

**Ucluelet Forest Agreement**  
(the "Agreement")

**Between:**

***Ucluelet First Nation***  
As represented by the Ucluelet Indian Band Chief and Council  
(*"Ucluelet"*)

**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:**

- *Ucluelet* has Aboriginal Interests within its 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 consultation and/or accommodation obligations it has regarding *Ucluelet's* Aboriginal Interests subject to potential infringement as a result of forest resource development activities proposed within the Traditional Territory.
- *Ucluelet* agrees to participate in consultation initiated by the Government of British Columbia or a Licensee in relation to forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of *Ucluelet's* Aboriginal Interests.
- The Parties have an interest in reaching agreement on an interim workable accommodation of *Ucluelet's* Aboriginal Interests where those interests are subject to potential infringement as a result of forest resource development

activities proposed with the Traditional Territory prior to the reconciliation of those interests through a land claim settlement.

- The Parties wish to resolve issues related to forest resource development 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 an asserted and/or proven aboriginal rights and/or aboriginal title.
- 1.2 "Administrative Decision" means any one of the following decisions made by a person under the *Forest Act*:
  - 1.2.1 the decision setting or variance of the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
  - 1.2.2 the replacement of a Forest Tenure;
  - 1.2.3 the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - 1.2.4 the apportionment and reallocation of AAC;
  - 1.2.5 the transfer or change in control of a Forest Tenure, including any associated reductions to Forest Tenure AAC and exchange of rights between or among tenure holders;
  - 1.2.6 the issuance or subdivision of a Forest Tenure;
  - 1.2.7 the conversion of a Timber Sale License to another form of Forest Tenure;
  - 1.2.8 the extension of a Timber License term; and,
  - 1.2.9 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.

- 1.3 "Economic Interests" means the financial and/or commercial aspects of *Ucluelet's* Aboriginal Interests relating to forest resources.
- 1.4 "Forest Tenure" means an agreement entered into under the *Forest Act*.
- 1.5 "Licensee" means a holder of a Forest Tenure.
- 1.6 "Operational Decision" means the statutory approval of or the statutory refusal to approve an Operational Plan.
- 1.7 "Operational Plan" means a Forest Development Plan, or a Forest Stewardship Plan that has an effect in the Traditional Territory.
- 1.8 "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 *Ucluelet* is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which *Ucluelet* 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. Where exceptional and unforeseen circumstances arise, reasonable efforts will be made by the Parties to extend the Response Period, if necessary.
- 1.9 "Traditional Territory" means *Ucluelet's* asserted traditional territory as shown on bold black on the map attached in Appendix A.

## **2.0 Purpose:**

- 2.1 The purposes of this Agreement are to:
  - 2.1.1 increase *Ucluelet's* opportunity for participation in the forest sector;
  - 2.1.2 provide economic benefits to *Ucluelet* by inviting *Ucluelet* to apply for a forestry licence to cut as described in Section 3.1.1 and by sharing of revenues received by the Government of British Columbia from forest resource development;

- 2.1.3 address consultation requirements and provide an interim workable accommodation with regard to potential infringements of *Ucluelet's* Aboriginal Interests that may result from an Administrative Decision or an Operational Decision relating to forest resource development within the Traditional Territory, all as more particular described in this Agreement, during the term of this Agreement; and,
- 2.1.4 provide stability for 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.
- 2.2 The Parties differ on the question of the existence or extent of any duty or duties of consultation and/or accommodation owed by Licensees to *Ucluelet*. Nothing in this Agreement, or the fact that the Parties have entered into this Agreement, is intended to limit or prejudice the position that either Party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by Licensees or other third parties to *Ucluelet*.

### **3.0 Economic Benefits to *Ucluelet***

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Section 4.0 and 5.0 of this Agreement and will provide the following economic benefits to *Ucluelet* to address consultation and to provide an interim workable accommodation as set out in this Agreement, in respect of any infringements of *Ucluelet'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 Within 30 days of execution of this Agreement by the last Party, the Minister of Forests will invite *Ucluelet* under section 47.3 of the *Forest Act* to apply for a 91,000 cubic metre forestry licence to cut over a 5 year-term from undercut volume in Tree Farm Licence #44.
- 3.1.2 An invitation to apply for a forestry licence to cut and any forestry licence to cut entered into as a result of the invitation to apply under this Agreement will be subject to the policies, regulations and statutes of the Government of British Columbia as amended from time to time.

- 3.1.3 An invitation to apply under this Agreement will contain terms and conditions required by the Minister of Forests.
- 3.1.4 If the Parties enter into this Agreement before March 31, 2004, then the Government of British Columbia will provide *Ucluelet* with \$10,000 under the Economic Measures Fund to assist the *Ucluelet* to develop a business plan for the forestry licence to cut. The Government of British Columbia further agrees to use reasonable efforts to assist *Ucluelet* in its efforts to obtain contribution funding from the federal government for this purpose.
- 3.1.5 A forestry licence to cut entered into as a result of an invitation to apply under Section 3.1.1 of this Agreement will:
- 3.1.5.1 be for a term of no longer than five years, as determined by the Minister;
  - 3.1.5.2 not be replaceable under the *Forest Act*;
  - 3.1.5.3 contain other terms and conditions required by law, including the condition that *Ucluelet* must comply with this Agreement; and,
  - 3.1.5.4 include other terms and conditions as may be required by the regional manager including a term that *Ucluelet* may not divide, subdivide, transfer or otherwise dispose of the forestry licence to cut or an interest in the forestry licence to cut, except as may be permitted in accordance with the terms of the invitation to apply made pursuant to Section 3.1.1 of this Agreement.
- 3.1.6 If the term of the forestry licence to cut entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then the forestry licence to cut may be referenced and considered to be an economic benefit forming part of any other interim workable accommodation agreed to by the Parties, in any subsequent forestry agreement between the Parties for the purposes described in Section 3.0.
- 3.1.7 Prior to *Ucluelet* making application for a forestry licence to cut under Section 3.1.1, the Ministry of Forests will identify potential operating areas for the forestry licence to cut and

the Parties will work together to identify the operating area for the licence from the potential areas identified. If possible, the operating area will be within the Traditional Territory.

3.1.8 This Agreement does not preclude *Ucluelet* members from applying for a free use permit for wood for traditional and/or cultural purposes in accordance with Section 48 of the *Forest Act*.

3.1.9 The Parties will meet from time to time to review forestry business opportunities that may be available to *Ucluelet*.

## **3.2 Revenue Sharing**

3.2.1 During the term of this Agreement, the Government of British Columbia will pay to *Ucluelet* \$303,000 annually for the 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, *Ucluelet* 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 *Ucluelet* 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 by the Government of British Columbia, and no more than once a year, *Ucluelet* will conduct a financial audit of the revenue sharing expenditures provided to it pursuant to Section 3.2 of this Agreement and will provide a copy of the audit to the Government of British Columbia. The Government of British Columbia agrees that *Ucluelet* may conduct this financial audit concurrently with the general audit that it carries out at the end of each of its fiscal years.

#### 4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Government of British Columbia agrees to consult with *Ucluelet* on Operational Plans that may potentially infringe *Ucluelet's* Aboriginal Interests within the Traditional Territory, except for any Economic Interests addressed in Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, *Ucluelet* agrees that the Government of British Columbia has fulfilled its duties to consult and to seek interim workable accommodation of the Economic Interests that are subject to potential infringement as a result of Operational Decisions and the forest resource development activities that may be carried out under an Operational Plan in the Traditional Territory.
- 4.3 *Ucluelet* agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest resource development activities within the Traditional Territory provided to it by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to it, *Ucluelet* will, within the Response Period, provide the party who supplied the plan with all reasonably available information that will identify any potential impacts to its Aboriginal Interests that may result from forest resource development activities within the Traditional Territory, other than the Economic Interests addressed under Section 3.0.
- 4.5 Upon receiving the response from *Ucluelet* as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve, in a timely manner, with *Ucluelet* any site specific operational impacts on *Ucluelet's* Aboriginal Interests that may occur as a result of proposed forest resource development activities other than the Economic Interests addressed under Section 3.0.
- 4.6 If no response is received from *Ucluelet* within the Response Period, then the Government of British Columbia may assume that *Ucluelet* 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

*Ucluelet*, whether received directly or through a Licensee, and will consider whether concerns identified by *Ucluelet* have been addressed.

## **5.0 Consultation and Accommodation Respecting Administrative Decisions**

- 5.1 The Government of British Columbia will provide to *Ucluelet* on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of *Ucluelet* or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to *Ucluelet* an updated list.
- 5.2 The Government of British Columbia will meet with *Ucluelet* at mutually agreed times throughout the year to provide an opportunity for *Ucluelet* to make known to representatives of the Government of British Columbia its 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 *Ucluelet* 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, Tree Farm Licence #54, and Tree Farm Licence #44.
- 5.4 *Ucluelet* agrees to fully participate within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about its 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 agree 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 *Ucluelet*, the statutory decision-maker is reasonable of the opinion that an Administrative Decision creates a potential infringement of *Ucluelet'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 *Ucluelet* as to how its concerns raised in Section 5.2 have been addressed.
- 5.8 *Ucluelet* 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 of the Economic Interests that are subject to potential infringement as a result of Administrative Decisions made from time to time during the term of this Agreement.
- 5.9 *Ucluelet* further agrees that, subject to the compliance by the Government of British Columbia with the processes set out in 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 to address potential infringements of *Ucluelet's* Aboriginal Interests that may go beyond the potential infringements of the Economic Interests resulting from Administrative Decisions made from time to time during the term of this Agreement.
- 5.10 There will be no presumption that *Ucluelet* agrees with any Administrative Decisions made from time to time during the term of this Agreement unless such agreement is expressed in writing.

## **6.0 Stability within *Ucluelet's* Traditional Territory**

- 6.1 *Ucluelet* 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 *Ucluelet* members with provincially authorized activities related to forest 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 *Ucluelet* 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 *Ucluelet*.
- 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 first 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; or
  - 8.2.5 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.
- 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/or the forestry licence to cut 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 *Ucluelet* 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 *Ucluelet* of any alleged

contravention of this Agreement that may lead *Ucluelet* being determined to not be in compliance with this Agreement.

9.3 If during the term of this Agreement, *Ucluelet* challenges or supports a challenge to, an Administrative Decision and/or Operational Decision, 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 the Economic Interests subject to potential infringement as a result of Operational Decisions;  
or

9.3.2 substantially address *Ucluelet's* Aboriginal Interests subject to potential infringement as a result of Administrative decisions 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 will be terminated.

## **10.0 Renewal of the Agreement**

10.1 Prior to this Agreement terminating in accordance with Section 8.2.1, if the terms and conditions of this Agreement are being met, the Government of British Columbia and *Ucluelet* may seek their necessary authorities and approvals to renew this Agreement subject to available appropriations and available timber volume.

## **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.
- 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 Forests  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 387-4809  
Facsimile (250) 387-7065

### **Ucluelet**

Chief Councillor, Ed Mack  
PO Box 699,  
Ucluelet, BC V0R 3A0  
Telephone: (250) 726-7342  
Facsimile: (250) 726-7552

## **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:

**Ucluelet First Nation**

Date: March 15/04



**Chief Councillor**



**Witness**

Signed on behalf of:

**Government of British Columbia**

Date: March 23, 2004

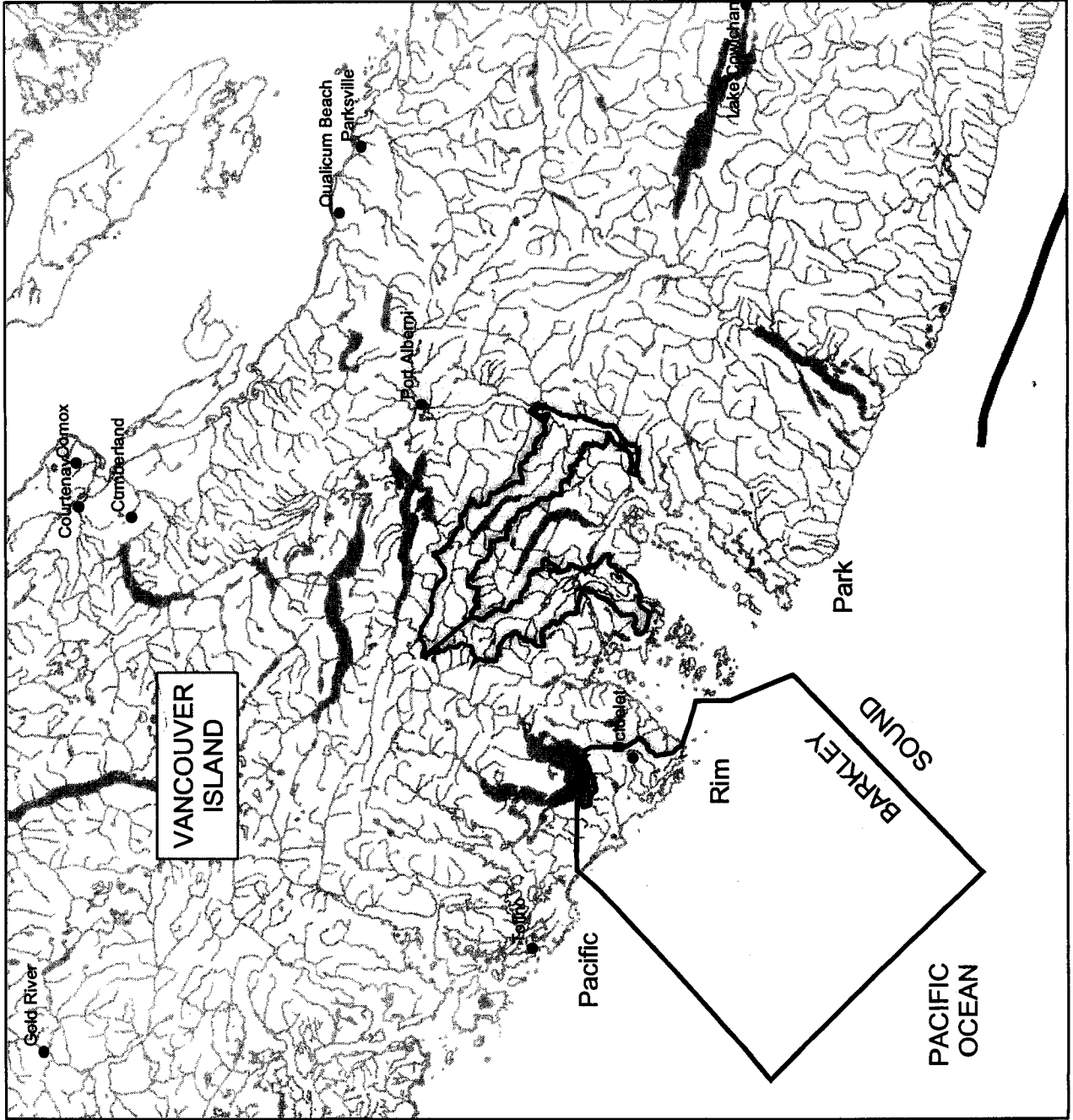


**Michael de Jong**  
**Minister of Forests**



**Witness**

# Appendix A



Ucluelet Traditional Territory

**Legend**

- UCLUELET TRADITIONAL TERRITORY
- BC MAJOR CITIES
- BC RIVERS
- BC LAKES
- BC PROVINCIAL BOUNDARY
- BC BASEMAP

