

**WESTBANK FIRST NATION  
INTERIM MEASURES AGREEMENT**

**(the "Agreement")**

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA**

**("British Columbia")**

**as represented by the Minister of Forests**

**AND**

**WESTBANK FIRST NATION**

**("Westbank")**

**as represented by its Chief and Council**

**(the "Parties")**

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**WHEREAS:**

- A. Westbank, as represented by the Chief and Council, acts on behalf of the present and future members of Westbank First Nation.
- B. Her Majesty the Queen in right of British Columbia is represented by the Minister of Forests.
- C. Pursuant to the August 20<sup>th</sup>, 1993 Protocol Respecting the Government-to-Government Relationship Between the First Nations' Summit and the Government of British Columbia ("August 20<sup>th</sup>, 1993 Protocol"), it was agreed that "a government-to-government relationship" exists between First Nations and the Government of British Columbia."
- D. Westbank asserts, as part of the Okanagan Nation, that it has unextinguished aboriginal title, jurisdiction and rights, which includes the lands that are subject to this Agreement.
- E. In entering into this Agreement, Westbank asserts it is exercising its inherent right of self-government, recognized and affirmed within section 35 of the Constitution Act, 1982.
- F. Recommendation 16 of the June 1991 Report of the B.C. Claims Task Force recommends that "The Parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process."
- G. The Parties are committed to working together to establish interim measures dealing with lands and natural resources within the Subject Lands.
- H. The Parties entered into a Tripartite Political Accord on Treaty Negotiations on May 10, 2000 as attached hereto and wish to enter into this Agreement consistent with that Accord.
- I. The Parties have indicated a desire to reconcile the interests of Westbank and the Province through tripartite treaty negotiations.
- J. The Parties entered into a Letter of Understanding dated August 9, 2000 as attached hereto.

## THEREFORE THE PARTIES AGREE:

### 1 DEFINITIONS

- 1.1 "CFPA" means Community Forest Pilot Agreement as defined in Section 43.1 of the Forest Act.
- 1.2 "Companies" means those companies listed in Appendix "A."
- 1.3 "Okanagan Timber Supply Area" means the area identified in Appendix "B" to this agreement.
- 1.4 "Subject Lands" means that portion of British Columbia as generally illustrated on the map attached to this Agreement as Appendix "C", asserted by Westbank to be within its area of interest within the traditional territory of the Okanagan Nation.
- 1.5 "Workplan" means the document created under Section 6.3 of this Agreement for the purposes of operating the Joint Forest Council.

### 2 INTERPRETATION

- 2.1 This Agreement and its implementation shall not affect the Okanagan Nation or other First Nations within the Okanagan Nation in the assertion of their aboriginal rights and title.
- 2.2 Nothing in this Agreement is intended to affect the existence or scope of any aboriginal rights, or to prevent the exercise of any aboriginal rights, either during the currency of the Agreement or otherwise.
- 2.3 Nothing in this Agreement or any record created pursuant to it is intended to create, recognize, limit or deny any aboriginal rights, or the legal relationship between Parties with respect to such rights, or alter or affect the legal status of lands or resources within the Province or the existing authorities of British Columbia.
- 2.4 This Agreement and any record created pursuant to it is not intended to limit any position any Party may take with respect to future negotiations, agreements or treaties, and is without prejudice to any legal position that have been or may be taken by any Party in any court proceeding, process or otherwise, and nothing in this Agreement shall be construed as an admission of fact or liability in any such proceeding or process.
- 2.5 Nothing in this Agreement shall be interpreted in a manner that obliges British Columbia to act in a manner inconsistent with provincial legislative or regulatory authorities, or that fetters the statutory discretion of government decision-makers.
- 2.6 This Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act*.
- 2.7 Nothing in this Agreement shall restrict or limit the right of Westbank or its members to collectively or individually apply to benefit from any program of British Columbia available to them as aboriginal people or otherwise.

### **3 GENERAL INTENT**

- 3.1 The intent of this Agreement is to incorporate and implement the terms of the Letter of Understanding signed between British Columbia, Canada and Westbank on August 9, 2000 and is conditional upon the Parties meeting any ongoing commitments contained within the Letter of Understanding.
- 3.2 The intent of this Agreement is to facilitate Westbank's role in forestry management, and through the invitation of a Community Forest Pilot Agreement proposal, access to sharing of the timber resource.
- 3.3 The Parties, through this Agreement and other activities, will identify ways to work co-operatively on land and natural resource issues through the establishment of a Joint Forest Council.
- 3.4 Any moneys paid or timber resource attributed to Westbank in this Agreement shall not be counted against any settlement achieved in reconciliation negotiations or other negotiations without the express agreement of the Parties.

### **4 PURPOSE**

- 4.1 The Purpose of this Agreement is to:
  - 4.1.1 build meaningful working relationships between Westbank and the Ministry of Forests, forest sector companies, and others with an interest in the forest resource within the Subject Lands;
  - 4.1.2 pursue economic development opportunities, including value added forestry opportunities, related training, and long term employment opportunities for Westbank;
  - 4.1.3 promote certainty, while treaty negotiations proceed, for third party interests, in the Subject Lands; and,
  - 4.1.4 provide Westbank orderly access to forest and timber resources through the invitation of a CFPA and establishment of a Joint Forest Council.

### **5 COMMUNITY FOREST PILOT AGREEMENT**

- 5.1 The Minister of Forests hereby invites Westbank to apply for a Community Forest Pilot Agreement over an area of Crown land that would represent a volume of timber harvested of up to 55,000 m<sup>3</sup> per year based on current forest management practices for the Okanagan Timber Supply Area as described in the August 1, 2001 *Okanagan Timber Supply Area Rationale for Allowable Annual Cut (AAC) Determination*.
- 5.2 Further to section 5.1, Westbank will enter into a mutually satisfactory fibre supply agreement or agreements with the Companies, including performance obligations with which Westbank shall comply, for the volume of timber that each of the Companies will be contributing to British Columbia for use in the Community Forest Pilot Agreement. Any dispute relating to the performance obligations under the fibre supply agreements may, after completion of the dispute resolution process in the fibre supply agreement, be, at the discretion of British Columbia or Westbank, subject to the dispute resolution process set out in section 9.

- 5.2.1 If one or more of the Companies requests an uplift in AAC under an Innovative Forest Practices Agreement the Regional Manager will assess and monitor the request in accordance with Section 59.1 of the Forest Act.
- 5.2.2 The Parties acknowledge that, pursuant to section 59.1 of the Forest Act, if the Companies' aggregate AAC is increased as a result of actions undertaken by the Companies under an Innovative Forest Practices Agreement with British Columbia, then the Companies have agreed that the volume committed by Westbank to the companies in section 2.1 of the fibre supply agreement will be reduced by an amount equivalent to the AAC increase received by the companies, for so long as such AAC increase applies to the companies' tenures.
- 5.3 Westbank may include, within its Community Forest Pilot Agreement Proposal, an assessment of the market conditions in which the business will be operating, that will take into consideration the requirement for fibre supply agreements. At the end of the 5-year pilot period, the Minister will review the CFPA under section 43.4 of the *Forest Act* in a manner consistent with the regulations.
- 5.4 The detailed requirements for the Community Forest Pilot Agreement proposal, as well as the conditions for the award of the Community Forest Pilot Agreement which are in addition to those outlined in the Letter of Understanding attached to this Agreement, will be forwarded to Westbank by the Regional Manager of the Kamloops Forest Region after this Agreement has been executed by the Parties.

## **6 JOINT FOREST COUNCIL**

- 6.1 The purpose of the Joint Forest Council is to undertake initiatives and specific projects to support successful implementation of this Agreement, and shall constitute a forum for technical discussions between the Parties on strategic level forestry planning processes within the Subject Lands. To carry out these functions the JFC shall:
  - 6.1.1 meet quarterly, or by agreement of the Parties;
  - 6.1.2 review progress on implementation of this Agreement;
  - 6.1.3 develop, design, implement, review and modify a Workplan;
  - 6.1.4 identify, consider, and act on issues which arise from this Agreement;
  - 6.1.5 identify policy and legislative issues;
  - 6.1.6 consider agenda items proposed by any Party; and,
  - 6.1.7 provide advice to the Parties on the planning processes and outcomes of plans and strategic initiatives affecting forestry management.
- 6.2 The Joint Forest Council will be made up of three members appointed by British Columbia, three members appointed by Westbank, with the Chair alternating between the Parties.
- 6.3 The Joint Forest Council will develop a Workplan on an annual basis.
- 6.4 The Joint Forest Council will determine its rules of operation based on the principles of efficiency, effectiveness, and sound resource management.

- 6.5 All public communications or releases related to this Agreement shall be jointly reviewed and approved by the Joint Forest Council prior to their issuance.
- 6.6 The Parties recognize that there may be legislative and policy issues that may not be able to be resolved at the Joint Forest Council. As such, any Party may refer matters related to policy and legislation to the Annual Meeting referred to in Part 7 of this Agreement for discussion.
- 6.7 The Joint Forest Council may participate in the development of regional economic development opportunities as initiated by local governments or other agencies.
- 6.8 The Parties and the Joint Forest Council shall seek to involve representatives of other public and private sector organizations where it will contribute to the successful implementation of this Agreement.

## **7 ANNUAL MEETING OF THE PARTIES**

- 7.1 The Parties will meet not less than once yearly to review progress with respect to the implementation of this Agreement.
- 7.2 The purpose of the Annual Meeting is to ensure the successful implementation of this Agreement by:
  - 7.2.1 approving the Workplan of the Joint Forest Council;
  - 7.2.2 Reviewing progress on the implementation of this Agreement;
  - 7.2.3 Reviewing any issues referred by any Party to the Annual Meeting;
  - 7.2.4 Considering agenda items proposed by any Party
- 7.3 The Minister of Forests, or designate, and the Chief of Westbank shall co-chair the annual meeting.
- 7.4 Minutes of the Annual Meeting will be kept.

## **8 FUNDING**

- 8.1 The Parties will attempt to secure financial and other resources for initiatives identified by the Joint Forest Council in order to support the implementation of this Agreement.
- 8.2 British Columbia acknowledges that Westbank may require additional funding for capacity building. Any such additional funding will be subject to an appropriation and allocation of funds from the Legislature of British Columbia.
- 8.3 The Parties will attempt to secure financial and other resources for capacity building initiatives identified by the Joint Forest Council.

## **9 DISPUTE RESOLUTION**

- 9.1 In the event of a dispute between the Parties arising out of the interpretation of this Agreement, the Parties agree to meet, negotiate and attempt to resolve the dispute amicably. The Parties agree to use the procedure set out in this Part.
- 9.2 If a dispute arises under this Agreement which cannot be resolved by the persons directly involved within thirty (30) days, either Party may invoke this dispute resolution procedure by giving written notice to the other Party designating a senior official with appropriate authority to be its representative in the dispute.

- 9.3 Upon receipt of the notice referred to above, the Parties shall:
- 9.3.1 within ten (10) business days table the matter in dispute with the designated officials for Westbank and the British Columbia; and,
  - 9.3.2 within thirty (30) business days, if the Parties have failed to resolve the dispute or agreed to extend the time to resolve the dispute, may consider jointly appointing a facilitator or mediator to assist in resolving the dispute.
- 9.4 If, as a result of the facilitation/mediation process, the Parties are unable to resolve the matter in dispute, or if the Parties do not appoint a facilitator or mediator, then the matter will be placed on the agenda for the next annual meeting for possible resolution.

## **10 INTERPRETATION OF THE AGREEMENT**

- 10.1 The Parties will use their best efforts to renegotiate diligently any term or provision of this Agreement that is invalid or ineffective so as to render it valid, effective, and having regard to the spirit and intent of this Agreement.
- 10.2 The Parties acknowledge that the British Columbia government is considering policy and legislative changes that may affect this Agreement.
- 10.3 British Columbia agrees to inform Westbank of any such proposed legislative changes as soon as they are publicly available with the intention of discussing the amendment of the Agreement to address such legislative changes. The forgoing discussion shall take place at the Joint Forest Council having regard for the spirit and intent of the Agreement.
- 10.4 If the Parties are unable to reach agreement on the amendment of this Agreement either party may refer the matter to the dispute resolution process outlined in section 9. Any amendments agreed to by the Parties will be completed prior to the effective date of the proposed legislation.

## **11 TERM OF THE AGREEMENT**

- 11.1 This Agreement will be in effect for a period of five (5) years after which time the Parties will review its effectiveness, and:
- 11.1.1 make necessary modifications supported by both Parties and renew the Agreement for a further period as agreed; or,
  - 11.1.2 terminate the Agreement.
- 11.2 This Agreement shall automatically terminate upon the coming into effect of any treaty between the Westbank, British Columbia and the Government of Canada.
- 11.3 Any Party may terminate this Agreement following the failure of the Dispute Resolution Process outlined in section 9.1 – 9.3, by giving the other Party 30 days notice in writing.
- 11.4 The provisions of this Agreement may only be amended by written agreement of the Parties.

## **12 EFFECTIVE DATE OF THE AGREEMENT**

- 12.1 This Agreement will come into effect when signed by all Parties.

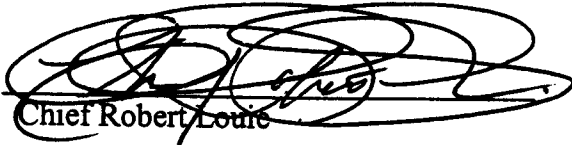
This Agreement was executed by the duly authorized representatives of the Parties as of the 23rd of September, 2002.

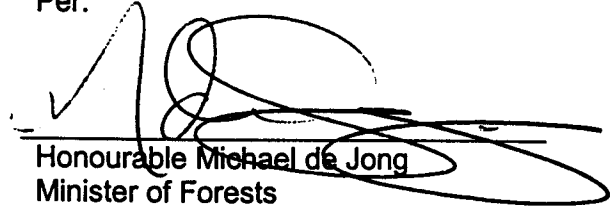
Westbank First Nation

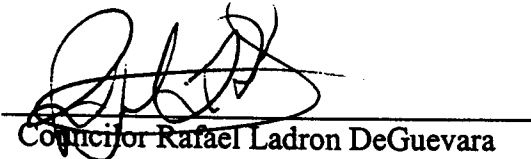
Her Majesty the Queen in Right of  
British Columbia

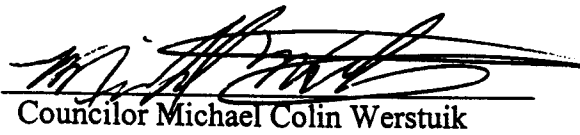
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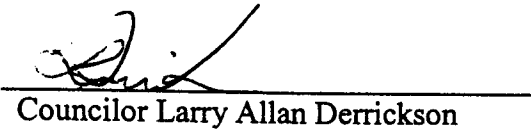
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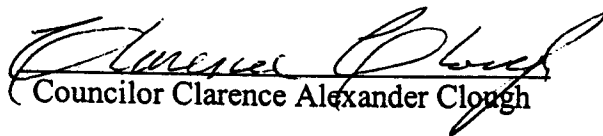
  
Chief Robert Louie

  
Honourable Michael de Jong  
Minister of Forests

  
Councilor Rafael Ladron DeGuevara

  
Councilor Michael Colin Werstuik

  
Councilor Larry Allan Derrickson

  
Councilor Clarence Alexander Clough

## **APPENDIX "A" – Certain Companies in the Okanagan Timber Supply Area**

Tolko Industries Ltd.

Riverside Forest Products Limited

LP Engineered Wood Products Ltd.

Bell Pole Company

Selkirk Timber Company

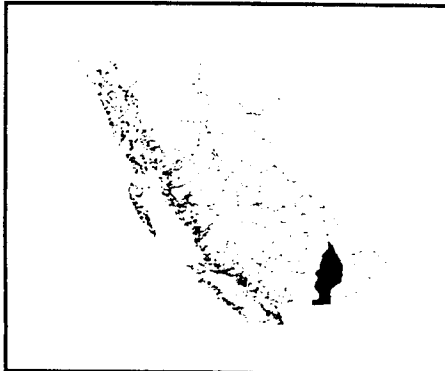
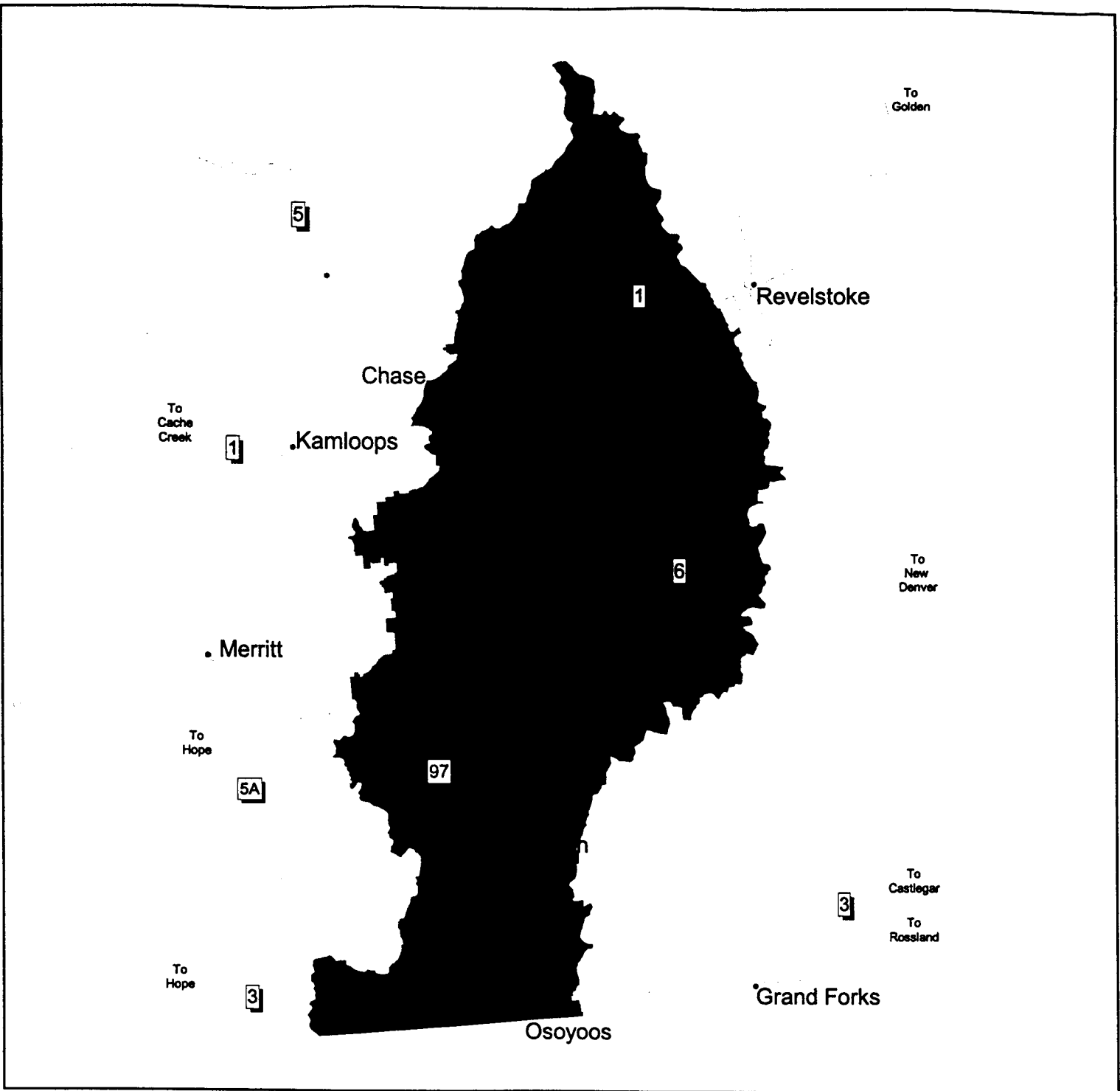
Gorman Bros. Lumber Ltd.

Weyerhaeuser Company Ltd.

Federated Co-operatives Limited



**APPENDIX "B" – Okanagan Timber Supply Area**



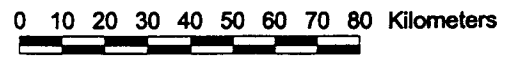
**Okanagan TSA**

Numbered Highways  
 Okanagan TSA



**Ministry of Forests  
 Aboriginal Affairs Branch**

September 19, 2002



Scale 1: 1,899,362 Projection Albers Datum NAD 83

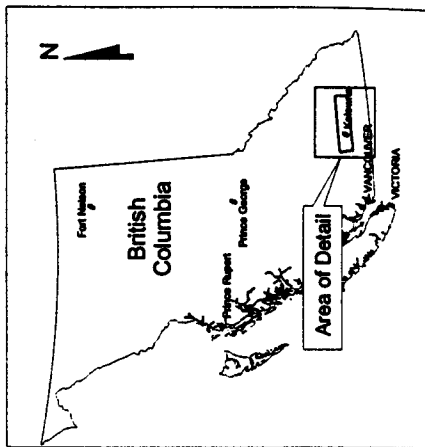
**APPENDIX "C" – Subject Lands**

TREATY NEGOTIATIONS IN BRITISH COLUMBIA  
STATEMENT OF INTENT BOUNDARY  
WESTBANK FIRST NATION

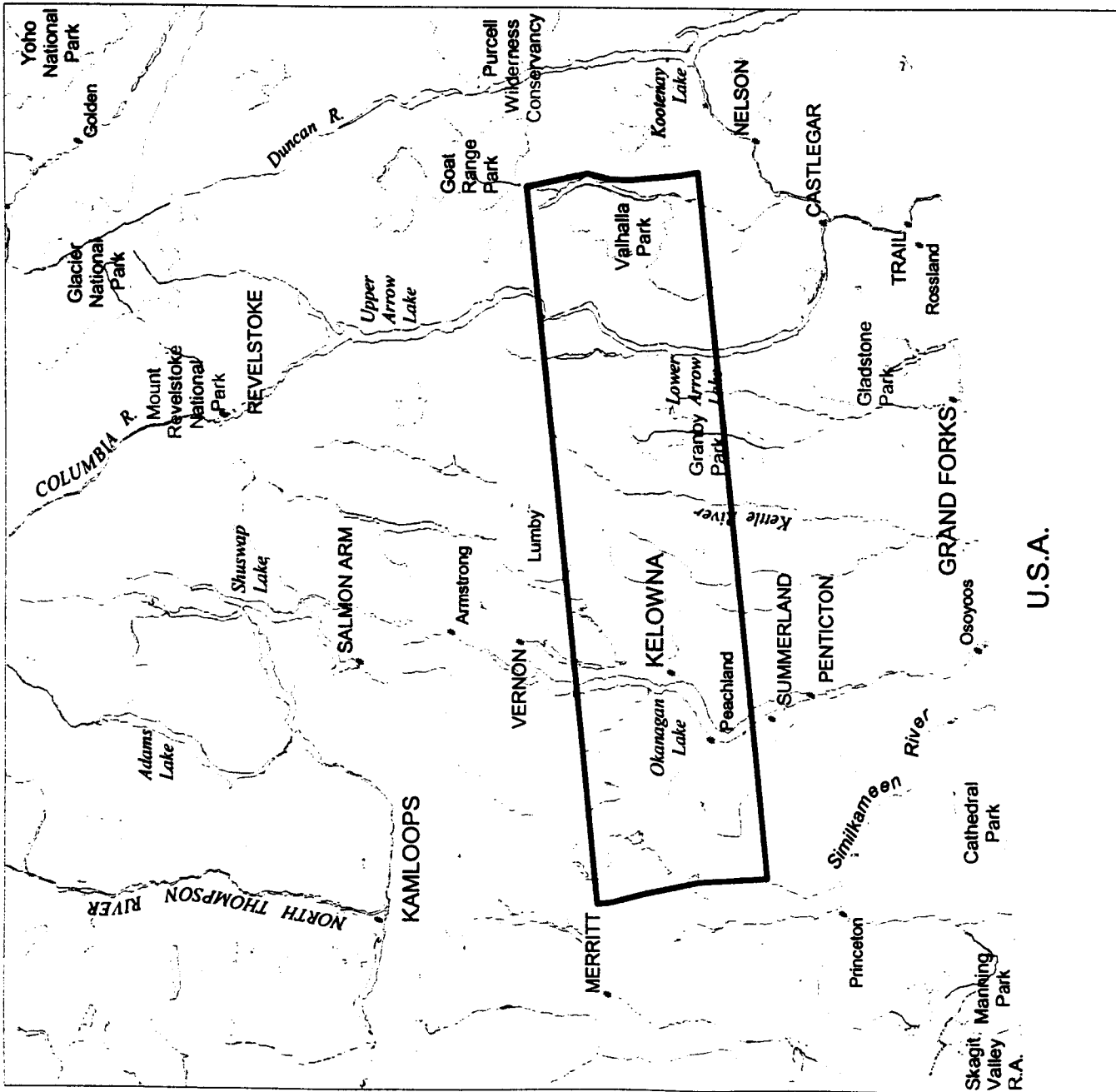


LEGEND

- Statement of Intent Boundary
- Roads
- Populated Places
- Parks



March 23, 2001



The boundary on this map represents the approximate boundary of a traditional territory as described in a First Nation Statement of Intent to negotiate treaties which has been submitted to the B.C. Treaty Commission. The boundary is illustrative only and may be updated in the future. Publication of this map does not imply that the First Nations, the Province of British Columbia, or the Government of Canada have agreed to the boundary shown. The Statement of Intent boundaries of neighbouring and overlapping First Nations are not shown.

Produced under the Information Sharing Protocol by the Federal Treaty Negotiation Office, Indian and Northern Affairs Canada, and the Information Provision Branch, British Columbia Ministry of Aboriginal Affairs.