

**Nuchatlaht First Nation
Forest Agreement
(the “Agreement”)**

**Between:
Nuchatlaht First Nation**

As represented by
Chief Walter Michael

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 Nuchatlaht First Nation has Aboriginal Interests within their Traditional Territory.
- The Nuchatlaht First Nation supports the asserted Hahoulthee of the hereditary chief, which, Hahoulthee they see as being the honour of the chief to govern over his lands, waters, seas, air environment, human and natural resources.
- Nuchatlaht First Nation have a desire to pursue long term sustainable economic opportunities that will enhance their role in the local economy and the forest industry.
- 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 to seek workable accommodation with the Nuchatlaht First Nation on forest resource development activities proposed within the Nuchatlaht First Nation Traditional Territory that may lead to the infringement of the Nuchatlaht First Nation’s Aboriginal Interests.

- Nuchatlaht First Nation agree to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest resource development activities proposed within the Nuchatlaht First Nation Traditional Territory, that may lead to an infringement of Nuchatlaht First Nation Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of Nuchatlaht First Nation's Aboriginal Interests where forest development activities are proposed within the Nuchatlaht First Nation Traditional Territory that may to lead to the infringement of Nuchatlaht First Nation's Aboriginal Interests.
- The Government of British Columbia and the Nuchatlaht First Nation wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.
- This Agreement does not exclude the Nuchatlaht First Nation from accessing other forestry economic opportunities or benefits which may be available from time to time.

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 proven aboriginal rights and/or aboriginal title.
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under the *Forest Act*:
 - A decision regarding a tree farm licence management plan, community forest agreement management plan and/or woodlot licence management plan;
 - The decisions setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
 - The deletion of land from provincial forest; and,
 - The disposition of timber volumes arising from undercut decisions on a Forest Tenure;
 - The issuance of special use permits;
 - The issuance, extension, consolidation, subdivision or amendment of a forest tenure where these events may have an impact on Aboriginal Interests;
 - The establishment of recreation sites or trails;

- The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.
 - The replacement of Forest Tenures;
 - Timber Sale Licence conversion to another forms of tenure;
 - Timber Licence term extensions; and
 - The transfer of AAC 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 “Licensee” means a holder of a Forest Tenure.
- 1.5 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has an effect in Nuchatlaht First Nation’s Traditional Territory.
- 1.6 “Operational Plan” means a Forest Development Plan, Woodlot Licence Plan, or a Forest Stewardship Plan that has an effect in Nuchatlaht First Nation’s Traditional Territory.
- 1.7 “Response Period” means a period of 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 Nuchatlaht 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 Nuchatlaht First Nation receives the plan to be reviewed. Where an emergency operation arises and/or expedited operation has to occur, or for circumstances where the advertising period for an Operational Plan is reduced below 60 days by a ministry decision maker for reasons other than emergency or expedited operations, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations. The Parties may also mutually agree to adjust the Response Period at any time.
- 1.8 “Traditional Territory” means the Nuchatlaht 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 Nuchatlaht First Nation's opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Nuchatlaht First Nation through a forest tenure opportunity and/or the sharing of revenues received by the Government of British Columbia from forest resource development.
- 2.3 Address consultation and to provide an interim workable accommodation, as set out in this Agreement, with regard to any infringements of Nuchatlaht First Nation's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Nuchatlaht First Nation's Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest resource development on Crown lands within the Nuchatlaht First Nation Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

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

3.1 Forest Tenure

- 3.1.1 After the execution of this Agreement by the Parties, the Minister of Forests and Range will invite Nuchatlaht First Nation to apply under section 47.3 of the Forest Act for a non-replaceable licence (the "licence") for up to 28,000 cubic meters over 5 years in the Strathcona Timber Supply Area.

- 3.1.2 After the execution of this Agreement by the Parties and after the Minister of Forests and Range has determined that sufficient volume of timber is available for disposition to the Nuchatlaht First Nation as a result of the implementation of the *Forestry Revitalization Act*, the Minister of Forests and Range will invite Nuchatlaht First Nation to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "licence") for up to 20,000 cubic meters over 5 years in the Strathcona Timber Supply Area.
- 3.1.3 For greater certainty, the maximum volume that may be available under the licence referred to in Section 3.1.1 and 3.1.2 will be up to 48,000 cubic meters over 5 years.
- 3.1.4 If the intended holder of the licence is a legal entity other than the Nuchatlaht First Nation, the Nuchatlaht First Nation must supply the Government of British Columbia with the supporting documentation stating that the intended holder has been validly appointed by the Nuchatlaht First Nation as its representative.
- 3.1.5 An invitation to apply for a licence (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.
- 3.1.6 An invitation:
- 3.1.6.1 will be subject to a condition that prior to Nuchatlaht First Nation making an application for the licence, the Nuchatlaht First Nation must contact and provide input to Ministry of Forests and Range personnel to assist the Ministry of Forests and Range to identify the location of an operating area for the licence within the Strathcona Timber Supply Area, which to the extent that it is operationally feasible will be within the Traditional Territory; and
 - 3.1.6.2 will contain terms and conditions required by the Minister.
- 3.1.7 A licence entered into as a result of an invitation:
- 3.1.7.1 will be for a term of no longer than 5 years, as determined by the Minister;

3.1.7.2 will contain other terms and conditions required by law, including the condition that Nuchatlaht First Nation must comply with this Agreement;

3.1.7.3 a term that Nuchatlaht First Nation may not dispose of the licence or an interest in the licence except in accordance with Section 54(4) of the *Forest Act*; and,

3.1.7.4 will include other terms and conditions as may be required by the regional manager.

3.1.8 Subject to:

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

3.1.8.2 the Minister determining that there is sufficient volume of timber available for disposition to Nuchatlaht First Nation,

the Minister may invite Nuchatlaht First Nation to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.1.9 The Government of British Columbia and the Nuchatlaht First Nation will meet from time to time during the term of this Agreement to review forestry business opportunities that may be available to the Nuchatlaht.

3.1 Revenue Sharing

3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Nuchatlaht First Nation \$66,664 annually for purposes described in Section 3.0.

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

3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e. $\frac{1}{4}$) of the annual amount will be used for

each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.

- 3.2.4 Upon signing of this Agreement, the Nuchatlaht First Nation will be paid the full revenues for the remaining quarters of fiscal year 2005/2006 (\$33,332). Subsequent payments will be made at the end of each quarter starting in April 1, 2006 - June 30, 2006 quarter.
- 3.2.5 Nuchatlaht 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, Nuchatlaht 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.
- 3.2.7 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 Nuchatlaht First Nation has agreed to accept as an interim measure for the term of this Agreement.

4.0 Consultation and Accommodation Regarding Operational Plans

- 4.1 The Government of British Columbia agrees to consult with Nuchatlaht First Nation on Operational Plans that may potentially infringe Nuchatlaht First Nation's Aboriginal Interests within the Traditional Territory, except for any economic component of those interests or rights that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, Nuchatlaht First Nation agrees that the Government of British Columbia has fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of Nuchatlaht First Nation's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest development activities that may be carried out under an Operational Plan in Nuchatlaht First Nation's Traditional Territory.
- 4.3 Nuchatlaht First Nation agrees to fully participate, as set out in this section, 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.

- 4.4 In reviewing and responding to an Operational Plan submitted to them, Nuchatlaht 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 that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.5 Upon receiving the response from Nuchatlaht First Nation as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Nuchatlaht First Nation any site specific operational impacts on Nuchatlaht First Nation's Aboriginal Interests that may occur as a result of proposed forest development activities within the Traditional Territory, other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.6 If no response is received from Nuchatlaht First Nation within the Response Period, then the Government of British Columbia may assume that Nuchatlaht 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 decision maker will fully consider information he/she receives from Nuchatlaht First Nation, whether received directly or through a Licensee, and will consider whether concerns identified by Nuchatlaht First Nation have been addressed.
- 4.8 The Government of British Columbia will provide the Nuchatlaht First Nation with a copy of the approval letter for Operational Plans.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to Nuchatlaht First Nation 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 Nuchatlaht First Nation or when the Government of British Columbia becomes aware

of other proposed Administrative Decisions, will provide to Nuchatlaht First Nation an updated list.

- 5.2 The Government of British Columbia will meet with Nuchatlaht First Nation at mutually agreed times throughout the year to provide an opportunity for Nuchatlaht 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 ensure the opportunity for the Nuchatlaht First Nation to participate, as set out in Section 5.4, in Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Strathcona TSA.
- 5.4 Nuchatlaht First Nation agrees to fully participate, within the Response Period, in 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 If after considering the concerns and comments of Nuchatlaht First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Nuchatlaht First Nation's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.
- 5.6 The Government of British Columbia will provide a response to Nuchatlaht First Nation in a timely manner as to how their concerns raised in Section 5.2 have been addressed.
- 5.7 Nuchatlaht First Nation agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of Nuchatlaht First Nation's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.

- 5.8 Nuchatlaht 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 Nuchatlaht First Nation's Aboriginal Interests.

6.0 Stability for Land and Resource Use

- 6.1 Nuchatlaht First Nation will respond immediately to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Nuchatlaht 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 Nuchatlaht First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 7.2 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 Nuchatlaht First Nation.
- 7.3 The Parties may agree on other appropriate approaches to assist in reaching resolution of the interpretation issue.

8.0 Term

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or

- 8.2.2 the coming into effect of a treaty between the Parties;
or,
 - 8.2.3 the mutual agreement of the Parties; or
 - 8.2.4 upon written notice of withdrawal from this Agreement by either Party, which will take effect 90 days following the receipt of notice by the other Party; or,
 - 8.2.5 the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 9.0.
- 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 and Range or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that Nuchatlaht First Nation is not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to Nuchatlaht First Nation of any alleged contravention of this Agreement that may lead Nuchatlaht First Nation being determined to not be in compliance with this Agreement.
- 9.3 If, during the term of this Agreement, Nuchatlaht First Nation challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to
- 9.3.1 provide adequate consultation, to substantially address Nuchatlaht First Nation's concerns and to provide an interim workable accommodation in respect of any potential infringements of Nuchatlaht 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 Nuchatlaht First Nation's Aboriginal Interests with regard to Operational 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 or cancel the economic benefits set out in Section 3.0.

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

10.0 Renewal of the Agreement

10.1 Prior to this Agreement terminating in accordance with Section 8.2, and subject to Section 3.2.7 if the terms and conditions of this Agreement are being met, the Government of British Columbia and Nuchatlaht First Nation will seek the necessary authorities and approvals to renew this Agreement.

10.2 Any subsequent forestry agreement between the Government of British Columbia and Nuchatlaht First Nation may provide 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.

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 quarterly and consider amendments to this Agreement.

12.0 Entire Agreement

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

13.0 Notice

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

British Columbia

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

Nuchatlaht First Nation

Chief and Council
Nuchatlaht First Nation
P.O. Box 40
Zeballos, BC V0P 2A0
Telephone: (250) 332-5908
Facsimile: (250) 332-5907

14.0 Miscellaneous

- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia or the Nuchatlaht First Nation 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.

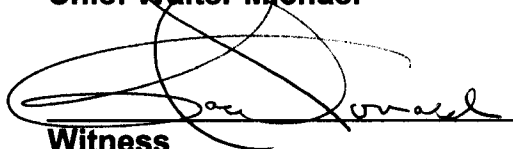
Signed on behalf of:

Nuchatlaht First Nation

Date: Nov 25, 2005



Chief Walter Michael




Witness

Signed on behalf of:

Government of British Columbia

Date: January 14/06

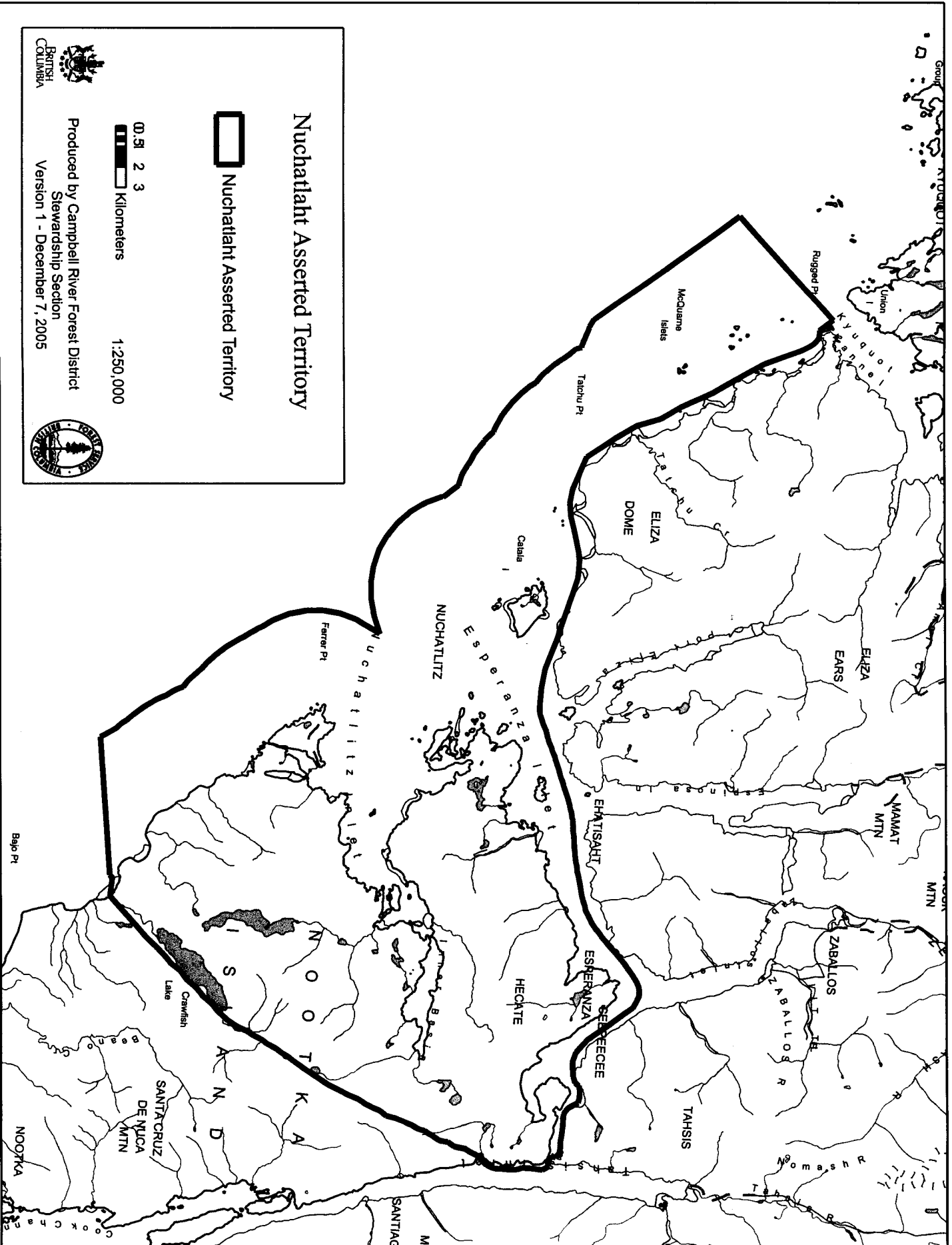


Rich Coleman
Minister of Forests and Range
(and Minister Responsible for Housing)



Witness

Appendix A





Chronological no
File reference no

BAND COUNCIL RESOLUTION RESOLUTION DE CONSEIL DE BANDE

NOTE: The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds

The Council of the Le conseil de Nuchatlaht First Nation						Cash free balance	
						Capital account	\$ _____
Date of duly convened meeting Date de l'assemblee dument convoquee	D-J	M	Y-A	Province		Revenue Account	
	2	5	1	1	0	5	B.C.
							\$ _____

DO HEREBY RESOLVE:
DECIDE, PAR LES PRESENTES:

To enter into a Forest Agreement with the Minister of Forests and Range and to have Chief Walter Michael sign the this agreement on behalf of the Nuchatlaht First Nation Council.

Quorum 3

 (Councillor)	 (Chief)	 (Councillor)
 (Councillor)	_____ (Councillor)	_____ (Councillor)
_____ (Councillor)	_____ (Councillor)	_____ (Councillor)

FOR DEPARTMENTAL USE ONLY - RESERVE AU MINISTERE					
Expenditure	Authority (Indian Act Section Autorite (Article de la Loi sur les Indiens)	Source of funds Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue	Expenditure	Authority (Indian Act Section Autorite (Article de la Loi sur les Indiens)	Source of funds Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
Recommending officer			Recommending officer		
_____ Signature		_____ Date	_____ Signature		_____ Date
Recommending officer			Recommending officer		
_____ Signature		_____ Date	_____ Signature		_____ Date

