nation regarding the interpretation of a provision of


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this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.

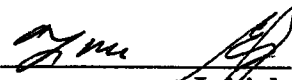
- 7.2 If the Parties are unable to resolve the interpretation difference at the appropriate level, the issue will be raised to more senior levels of the Government of British Columbia and Penelakut First Nation.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution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

8.0 Term

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - 8.2.1 five years from the date this Agreement is executed; or
 - 8.2.2 the coming into effect of a treaty; or,
 - 8.2.3 the mutual agreement of the Parties; or
 - 8.2.4 the Government of British Columbia cancels economic benefits under this Agreement pursuant to Section 9.0.
- 8.3 If this Agreement is terminated in accordance with Sections 8.2.2 or 8.2.3, 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 Forest Tenure entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that Penelakut First Nation is not in compliance with this Agreement.


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- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to Penelakut First Nation of any alleged contravention of this Agreement that may lead Penelakut First Nation to not being in compliance with this Agreement.
- 9.3 If during the term of this Agreement, Penelakut First Nation challenges or supports a challenge to, an Administrative Decision and/or Operational Plan, by way of legal proceedings or otherwise on the basis that the economic benefits set out in Section 3.0, and the consultation/accommodation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:
- 9.3.1 substantially address Penelakut First Nation's concerns and to provide a interim workable accommodation in respect of any potential infringements of Penelakut First Nation's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory; or
 - 9.3.2 substantially address the economic component of Penelakut First Nation's Aboriginal Interests with regard to Operational Plans relating to forest resource development within the Traditional Territory;
- then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.
- 9.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

10.0 Renewal of the Agreement

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



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- 10.2 Any subsequent forestry agreement between the Government of British Columbia and Penelakut First Nation may provide for an opportunity to acquire a Forest Tenure, and/or other economic benefits and other terms and conditions that are agreed to by the Parties.
- 10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and Penelakut 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

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.


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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 and Range
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-4809
Facsimile (250) 953-3687

Penelakut First Nation

Chief Councillor: Earl Jack
PO Box 360
Chemainus, BC V0R 1K0
Telephone: (250) 246-2321
Facsimile: (250) 246-2725

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 Sections 9.3, 3.1.3, and 3.1.4, 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



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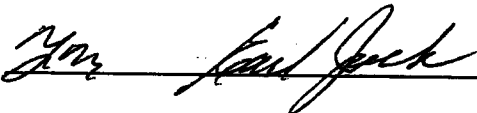
authorize any infringement that may occur following the termination of this Agreement.

- 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:

Penelakut First Nation

Date: September 30, 2005



Chief Councillor Earl Jack




Witness

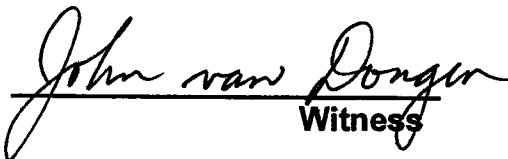
Signed on behalf of:

Government of British Columbia

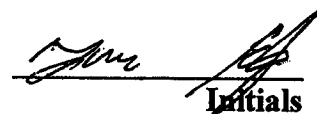
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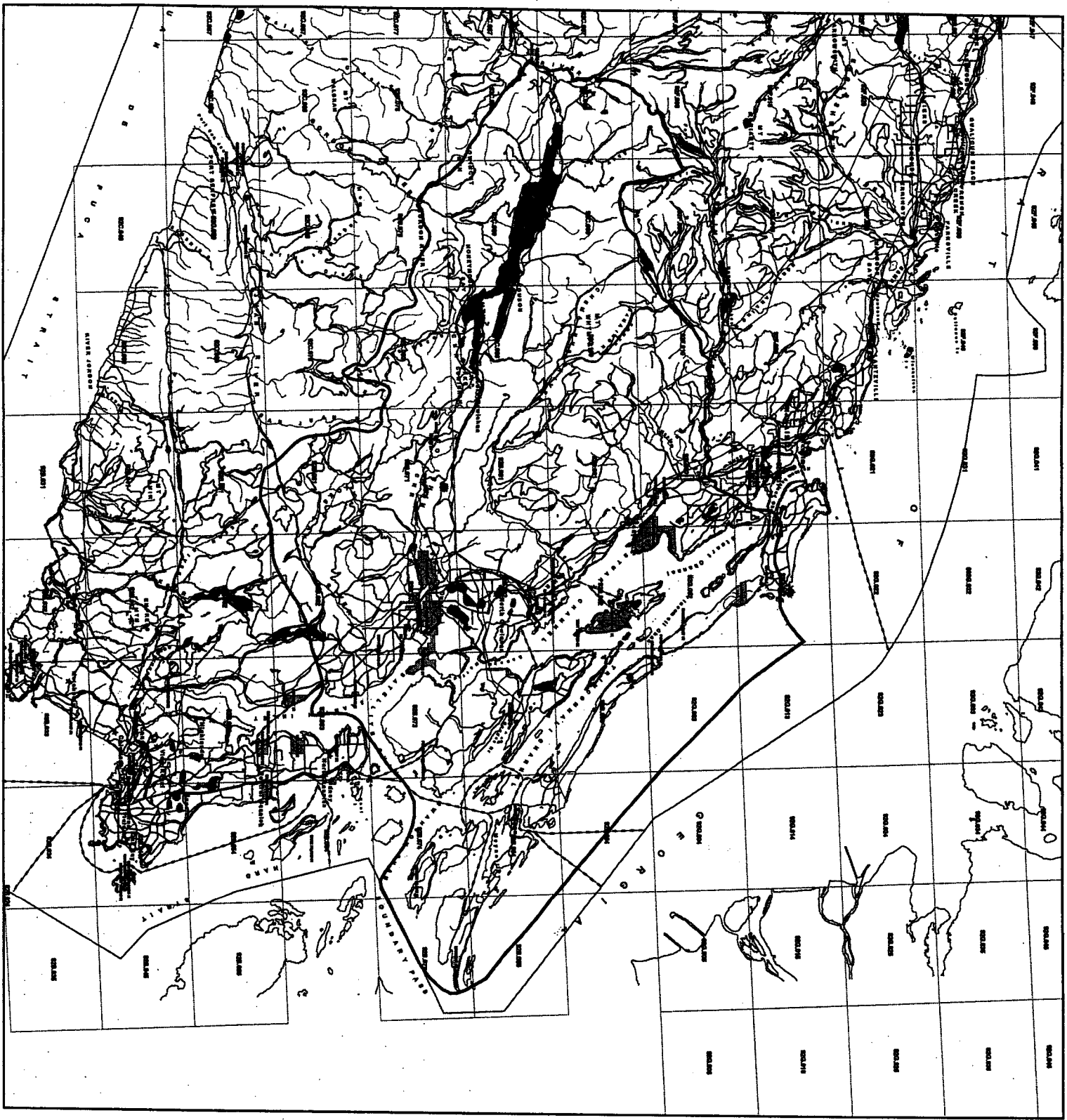
**Rich Coleman
Minister of Forests and Range and
Minister Responsible for Housing**



Witness



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**PENIKESE ISLAND NATION
TRADITIONAL TERRITORIES,
HOF SOUTH ISLAND FOREST DISTRICT
FOREST AND RANGE AGREEMENT MAP**

Map last updated August 31st, 2014
Source: 1 Penikese Island Nation Representative



Legend

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- White box with black border: [Symbol description]
- White box with black border and diagonal lines: [Symbol description]



This map is not intended to be used for navigation, or to determine the location of any specific point on the map. It is intended to show the general location of the Penikese Island Nation's traditional territories, and the location of the Forest District's forest and range agreement areas. The map is not intended to be used for any other purpose. The map is not intended to be used for any other purpose.

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Kilometers

Appendix B

